

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

A.S.No.498 of 1997

Between:

Challa Raju

...Petitioner

AND

\$ Pyla Gireenu (died) per L.Rs.
and 2 others.

...Respondents

DATE OF JUDGMENT PRONOUNCED: 6.12.2017

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

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1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment? Yes/No
 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? Yes/No
 3. Whether Their Lordship wish to see the
Fair copy of the judgment? Yes/No

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< GIST:

> HEAD NOTE:

!Counsel for Appellant: Sri S.Ashok Anand Kumar

^ Counsel for Respondent No.2: Sri G.Ramgopal

^ Counsel for Respondent No.3: Sri P.Sri Raghuram

? Cases referred:

1. (2010) 4 SCC 753
2. (2012) 11 SCC 405
3. (2010) 10 SCC 512
4. (2010) 4 SCC 753
5. (2004) 7 SCC 277
6. (2004) 6 SCC 325
7. 2011 (1) ALD 296
8. 2011 (5) ALD 508
9. AIR 2005 SC 439
10. (1999) 3 SCC 573
11. AIR 2003 Bombay 369
12. 2010(6) ALD 119 (SC)
13. 2014(3) ALD 449



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

A.S.No.498 of 1997

JUDGMENT:

Plaintiff in O.S.No.155 of 1988 on the file of Court of III Additional Subordinate Judge, Visakhapatnam, is the appellant in the present Appeal Suit, preferred under Section 96 of Code of Civil Procedure against the judgment and decree dated 30.1.1997 passed by the said Court.

2. The appellant herein instituted the said suit for the following reliefs:

- (1) Permanent injunction restraining the defendants 1 and 2 from selling the suit schedule I and II site with a thatched house to third defendant or any other person.
- (2) And as a consequential relief to set aside the sale dated 29.3.1988 in respect of Schedule-II property which is given as a passage of the width of 2 feet and length of 52 ½ feet for road accessibility or in the alternative to declare the sale in respect of Schedule-II property which is included in the sale deed dated 29.3.1988 as null and void.
- (3) For specific performance of the suit agreement dated 26.4.1987 by directing the defendants 1 and 2 to register the suit schedule I and II site in favour of the plaintiff after receiving the balance of sale consideration after deducting the interest payable by the defendants to the plaintiff at the rate of 24% per annum from 26.5.1987 as directed by this Hon'ble Court and in case defendants 1 and 2 fails to register the same in favour of the plaintiff, this Hon'ble Court to register the sale deed in favour of the plaintiff on behalf of the defendants 1 and 2 and for delivery of possession.
- (4) And in case the specific performance cannot be granted this Hon'ble Court direct the defendants 1 and 2 to order the return the advance of Rs.15,000/- with interest at 24% per annum from 26.4.1987 and also for a sum of Rs.10,000/- being the damages for breach of contract.
- (5) For costs of the suit; and
- (6) For such other relief or reliefs which this Hon'ble Court may

deem fit and proper under the circumstances of the case.

3. The schedule of properties is as follows:

SCHEDULE-I

The suit schedule land consisting of 2 roomed old tatched house with vacant space of 60 sq.yards situated in the backyard of Door No.34-11-12, Ward No.38, S.No.295, Block No.13, Holly Cross Street, Gnanapuram, Visakhapatnam, marked as A, B, C, D in plaint plan bounded by:

East	:	The house of Gullipilli Santhaiah
South	:	Allotted 3' lane with Municipal drainage
West	:	Asbestos sheet house of one Pyla Atchanna
North	:	Tiled house of the Defendants 1 and 2 with vacant land
Total extent	:	60 (sixty only) sq.yards
Total value	:	Rs.36,000/-

SCHEDULE-II

The 2 feet width and about 50 feet length common passage on the Eastern side of the tiled house with D.No.34-11-12 S.No.295 Block No.13, Holy Cross Street, Gnanapuram, Visakhapatnam, marked as D, E, F, G in the plaint plan is bounded as follows:

East	:	The house of Gullipilli Santhaiah
South	:	Vacant land with tatched house.
West	:	Tiled house and terraced and asbestos sheet rooms.
North	:	Municipal Road
Total extent	:	

4. Defendants 1 and 2 executed Ex.A3 Agreement of Sale dated 26.4.1987 in favour of the plaintiff, agreeing to sell the plaint property for a total consideration of Rs.36,000/-. On the date of Ex.A3, plaintiff paid an advance amount of rs.15,000/-. By way of Ex.A4 notice dated 11.1.1988, 1st defendant asked the plaintiff to receive back the advance amount of Rs.15,000/- with interest and to return the agreement executed by him on the ground that necessary certificates for registration could not be secured.

In response to the same, plaintiff got issued Ex.A5 reply dated 26.1.1988, calling upon to perform the contract within (10) days. Thereafter, plaintiff also got issued Ex.A7 notice dated 29.3.1988 to the Joint Sub-Registrar, Visakhapatnam, asking not to register any transaction in respect of the subject property. First defendant executed Ex.A8 sale deed dated 29.3.1988 in favour of 3rd defendant. First defendant filed written statement and he passed away pending suit and after his death, on 9.10.1996, 2nd defendant, son of 1st defendant filed additional written statement. Third defendant also filed written statement, resisting the suit. On the basis of the pleadings, the learned Subordinate Judge, framed the following issues for trial:

- (1) Whether the plaintiff has been always ready and willing to perform his part of contract?
- (2) Whether the plaintiff is entitled for specific performance of agreement of sale?
- (3) Whether the plaintiff is alternatively entitled for return of earnest money with interest and damages of Rs.10,000/-?
- (4) To what relief?

Additional Issues:

- (1) Whether the plaintiff is entitled for permanent injunction as prayed for?
- (2) Whether the plaintiff is entitled for a consequential relief to set aside the sale deed dated 29.3.1988 created by 1st and 2nd defendants in favour of 3rd defendant as prayed for?

5. On behalf of plaintiff, P.Ws.1 and 2 were examined and Exs.A1 to A8 were marked and on behalf of defendants, D.Ws.1 and 2 were examined and Exs.B1 and B2 were marked. The learned Subordinate Judge, passed the impugned judgment and decree on 30.1.1997, decreeing the suit for the alternative relief of refund of the advance amount with interest and also awarded damages of Rs.10,000/-. This Appeal Suit assails the validity and legal sustainability of the said judgment and decree.

6. Heard Sri S.Ashok Anand Kumar, learned counsel for the plaintiff/ appellant herein, Sri G.Ramgopal, learned counsel for Respondent No.2 and Sri P.Sri Raghuram, learned Senior Counsel appearing for Respondent No.3.

7. The learned counsel for the appellant contends that the impugned judgment rendered by the learned Subordinate Judge is erroneous, contrary to law and not in consonance with the material available on record and that the Court below failed to consider the oral and documentary evidence available on record. It is the further submission of the learned counsel that the learned Subordinate Judge grossly erred in not taking into consideration the averments in the additional written statement filed by 2nd defendant and that the judgment is contrary to Order 12 Rule 6 of CPC. It is further contended that Ex.A3 did obligate only defendant, but not plaintiff to obtain certificates from the Municipality. It is also contended that since the plaintiff proved his readiness and willingness to perform his part of contract, the primary relief of execution of sale deed in favour of plaintiff should have been granted. In support of his case, the learned counsel takes the support of the judgments of the Hon'ble Supreme Court in *KARAM KAPAH AND OTHERS v. LAL CHAND PUBLIC CHARITABLE TRUST AND ANOTHER*¹, *PAYAL VISION LIMKITED v. RADHIKA CHOUDHARY*², *MAN KAUR (DEAD) BY LRS v. HARTAR SINGH SANGHA*³, *KARAM KAPAH & ORS v. M/S LAL CHAND PUBLIC CHARITABLE TRUST AND ANOTHER*⁴, *INDER SAIN BEDI (DEAD) BY LRS v. CHOPRA ELECTRICALS*⁵, *VICE-CHAIRMAN, KENDRI YA VIDYALAYA SANGATHAN AND ANOTHER v.*

¹ (2010) 4 SCC 753

² (2012) 11 SCC 405

³ (2010) 10 SCC 512

⁴ (2010) 4 SCC 753

⁵ (2004) 7 SCC 277

*GIRIDHARILAL YADAV*⁶ and the Judgments of this Court in *P.V.V.A.V. PRASAD v. SHAIK MAHABOOB BASHA*⁷ and *TASTE HOTELS (P) LTD., ONGOLE, PRAKASAM DISTRICT v. MEDISETTY JAYASRI AND ANOTHER*⁸.

8. The learned counsel appearing for 2nd defendant/2nd respondent herein strenuously contends that the plaintiff is liable to be non-suited on the ground that he failed to enter into witness box and that the GPA holder who represented the plaintiff throughout cannot be a substitute to the plaintiff to prove his case. It is the further submission of the learned counsel that the averments in the additional written statement filed by 2nd defendant/2nd respondent cannot be taken as admissions and the same being a conditional offer which the plaintiff failed to avail. It is further contended that the learned Subordinate Judge is perfectly justified in granting alternative relief having regard to the facts and circumstances of the case and the exercise of discretion by the learned Subordinate Judge is strictly in accordance with the provisions of Sections 16 and 20 of the Specific Relief Act. It is the further submission of the learned counsel that non-examination of 2nd defendant would be insignificant in view of the reason that the plaintiff also did not enter into witness box. It is further contended that since the trial Court already exercised its discretion and as the relief of specific performance is an equitable relief, no interference of this Court is warranted under Section 96 of CPC. It is also the submission of the learned counsel that in terms of the decree rendered by the Court below for refund of the amount, the 2nd respondent/2nd defendant had deposited the amount in the Court below. In support of his submissions/contentions, learned counsel places reliance on

⁶ (2004) 6 SCC 325

⁷ 2011 (1) ALD 296

⁸ 2011 (5) ALD 508

judgments of the Hon'ble Apex Court in *JANKI VASHDEO BHOJWANI AND ANOTHER v. INDUSIND BANK LTD. AND OTHERS*⁹, *VIDHYADHAR v. MANIK RAO AND ANOTHER*¹⁰, *WESTERN COALFIELDS LTD. v. M/S SWATI INDUSTRIES*¹¹, *JEEVAN DIESELS AND ELECTRICALS LTD. v. JASBIR SINGH CHADHA (HUF) AND ANOTHER*¹² and the judgment of this Court in *M.ALI BAIG AND OTHERS v. KOTTALA SANJEEVA REDDY AND OTHERS*¹³.

9. It is contended by the learned counsel appearing for 3rd defendant/3rd respondent herein that the Court below is perfectly justified in granting alternative relief of refund of the amount as the plaintiff instituted the suit on 8.4.1988 i.e. after execution of Ex.A8 sale deed dated 29.3.1988, conveying the property in favour of 3rd defendant. It is also the submission of the learned counsel that without the knowledge of Ex.A3 Agreement of Sale in favour of plaintiff, 3rd defendant purchased the property under the bonafide impression that there were no encumbrances on the property. It is also the submission of the learned counsel that since the plaintiff failed to prove the continuous readiness and willingness to perform his part of the contract, he is not entitled to the primary relief of execution of sale deed in his favour.

10. In the light of the above pleadings and submissions, the points that emerge for consideration of this Court under Section 96 of CPC are as follows:

- (1) Whether the learned Subordinate Judge is justified in declining to grant the primary relief of specific performance of contract of sale by way of execution of sale deed in favour of plaintiff

⁹ AIR 2005 SC 439

¹⁰ (1999) 3 SCC 573

¹¹ AIR 2003 Bombay 369

¹² 2010(6) ALD 119 (SC)

¹³ 2014(3) ALD 449

having regard to the facts and circumstances of the case and whether the same is in accordance with the provisions of Sections 16 and 20 of Specific Relief Act ?

- (2) Whether the plaintiff proved his readiness and willingness to perform his part of the contract ?
- (3) Whether the 3rd defendant is a bonafide purchaser for a valuable consideration?

11. The execution of Ex.A3 Agreement of Sale dated 26.4.1987 by the defendants 1 and 2 in favour of plaintiff, agreeing to sell the plaint schedule property for a total consideration of Rs.36,000/- and the factum of payment of advance amount of Rs.15,000/- on the date of agreement by the plaintiff are not in dispute. According to Ex.A3 Agreement of Sale dated 26.4.1987, it was agreed by the defendants that they would secure necessary documents for registration and they also agreed for payment of interest @ 2/- and they also agreed to handover the property to the plaintiff in the event of failure to do so. The time stipulated for execution of the document as per Ex.A3 was admittedly one month. On the ground that they could not secure the necessary documents, defendants 1 and 2 got issued Ex.A4 notice dated 11.1.1998, asking the plaintiff to receive back the advance amount of Rs.15,000/-. But the plaintiff by way of Ex.A5 reply demanded the defendants to perform their part of contract as per the recitals of Ex.A3 Agreement of Sale.

12. According to the plaintiff, on coming to know that defendants 1 and 2 were contemplating to sell the property in favour of third parties, he got issued Ex.A7 notice dated 29.3.1988. A perusal of the said Ex.A7 notice, in clear and vivid terms, discloses that the plaintiff asked the Joint Registrar not to register any transactions in respect of the subject property. Despite the

said notice, Ex.A8 sale deed was executed on 29.3.1988 in favour of 3rd defendant. It is also significant to note that the 2nd defendant filed additional written statement after the death of his father (1st defendant) on 9.10.1996, categorically admitting execution of sale agreement and also expressed no objection to execute the sale deed in respect of the schedule properties. Admittedly, after receipt of Ex.A4 notice dated 11.1.1988, plaintiff by way of Ex.A5 reply, expressed his willingness and readiness to perform his part of contract and asked the defendants 1 and 2 to get ready for execution within (10) days.

13. It is also important to note in this context that in the additional written statement, the 2nd defendant categorically stated that his father (1st defendant) executed sale deed as desired by 3rd defendant as she agreed to reap the consequences of such registration. In this context, the evidence of P.W.2, who attested Ex.A3 Agreement of Sale gains significance. In his evidence, P.W.2-Attestor of Ex.A3 categorically in clear terms stated that (30) minutes after execution of Ex.A3, he along with 1st defendant went to the suit site and informed the 3rd defendant about execution of Ex.A3 document and making a provision of 2 feet way. It is also clear from the evidence of P.W.2 that he is related to Defendants 1 and 3. It is also clear from the said evidence that he denied the suggestion that he never informed the 3rd defendant about the execution of Ex.A3. It is very much evident from the cross-examination of P.W.2 that nothing negative could be elicited by the defendants to discredit his testimony.

14. It is also significant to note that the 3rd defendant never entered into witness box to prove her case and to reject the case of the plaintiff that only with knowledge of execution of Ex.A3 agreement of sale, she purchased the

property by way of Ex.A8 sale deed. It is also the submission of the learned counsel that Ex.A8 sale deed was not released by the registering authorities so far and the evidence of P.W.2 was not shattered. In the considered opinion of this Court, the admissions in the additional written statement made by 2nd defendant cannot be construed as a conditional offer to the plaintiff for performance of the contract. Admittedly, the document executed by defendants 1 and 2 in favour of 3rd defendant is under challenge in the suit. Having regard to the categorical admission made by the 2nd respondent/2nd defendant in the suit, the judgments cited by the learned counsel for 2nd respondent would not render any assistance to the case of the Respondents. In fact, the plea as to non-examination of plaintiff was never taken by the Respondents before the Court below nor the same fell for consideration.

15. Coming to the judgements cited by the learned Advocates.

(1) In *KARAM KAPAH* (1 *supra*), the Hon'ble Supreme Court at paragraphs 37 to 48 held as under:

“37. The principles behind Order 12 Rule 6 are to give the plaintiff a right to speedy judgment. Under this Rule either party may get rid of so much of the rival claims about “which there is no controversy” (see the dictum of Lord Jessel, the Master of Rolls, in *Thorp v. Holdsworth* [(1876) 3 Ch D 637] in Chancery Division at p. 640).

38. In this connection, it may be noted that Order 12 Rule 6 was amended by the Amendment Act of 1976. Prior to amendment the Rule read thus:

“6. *Judgment on admissions*.—Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just.”

39. In the 54th Law Commission Report, an amendment was suggested to enable the court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering the Judges to use it “ex debito justitiae”, a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the court always retains its discretion in the matter of pronouncing judgment.

40. If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider inasmuch as the provision of Order 12 Rule 1 is limited to admission by “pleading or otherwise in writing” but in Order 12 Rule 6 the expression “or otherwise” is much wider in view of the words used therein, namely: “admission of fact ... either in the pleading or otherwise, whether orally or in writing”.

41. Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case (see *Charanjit Lal Mehra v. Kamal Saroj Mahajan* [(2005) 11 SCC 279] , SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see *Mullas's Commentary on the Code*, 16th Edn., Vol. II, p. 2177).

42. In *Uttam Singh Duggal & Co. Ltd. v. United Bank of India* [(2000) 7 SCC 120] this Court, while construing this provision, held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment.

This extract is taken from *Karam Kapahi v. Lal Chand Public Charitable Trust*, (2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262 at page 766

43. In *Uttam Singh Duggal case* [(2000) 7 SCC 120] it was contended on behalf of the appellant, Uttam Singh Duggal, that:

(a) Admissions under Order 12 Rule 6 should only be those which are made in the pleadings.

(b) The admissions would in any case have to be read along with the first proviso to Order 8 Rule 5(1) of the Code and the court may call upon the party relying on such admission to prove its case independently.

(c) The expression “either in pleadings or otherwise” should be interpreted ejusdem generis. (See para 11, p. 126-27 of the Report.)

Almost similar contentions have been raised on behalf of the Club. In *Uttam Singh* [(2000) 7 SCC 120] those contentions were rejected and this Court opined no effort should be made to narrow down the ambit of Order 12 Rule 6.

44. In *Uttam Singh* [(2000) 7 SCC 120] this Court made a distinction between a suit just between the parties and a suit relating to the Specific Relief Act, 1963 where a declaration of status is given which not only binds the parties but also binds generations. The Court held that such a declaration may be given merely on admission (SCC para 16 at p. 128 of the Report). But in a situation like the present one where the controversy is between the parties on an admission of non-payment of rent, judgment can be rendered on admission by the court.

45. Order 12 Rule 6 of the Code has been very lucidly discussed and succinctly interpreted in a Division Bench judgment of the Madhya Pradesh High Court in *Shikharchand v. Bari Bai* [AIR 1974 MP 75] . G.P. Singh, J. (as His Lordship then was) in a concurring judgment explained the aforesaid Rule, if we may say so, very authoritatively at p. 79 of the Report. His Lordship held: (AIR para 19)

“... I will only add a few words of my own. Rule 6 of Order 12 of the Code of Civil Procedure corresponds to Rule 5 of Order 32 of the Supreme Court Rules (English), now Rule 3 of Order 27, and is almost identically worded (see *Annual Practice*, 1965 Edn., Part I, p. 569). The Supreme Court Rule came up for consideration in *Ellis v. Allen* [(1914) 1 Ch 904 : (1911-13) All ER Rep 906] . In that case a suit was filed for ejectment, mesne profits and damages on the ground of breach of covenant against sub-letting. Lessee's solicitors wrote to the plaintiff's solicitors in which fact of breach of covenant was admitted and a case was sought to be made out for relief against forfeiture. This letter was used as an admission under Rule 5 and as there was no substance in the plea of relief against forfeiture, the suit was decreed for ejectment under that Rule. Sargant, J. rejected the argument that the Rule is confined to admissions made in pleadings or under Rules 1 to 4 in the same order (same as ours) and said:

‘The Rule applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed.’

Rule 6 of Order 12, in my opinion, must bear the same construction as was put upon the corresponding English rule by Sargant, J. The words ‘either on the pleadings or otherwise’ in Rule 6 enable us not only to see the admissions made in pleadings or under Rules 1 to 4 of the same order *but also admissions made elsewhere during the trial.*”

46. This Court expresses its approval of the aforesaid interpretation of Order 12 Rule 6 by G.P. Singh, J. (as His Lordship then was). Mulla in

his commentary on the Code has also relied on the ratio in *Shikharchand* [AIR 1974 MP 75] for explaining these provisions.

47. Therefore, in the instant case even though statement made by the Club in its petition under Section 114 of the Transfer of Property Act does not come within the definition of the word “pleading” under Order 6 Rule 1 of the Code, but in Order 12 Rule 6 of the Code, the word “pleading” has been suffixed by the expression “or otherwise”. Therefore, a wider interpretation of the word “pleading” is warranted in understanding the implication of this Rule. Thus the stand of the Club in its petition under Section 114 of the Transfer of Property Act can be considered by the Court in pronouncing the judgment on admission under Order 12 Rule 6 in view of clear words “pleading or otherwise” used therein especially when that petition was in the suit filed by the Trust.

48. However, the provision under Order 12 Rule 6 of the Code is enabling, discretionary and permissive and is neither mandatory nor it is peremptory since the word “may” has been used. But in a given situation, as in the instant case, the said provision can be applied in rendering the judgment.”

(2) In *PAYAL VISION LIMKITED* (2 supra), the Hon'ble Supreme Court at paragraphs 7 and 8 held as under:

“7. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the court can pass a decree in terms of Order 12 Rule 6 CPC, which reads as under:

“6. *Judgment on admissions.*—(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

8. The above sufficiently empowers the court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the court under Order 12 Rule 6 CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in *Jeevan Diesels & Electricals Ltd.* [(2010) 6 SCC 601 : (2010) 2 SCC (Civ) 745] relied upon by the High Court where this Court has observed: (SCC p. 604, para 10)

“ 10. ...Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in *Karam Kapahi* [(2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation.”

(3) In *MAN KAUR(DEAD)BY LRS (3 supra)*, the Hon'ble Apex Court at paragraphs 14 and 18, held as follows:

“14. In *Vidhyadhar and Manikrao* :1999 (3) SCC 573, this Court reiterated the following well recognized legal position:

"Where a party to the suit does not appear in the witness-box and state his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct."

18. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

(4) In *KARAM KAPAH I & ORS (4 supra)*, the Hon'ble Apex Court, at paragraphs 45 and 46, held as follows:

"45. Order 12 Rule 6 of the Code has been very lucidly discussed and succinctly interpreted in a Division Bench judgment of Madhya Pradesh High Court in the case of Shikharchand and others Vs. Mst. Bari Bai and others reported in AIR 1974 Madhya Pradesh. Justice G.P. Singh (as His Lordship then was) in a concurring judgment explained the aforesaid rule, if we may say so, very authoritatively at page 79 of the report. His Lordship held:-

"... I will only add a few words of my own. Rule 6 of Order 12 of the Code of civil Procedure corresponds to Rule 5 of Order 32 of the Supreme Court Rules (English), now rule 3 of Order 27, and is almost identically worded (see Annual Practice 1965 edition Part I. p. 569). The Supreme Court Rule came up for consideration in *Ellis v. Allen* (1914) Ch 904. In that case a suit was filed for ejectment, mesne profits and

damages on the ground of breach of covenant against sub-letting.

Lessee's solicitors wrote to the plaintiff's solicitors in which fact of breach of covenant was admitted and a case was sought to be made out for relief against forfeiture. This letter was used as an admission under rule 5 and as there was no substance in the plea of relief against forfeiture, the suit was decreed for ejectment under that rule. Sargent, J. rejected the argument that the rule is confined to admissions made in pleadings or under rules 1 to 4 in the same order (same as ours) and said:

"The rule applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed."

Rule 6 of Order 12, in my opinion, must bear the same construction as was put upon the corresponding English rule by Sargent, J. The words "either on the pleadings or otherwise" in rule 6 enable us not only to see the admissions made in pleadings or under Rules 1 to 4 of the same order but also admissions made elsewhere during the trial."

(Emphasis added)

46. This Court expresses its approval of the aforesaid interpretation of Order 12 Rule 6 by Justice G.P. Singh (as His Lordship then was). Mulla in his commentary on the Code has also relied on ratio in Shikharchand (supra) for explaining these provisions."

(5) In *INDER SAIN BEDI (DEAD) BY LRS (5 supra)*, the Hon'ble Apex

Court, at paragraph 10, held thus:

"10. Shri D. A. Dave, learned senior counsel appearing for Appellant contended that the contents of documents Ex. D-1 and P-3 will govern the rights of the parties. Portion shown in green was not included in the two documents and did not form part of tenancy and the same is unauthorisedly occupied by the Respondent. The suit has been filed for the portion shown in red in the site plan Ex. P-2 which had been let out to the Respondent. In para 2 of the plaint, the Appellant has specifically pleaded that the Respondent had taken on rent from him a portion comprising of

hall, 3 office-cum-store rooms, two mezzanine halls and toilet on the ground floor of the demised premises. In reply to this averment, Respondent in his written statement pleaded that the premises described in para 2 in the plaint as having been let out to the Respondent was substantially correct. This reply clearly amounts to admission of the allegations made in the corresponding paragraph of the plaint. That in view of this admission made by the Respondent, the High Court has gravely erred in recording a finding to the effect that the Appellant had let out the portion shown in green as well to the Respondent. That the High Court has built a new case for the Respondent, which was not even pleaded by him, in holding that on the expiry of period of licence the Respondent was taken as a tenant of the entire property of the Appellant which was in occupation of the Respondent. It was also contended that there was no registered instrument executed creating tenancy therefore tenancy will be deemed to be from month to month terminable with 15 days notice and the High Court has erred in holding to the contrary.”

(6) In *VICE-CHAIRMAN, KENDRIYA VIDYALAYA SANGATHAN AND ANOTHER (6 supra)* the Hon'ble Apex Court, at paragraph 11, held as follows:

“11. The admitted facts remain that the respondent is a permanent resident of Haryana. It further stands admitted that at the relevant time, Ahirs/Yadavs of Haryana were not treated as OBC. It further stands admitted that the respondent obtained a certificate showing that he was a resident of Rajasthan, which he was not. It is not disputed that a detailed enquiry was conducted by the District Magistrate, Kota, wherein the respondent had been given an opportunity of hearing. It is also not in dispute that he had given an opportunity to show cause as to why his appointment should not be cancelled not only by the appointing authority but also by the Appellate Authority. In terms of section 58 of the evidence act, 1872 facts admitted need not be proved. It is also a well-settled principle of law that the principles of natural justice should not be stretched too far and the same cannot be put in a straitjacket

formula. In [Bar Council Of India v. High Court Of Kerala](#) 2004 6 SCC 311 this Court has noticed that: (SCC p. 324, paras 49-50)

“ ‘24. The principles of natural justice, it is well settled, cannot be put into a straitjacket formula. Its application will depend upon the facts and circumstances of each case. It is also well settled that if a party after having proper notice chose not to appear, he at later stage cannot be permitted to say that he had not been given a fair opportunity of hearing. The question had been considered by a Bench of this Court in [Sohan Lal Gupta v. Asha Devi Gupta](#) 2003 7 SCC 492 of which two of us (V.N Khare, C.J and Sinha, J.) are parties wherein upon noticing a large number of decisions it was held: (SCC p. 506, para 29)

“29. The principles of natural justice, it is trite, cannot be put in a straitjacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby.”

25. The principles of natural justice, it is well settled, must not be stretched too far.’

(See also [Mardia Chemicals Ltd. v. Union of India](#) 2004 4 SCC 311 and [Canara Bank v. Debasis Das](#) 2003 4 SCC 557.)

In [Union of India v. Tulsiram Patel](#) 1985 3 SCC 398 whereupon reliance has been placed by Mr Reddy, this Court held: (SCC p. 477, para 97)

‘97. Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the

constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed.’ ”

(7) In *P.V.V.A.V. PRASAD (7 supra)*, this Court at paragraphs 17, 21 and 22, held as under:

“17. In *Nagindas Ramdas v. Dalpatram Ichharam @ Brijram and others*⁵, the principle laid down is that admissions, if true and clear, are by far the best proof of the facts admitted and the admissions in pleadings were opined to be admissible as judicial admissions under Section 58 of the Evidence Act, which stands on a higher footing than evidentiary admissions. The admissions in pleadings were held to be fully binding on the party and to constitute a waiver of proof. Such admissions were held to be capable of being made the foundation of the rights of the parties and incidentally, that was also a case seeking eviction under the Rent Control Act decided on such an admission.

21. Thus, a close consideration of the precedents cited by both the parties leads to the conclusion that a statement made in a pleading can be acted upon as an admission for the purposes of Order XII Rule 6 of the Code of Civil Procedure and irrespective of resorting to pronouncement of a judgment on the basis of the statement in the written statement of the respondent or not, the fact remains that the rights flowing out of the unregistered lease deed being the subject of a specific issue before the trial Court and a specific ground of appeal before the first appellate Court, the factum of expiry of the period of lease claimed by the respondent ought to have been taken into consideration by the first appellate Court as a subsequent event or circumstance having material bearing on the rights of the parties under adjudication. If so, therefore, the first appellate Court committed an error of law in not taking note of and acting upon the expiry of the period of lease by the end of September 2009 even according to the defence of the respondent in the written statement and irrespective of other considerations, when the lease stood determined by efflux of time, the first appellate Court should have moulded the relief to be granted in tune with the same.”

22. Concerning the validity of notice to quit, the first appellate Court went into the oral and documentary evidence in detail and noted that PW.1 was ignorant whether the respondent was residing in the address mentioned in the postal acknowledgment under Ex.A.3, which specified that there was no such addressee in that door number and hence, returned to the sender. The first appellate Court, with reference to a decision of the Madras High Court, which dealt with in detail about service and tender of such communications with reference to the statutory presumption under Section 114 of the Evidence Act and the relevant provisions of the General Clauses Act, concluded that there was no valid tender of notice to quit. Sri C. Raghu, learned counsel for the respondent, has brought to notice the discrepancies in the addresses given in the notice to quit and the postal acknowledgments marked as Exs.A.1 to A.3 respectively. In the absence of oral and documentary evidence probablising valid tender of notice to quit on the respondent, the requirement of Section 106 of the Transfer of Property Act cannot be considered to have been complied with as what has been relaxed by the statutory amendments by the Central Act 3 of 2003 amending Section 106 is the requirement concerning the period of notice, but not dispensing with the notice itself. It is true that sub-section 4 of Section 106 only requires tender of the notice to quit to the party concerned or sending of such notice to quit by post to the party and also permits affixture if tender or delivery is not practicable. But the said sub-section 4 cannot be considered as indicating the total absence of any necessity to prove a genuine attempt to serve such notice or a genuine tender of such notice, which was still not received by the party addressed. As the evidence on record in the suit coupled with the ignorance of PW.1 referred to by the first appellate Court is suggestive of the probable absence of a valid tender of notice to the respondent, the respondent could not have been entitled to suit reliefs on the basis of such notices to quit and this point is answered accordingly.”

(8) In *TASTE HOTELS (P) LTD., ONGOLE, PRAKASAM DISTRICT* (8 supra), this Court at paragraphs 20 and 23 of the judgment, held as follows:

“20. Now comes the necessity to understand the purport of the word 'admission' employed in Rule 6. This in fact, is the subject matter of interpretation by the Supreme Court in Uttam Singh Dugal and Company Ltd's case (3 supra), Karam Kapahi's case (4 supra), and the Delhi High Court in Parivar Seva Sansthan's case (5 supra). Their Lordships of the Supreme Court and the Delhi High Court in the judgments referred to above held that the admission need not be confined to the one in pleadings. In fact, the language of the provision itself suggests that it can be either in the pleadings or otherwise. Further, the admissions can be either oral or in writing. The words "orally or in writing" provide guidance to understand the idea succinctly. The admission in writing can be either in a written statement in that very suit, counters, or affidavits in the miscellaneous proceedings and in certain cases the admissions in the pleadings in other proceedings.

23. 20. If an oral statement or admission is made in the Court, the same shall form part of the record. The statement so recorded can certainly constitute the basis to render judgment under Rule 6 of Order XII Code of Civil Procedure.”

16. Coming to the Judgments relied upon by the learned counsel for the 2nd respondent:

(9) In *JANKI VASHDEO BHOJWANI AND ANOTHER* (9 supra), the Hon'ble Supreme Court at paragraph 13 held as under:

“Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to “act” on behalf of the principal. In our view the word “acts” employed in Order 3 Rules 1 and 2 CPC confines only to in respect of “acts” done by the power-of-attorney holder in exercise of power granted by the instrument. The term “acts” would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some “acts” in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the

matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.”

(10) In *VIDHYADHAR (10 supra)*, the Hon'ble Supreme Court at paragraph 17 held as under:

“Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in *Sardar Gurbakhsh Singh v. Gurdial Singh* [AIR 1927 PC 230 : 32 CWN 119] . This was followed by the Lahore High Court in *Kirpa Singh v. Ajaipal Singh* [AIR 1930 Lah 1 : ILR 11 Lah 142] and the Bombay High Court in *Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh* [AIR 1931 Bom 97 : 32 Bom LR 924] . The Madhya Pradesh High Court in *Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat* [AIR 1970 MP 225 : 1970 MPLJ 586] also followed the Privy Council decision in *Sardar Gurbakhsh Singh case* [AIR 1927 PC 230 : 32 CWN 119] . The Allahabad High Court in *Arjun Singh v. Virendra Nath* [AIR 1971 All 29] held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in *Bhagwan Dass v. Bhishan Chand* [AIR 1974 P&H 7] drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.”

(11) In *WESTERN COALFIELDS LTD. (supra 10)*, the Bombay High Court at paragraph 5 held as under:

“If one examines the pleadings particularly para 9 of the written statement which is in reply to para 6-D of the plaint, and paras 20 and 21 of the specific pleadings, the admissions given by the defendant is not absolute, but it is conditional and it has been specifically stated that in terms of another contract, the said amount is already appropriated. Therefore, in these facts and circumstances, it cannot be said that there is an unqualified admission on the part of the defendant which would invite a decree against it for the said amount. The nature of admission made by the defendant cannot be held to be conclusive so as to invite an

order under Rule 6 of Order 12, C.P.C. The nature of admission is such that it is only a statement of the case upon which the defendant intended to rely and would not operate as an estoppel against him as understood under Section 115 of the Evidence Act. As this admission made by the defendant is qualified, it is to be read as a whole while considering whether a decree can be passed against the defendant on such admission. As the admission is qualified and it is specifically pleaded that the said amount has been appropriated against another claim under contract between the parties, the Court should not have proceeded to pass the impugned order which would be discretionary. (*Dudhnath Pandey v. Sureshchandra Bhattasali*, AIR 1986 SC 1509). Therefore, in the facts and circumstances, the Court ought not to have passed the impugned order in the manner it has directed the defendant to deposit the amount in Court with a condition that on failure to deposit, the defendant will be liable to pay the interest on the said amount which was to be determined."

(12) In *JEEVAN DIESELS AND ELECTRICALS LTD.* (13 *supra*), the Hon'ble Supreme Court at paragraphs 16 to 22 held as under:

"16. In this connection reference may be made to an old decision of the Court of Appeal between *Gilbert v. Smith* reported in 1875-76 (2) CD 686. Dealing with the principles of Order XL, Rule 11, which was a similar provision in English Law, Lord Justice James held, "if there was anything clearly admitted upon which something ought to be done, the plaintiff might come to the Court at once to have that thing done, without any further delay or expense" (see page 687). Lord Justice Mellish expressing the same opinion made the position further clear by saying, "it must, however, be such an admission of facts as would shew that the plaintiff is clearly entitled to the order asked for". The learned Judge made it further clear by holding, "the rule was not meant to apply when there is any serious question of law to be argued. But if there is an admission on the pleading which clearly entitles the plaintiff to an order, then the intention was that he should not have to wait but might at once obtain any order" (see page 689).

17. In another old decision of the Court of Appeal in the case of *Hughes v. London, Edinburgh, and Glasgow Assurance Company (Limited)* reported in 1891-92 8 TLR 81, similar principles were laid down by Lord Justice Lopes, wherein His Lordship held "judgment ought not to be

signed upon admissions in a pleading or an affidavit, unless the admissions were clear and unequivocal". Both Lord Justice Esher and Lord Justice Fry concurred with the opinion of Lord Justice Lopes.

18. In yet another decision of the Court of Appeal in *Landergan v. Feast* reported in 1886-87 85 Ltr 42, in an appeal from Chancery Division, Lord Justice Lindley and Lord Justice Lopes held that party is not entitled to apply under the aforesaid rule unless there is a clear admission that the money is due and recoverable in the action in which the admission is made.

19. The decision in *Landergan* (supra) was followed by the Division Bench of Calcutta High Court in *Koramall Ramballav v. Mongilal Dalimchand* reported in 23 CWN (1918-19) 1017. Chief Justice Sanderson, speaking for the Bench, accepted the formulation of Lord Justice Lopes and held that admission in Order 12, Rule 6 must be a "clear admission".

20. In the case of *J.C. Galstaun v. E.D. Sassoon & Co., Ltd.* reported in 27 CWN (1922-23) 783, a Bench of Calcutta High Court presided over by Hon'ble Justice Sir Asutosh Mookerjee sitting with Justice Rankin while construing the provisions of Order 12, Rule 6 of the Code followed the aforesaid decision in *Hughes* (supra) and also the view of Lord Justice Lopes in *Landergan* (supra) and held that these provisions are attracted "where the other party has made a plain admission entitling the former to succeed. This rule applies where there is a clear admission of the facts on the face of which it is impossible for the party making it to succeed". In saying so His Lordship quoted the observation of Justice Sargent in *Ellis v. Allen* (1914) 1 Ch. D. 904 { See page 787}.

21. Similar view has been expressed by Chief Justice Broadway in the case of *Abdul Rahman and brothers v. Parbati Devi* reported in AIR 1933 Lahore 403. The learned Chief Justice held that before a Court can act under Order 12, Rule 6, the admission must be clear and unambiguous.

22. For the reasons discussed above and in view of the facts of this case this Court cannot uphold the judgment of the High Court as well as of the Additional District Judge. Both the judgments of the High Court and of the Additional District Judge are set aside."

(13) In *M.ALI BAIG (12 supra)*, this Court at paragraphs 73 to 75 held as under:

“73. Under Section 20 of the Specific Relief Act, 1963, jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so. Where the terms of the contract or the conduct of the parties at the time of entering into the contract or other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant, the court may not decree specific performance. [see Clause (a) to sub-Section (2) of Section 20].

74. In *Laxman Tatyaba Kankate v. Taramati Harishchandra Dhatrak*¹⁶, the Supreme Court considered the principles relating to exercise of discretion under Section 20 of the Specific Relief Act, 1963 and held:

“19. It will also be useful to refer to the provisions of Section 20 of the Act which vests the court with a wide discretion either to decree the suit for specific performance or to decline the same. Reference in this regard can also be made to *Bal Krishna v. Bhagwan Das*, where this Court held as under: (SCC pp. 152-53, paras 13-14)

“13. ...The compliance with the requirement of Section 16(c) is mandatory and in the absence of proof of the same that the plaintiff has been ready and willing to perform his part of the contract suit cannot succeed. The first requirement is that he must aver in plaint and thereafter prove those averments made in the plaint. The plaintiff's readiness and willingness must be in accordance with the terms of the agreement. The readiness and willingness of the plaintiff to perform the essential part of the contract would be required to be demonstrated by him from the institution of the suit till it is culminated into decree of the court.

14. It is also settled by various decisions of this Court that by virtue of Section 20 of the Act, the relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to

satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. In other words, the court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void.”

20. Similar view was taken by this Court in *Mohammadia Coop. Building Society Ltd. v. Lakshmi Srinivasa Coop. Building Society Ltd.* where the Court reiterated the principle that jurisdiction of the court to grant specific performance is discretionary and the role of the plaintiff is one of the most important factor to be taken into consideration.

21. We may also notice that in *Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son*, this Court further cautioned that while exercising discretionary jurisdiction in terms of Section 20 of the Act, the court should meticulously consider all facts and circumstances of the case. The court is expected to take care to see that the process of the court is not used as an instrument of oppression giving an unfair advantage to the plaintiff as opposed to the defendant in the suit.”(emphasis supplied)

75. Applying the above principles to the facts of this case, in my considered opinion, upholding the decree of specific performance granted by the court below, in the light of the findings recorded by me supra, would not be proper and would result in giving an unfair advantage to the plaintiff over the defendants. The conduct of the plaintiff and the pleas raised by him having been proved to be false, also disentitle him to the discretionary relief of specific performance.”

16. Having regard to the facts and circumstances of the case and the categorical admission of the 2nd defendant in the suit/2nd respondent herein, the judgments on which the learned counsel for 2nd respondent places

reliance would not be helpful to the case of the 2nd respondent. It is of course a settled proposition of law that the primary relief of specific performance need not be granted simply because the same is lawful to do so. At the same time, it is also a settled and well established principle of law that the said relief cannot be refused in an arbitrary, illegal, unreasonable and inequitable manner. In the instant case, knowing fully well about the existence of Ex.A3 sale agreement in favour of plaintiff, the 3rd defendant purchased the property by way of Ex.A8 sale deed. As observed supra, the defendants proceeded with the transaction pertaining to Ex.A8 sale deed despite Ex.A5 and A7 notices. By any stretch of imagination, it cannot be said that the 3rd defendant is a bonafide purchaser for valuable consideration to have the protection under the provisions of Specific Relief Act. The non-examination of the plaintiff herself, in the facts and circumstances of the case and in view of the active participation of the General Power of Attorney Holder of the plaintiff and in view of the Judgment of the Hon'ble Apex Court in *MAN KAUR (DEAD) BY LRS (3 supra)*, would not be fatal to the case of the plaintiff. In the considered opinion of this Court, the rejection of primary relief of specific relief of agreement of sale in favour of plaintiff is not only illegal, but also highly unreasonable. If these types of transactions covered by Ex.A8 are allowed to sustain, people will loose faith in the transactions and the rule of law. In the definite opinion of this Court, plaintiff not only pleaded, but also proved his readiness and willingness to perform his part of the contract and it is the defendants who went back from Ex.A3 agreement of sale and executed unreasonably Ex.A8 sale deed in favour of 3rd defendant. Therefore, all the issues are answered in favour of plaintiff and against the defendants and Ex.A8 sale deed executed in favour of 3rd defendant is to be declared as null and void.

17. For the aforesaid reasons, this Appeal Suit is allowed, decreeing the suit as prayed for. The judgment and decree dated 30.1.1997 passed in O.S.No.155 of 1988 on the file of Court of III Additional Subordinate Judge, Visakhapatnam is hereby set aside and Ex.A8 sale deed is declared as null and void and the Defendant No.2 is directed to register the suit schedule properties in favour of plaintiff, after receiving balance sale consideration and in the event of failure on his part, the sale deed shall be executed by the Court below in favour of plaintiff in respect of the suit schedule properties. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 6.12.2017

Note:
L.R. copy be marked.
B/o
DA



A.V.SESHA SAI, J



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



6.12.2017

DA