

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

APPEAL SUIT No.655 OF 1998

JUDGMENT:

1. This appeal is filed against the judgment and decree dated 19.10.1992 passed in O.S. No.175 of 1986 by the Additional Subordinate Judge, Ranga Reddy District at Saroornagar, Hyderabad (for short, 'the Court below').

2. Heard Mrs.Vladimeer Khatoon, learned counsel representing Mr.Y.Ashok Raj, learned counsel for the appellant-plaintiff. No representation on behalf of the respondent-defendant.

3. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the Court below in the original suit.

4. The plaintiff filed the suit against the defendant for specific performance of the oral agreement of sale entered into between the parties on 03.03.1985 in regard to plot No.24/18 admeasuring 500 square yards forming part of Sy.No.7, situated at Saroornagar village, Hayathnagar, Ranga Reddy District. The defendant is the owner of plot No.24/18. One V.Manikyam is a common friend of both the plaintiff and the defendant and on his mediation, the defendant agreed to sell the said plot to the plaintiff at the rate of Rs.100/- per square yard. The plaintiff agreed to purchase the said plot from the defendant at that rate. On 03.03.1985, the defendant received Rs.1,116/- from the plaintiff towards the advance. On account of mutual confidence reposed in the mediator V.Manikyam, on two slips

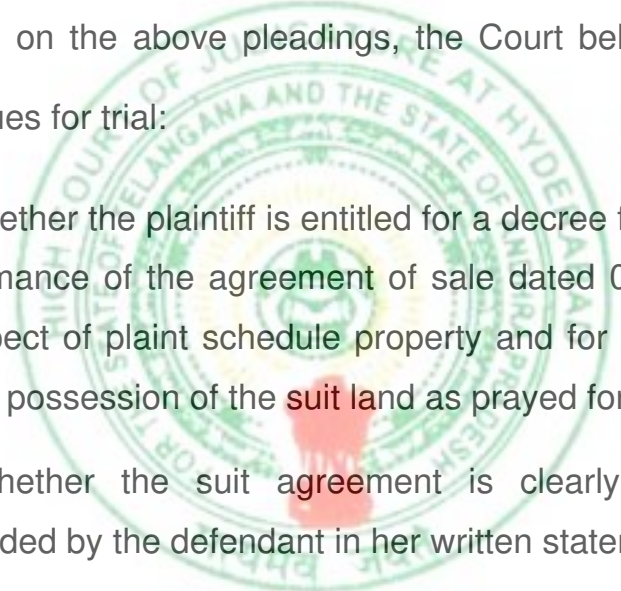
of paper, the mediator V.Manikyam wrote the transaction in the presence of defendant's husband Doctor M.P.G. Tilak. One such slip is the revenue stamp and the defendant wrote the date also as '03.03.1985'. The defendant's signature is in English and after getting involved in the transaction, she put the signature on the receipt. Another slip of paper was also written by the said mediator V.Manikyam, wherein the terms of agreement were mentioned. On the reverse of the said slip, the name and address of the defendant was noted by V.Manikyam. Thus, there was an enforceable contract between the plaintiff and the defendant on 03.03.1985, in regard to the said plot. The plaintiff purchased non-judicial stamp paper of denomination of Rs.7/- on 08.03.1985 from the stamp vendor and got the agreement of sale typed on the paper on 09.03.1985. Simultaneously, the plaintiff made arrangements for the amount of Rs.6,384/-, being the balance to be payable as agreed upon. On 09.03.1985, the plaintiff and his son-P.Prakash went to the house of the defendant along with the mediator V.Manikyam. The plaintiff offered the said balance amount in cash to the defendant in the presence of mediator V.Manikyam and requested the defendant to sign the agreement. The defendant and her husband refused to receive Rs.6,384/- tendered by the plaintiff and also refused to sign the agreement. When the plaintiff expressed shock, the mediator V.Manikyam assured the plaintiff that he would finalize the transaction of sale in accordance with the orally agreed terms, as evidenced by the stamped receipt signed by the defendant, and also the other slip written by V.Manikyam on 03.03.1985. Subsequently,

from the mediator, the plaintiff learnt that the defendant is not heeding to his advice and going against the agreement, got issued a legal notice to the defendant on 27.10.1985 referring the said agreement and execution of registered sale deed. The defendant taking legal advice, wrote a letter dated 01.11.1985 to the plaintiff informing her intention *i.e.*, had no intention to sell the plot and offered to refund Rs.1,116/-. She also invented a curious plea of ignorance of facts and figures. The plaintiff issued a reply notice on 16.12.1985 refuting the allegations of ignorance of facts and figures and all other pleas raised in the reply notice dated 01.11.1985. The defendant wrote another letter dated 24.12.1985 to the plaintiff conveying her same decision. The plaintiff got issued another notice dated 30.01.1986 to the defendant. The plaintiff is entitled for specific performance of the agreement as he is ready and willing to pay the balance of sale consideration and is ready to purchase the suit schedule plot.

5. The defendant filed written statement denying the material allegations of the plaint *inter-alia* contending that she is the owner of the suit plot, did not agree to sell the suit plot at the rate of Rs.100/- per Sq. yard and denied writing of slips in her presence and in the presence of her husband. She further stated that she did not see the plaintiff at any time. One V.Manikyam and P.Prakash came to their house and enquired about the willingness of the defendant and her husband to sell the plot, when they stated that they do not know the market value of the plot, insisted the defendant to receive some money; however, on determination of the market value of the plot,

the defendant can sell the plot; even if she failed to agree with the market value, she is entitled to refund the amount so received. The defendant received an amount of Rs.1,116/- subject to fixing of market value and her final decision to sell and specifically denied that there was no agreement of sale between the plaintiff and the defendant. She further stated that the market value of the suit plot was Rs.4,000/- per Sq. yard in those days and stated that the other averments made in the plaint are false and were specifically denied by the defendant and ultimately prayed to dismiss the suit.

6. Basing on the above pleadings, the Court below framed the following issues for trial:

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- (1) Whether the plaintiff is entitled for a decree for specific performance of the agreement of sale dated 03.03.1985 in respect of plaint schedule property and for delivery of vacant possession of the suit land as prayed for?
 - (2) Whether the suit agreement is clearly false as contended by the defendant in her written statement?
 - (3) To what relief?

7. The Court below after considering the evidence of P.Ws.1 to 3 and D.W.1, the documents Exs.A.1 to A.10 and Ex.B.1 and upon hearing both sides, dismissed the suit *vide* the judgment dated 19.10.1992. Challenging the said judgment and decree, the plaintiff preferred the present appeal.

8. Mrs.Vladimeer Khatoon, learned counsel, representing the learned counsel for the appellant-plaintiff on record, would submit that the judgment of the Court below is contrary to law and facts of

the case; the lower Court failed to appreciate the documents marked as Ex.A-1 and other documents; there is evidence to prove that there was an oral agreement in between the parties; the plaintiff paid part sale consideration of Rs.1,116/- and hence entitled for a decree for specific performance of contract and ultimately prayed to allow the appeal by setting-aside the judgment and decree. Learned counsel relied on a decision of the Hon'ble Supreme Court in **Vinod Kumar v. Gangadhar**¹, wherein the scope of the appellate Court under Section 96 of C.P.C. has been enunciated. The judgment under appeal shall not be cryptic. The appellate Court shall deal with all factual and legal aspects arising in appeal. The mandate given in the decision is required to be followed while disposing of this appeal.

9. There was no representation on behalf respondent-defendant.
10. Now the point for determination is whether the plaintiff is entitled for the judgment and decree as prayed for?

11. **POINT:** Admittedly, there is no written agreement between the parties to the litigation. The evidence of P.W.1 is that there is an oral agreement of sale between the plaintiff and defendant, as contended. To prove the case, the plaintiff himself was examined as P.W.1, got examined P.Ws.2 and 3, and marked Exs.A-1 to A-10. Defendant herself was examined as D.W.1 and got marked Ex.B-1, xerox copy of draft agreement of sale, on her behalf. D.W.1 specifically denied the oral transaction set up by the plaintiff. Ex.B-1

¹ (2015) 1 SCC 391

is the copy of Ex.A-9 – agreement of sale, without signature. As per the evidence on record, D.W.1 is the defendant and owner of the suit plot, D.W.1-defendant was not present on the date of entering into agreement of sale *i.e.*, on 03.03.1985. Ex.A-2 slip containing the terms of sale wherein there is no signature of defendant. It is not in dispute that the defendant is not the owner of the suit plot. P.Ws.1 and 2 are father and son; P.W.3 is their employee. All these witnesses have given different versions with regard to oral agreement of sale. As per the evidence of P.W.3, P.W.2 was only present at the time of transaction on 03.03.1985. The specific case of the plaintiff is that on 03.03.1985 the defendant received Rs.1,116/- from the plaintiff as part sale consideration of suit plot. There is no documentary evidence to that effect. As per the evidence of P.Ws.1 and 2, Ex.A-1 – receipt dated 03.03.1985 was prepared by the husband of the defendant. Even if it is believed to be true, a suit for specific performance cannot be ordered against the defendant herein. To establish the claim of specific performance of contract, the plaintiff has to substantiate that there is a valid agreement between the parties to the litigation and the plaintiff is ready and willing to perform his part of contract, in terms of the agreement; even then the defendant is not ready to perform her part of contract, in such event a suit of this nature can be allowed. There is no such contract between both the parties. There is nothing hold that the defendant agreed to sell the suit plot to the plaintiff for a specific sale consideration and received Rs.1,116/- towards part sale consideration. The trial Court while dealing with this matter had

elaborately dealt with the oral as well as documentary evidence and rightly concluded that the plaintiff failed to establish a case for specific performance of contract and dismissed the suit. No infirmity is being found in the impugned judgment and there is nothing to substantiate a different opinion. Therefore, the appeal is liable to be dismissed.

12. In the result, the Appeal Suit is dismissed confirming the judgment and decree dated 19.10.1992 passed in O.S. No.175 of 1986 by the Court below.

13. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Date: 23.10.2017.
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Dr. SHAMEEM AKTHER, J

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