

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

SECOND APPEAL NO.28 OF 2018

DATED:25-01-2018

Between:

Kalipatnam Venkata Satyanarayana Murthy... Appellant

And

Uppala Saraswathi, since died,
and another ... Respondents

COUNSEL FOR THE APPELLANT: Mr. M.Vidya Sagar

COUNSEL FOR THE RESPONDENTS: -



THE COURT MADE THE FOLLOWING:

ORDER:

This second appeal is filed with delay 20 days against judgment dt.1.8.2017 in A.S. No.29 of 2012 on the file of the VI Additional District Judge, Visakhapatnam, confirming the judgment dt.14.12.2011 in O.S. No.1940 of 2006 on the file of the I Additional Junior Civil Judge, Visakhapatnam.

Admittedly the appellant has filed the aforementioned suit for perpetual injunction restraining the respondents from alienating the suit schedule property based on an agreement of sale. The appellant has not sought for specific performance of agreement of sale. The law is well-settled that under Section 53A of the Transfer of the Property Act, 1882 (for short, “the Act”), which embodies the doctrine of part performance, the agreement holder has two-fold right viz., (1) to seek specific performance of agreement of sale and (2) to defend his claim against the owner or a third party. As observed hereinbefore, the appellant has not chosen the first mentioned option. As regards the right of the appellant under Section 53A of the Act, it is well-settled that the doctrine of part performance can be used only as a shield, and not as a sword. Therefore, the trial Court has rightly dismissed the suit on the ground that as the same was filed for injunction simpliciter without seeking the

relief of specific performance of agreement of sale, the same is not maintainable, which view was also confirmed by the first appellate court.

Hence, no substantial question of law arises for consideration in this appeal. The second appeal is accordingly dismissed.

C.V. NAGARJUNA REDDY, J

25-01-2018

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