

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

APPEAL SUIT No.464 OF 2000

JUDGMENT:

This Appeal is preferred by the unsuccessful plaintiff who filed O.S.No.364 of 1989 on the file of the II Additional Senior Civil Judge, Warangal, for specific performance of the agreement of sale dated 15.02.1988 and seeking a direction to execute a registered sale deed in his favour conveying the suit house to him after receiving balance sale consideration of Rs.35,000/-.

It is the case of the plaintiff that his father and the first defendant along with one J.Ramaiah inherited some properties including the house bearing No.13-7-122 from their father as the sons to him. Thereafter, they jointly purchased the suit house bearing No.13-7-121 and another house bearing No.13-7-123 from their joint income and thus, the properties were treated as joint family properties. The first defendant has been in occupation of the suit house bearing No.13-7-121 under mutual agreement. The plaintiff's father and after his death the plaintiff has been in occupation of house bearing No.13-7-122 and the younger brother of the first defendant was in occupation of house bearing No.13-7-123. The houses are situated within the municipal limits of Warangal. During 1982, the first defendant filed O.S.No.192 of 1982 in the Court of the Subordinate Judge, Warangal for partition of the joint family properties including the houses under the occupation, against the plaintiff and their younger brother, but on the intervention of the community elders, a compromise was effected. Under the terms of the said compromise, the houses under the occupation of each party to the suit were allotted to their respective shares. Thus, the suit house is held to the share of the first defendant and thus, the first defendant has become absolute owner and possessor of the suit house. The first defendant had no issues, but he fostered a daughter and his foster daughter's family resides in the suit house.

The husband of the foster daughter was doing business in pens and allied articles. During January, 1988, the plaintiff came to know that the first defendant was contemplating to sell the suit house in order to provide funds for development of his son-in-law's business. The plaintiff approached the first defendant and requested him to sell the suit house to him as it abuts his portion. The first defendant agreed to sell the suit house to the plaintiff for Rs.70,000/-, to which the plaintiff agreed. The negotiations took place in the presence of one N.Mohan Rao and A.Gopala Krishna Murthy. The plaintiff paid to the first defendant a sum of Rs.35,000/- towards part sale consideration and the first defendant, after receiving the said amount, executed an agreement of sale in favour of the plaintiff on 15.02.1988 and the same was attested by N.Mohan Rao and A.Gopala Krishna Murthy. At the time of execution of the agreement of sale, the first defendant requested the plaintiff to give him one year time to vacate the suit house and execute the registered document after receiving the balance sale consideration. In view of their close relationship, the plaintiff agreed to the said proposal. After expiry of the period of one year, in spite of demand of the plaintiff, the first defendant did not execute his part of the contract and finally on 16.04.1989, the plaintiff approached the first defendant and requested the first defendant to receive the balance sale consideration, vacate the suit house and execute a registered conveyance deed, but the first defendant requested the plaintiff to grant him six more months to vacate the house and complete the sale transaction. In view of the close relationship, the plaintiff did not compel the first defendant to immediately transfer the property and granted him time as requested by the first defendant. The plaintiff came to know that the first defendant, under the influence of his foster daughter and son-in-law, is trying to dispose of the suit house to third parties at a higher price by entering into clandestine deals with them. Having learnt about the same, the plaintiff approached the first defendant along with A.Gopala Krishna Murthy on

06.11.1989 and requested for completing the sale transaction, but the first defendant refused to abide by the same. He asked the plaintiff to take back the advance amount paid to him and cancel the agreement of sale, dated 15.02.1988. Since the persuasion of the plaintiff and A.Gopala Krishna Murthy did not yield any result, the suit was filed. The plaintiff has to pay only Rs.35,000/- to the first defendant towards balance sale consideration and he is always ready and willing to perform the remaining part of the contract, but the first defendant has been evading to receive the same.

A written statement was filed by the first defendant admitting that the first defendant, father of the plaintiff and one J.Ramaiah are brothers born to J.Narsimham. It was stated that the plaintiff's father died. The house properties bearing Door Nos.13-7-121 to 13-7-123 were partitioned as per the compromise decree that was passed in O.S.No.192 of 1982 on the file of the I Additional Subordinate Judge, Warangal, dated 27.08.1984. It was also admitted that the suit house fell to the share of the first defendant and since then he has been in possession and enjoyment of the same. The plaintiff had not cooperated for the construction of a dividing wall and the first defendant was taking steps to execute the decree for construction of partition walls dividing his share from that of the plaintiff and the first defendant. It was also admitted that the first defendant has no issues, but the allegation that he fostered a daughter and that fostered daughter's family resides with him in the said house were denied. It is also stated that Gayatri was the daughter of Saraswathi Bai, who is the sister of defendant's wife Rukmini Bai. The said Gayatri was adopted by the plaintiff while she was an infant, but the first defendant brought her up as his daughter and married her to Megharaj Man Mohan, who is the brother's son of the first defendant's younger brother Ramaiah's wife, Narsu Bai. The other allegations relating to the sale of the house and the deals connected with the same are denied. The execution of the agreement of sale and receipt of advance sale consideration were also

denied. Similarly, the allegation that the first defendant was trying to dispose of the suit house to third parties at higher price and the plaintiff along with one Gopala Krishna Murthy came to the defendant on 06.11.1989 and requested him to complete the sale transaction were also denied.

It was also stated by the first defendant that he appointed one J.Sudhakar, advocate, for the purpose of conducting the suit bearing No.S.C.S.106 of 1985 on the file of the Principal Subordinate Judge, at Warangal and the said advocate obtained the signatures of the first defendant on blank ledger papers. After the said suit was disposed of, differences arise between him and the advocate, and in those circumstances, he sought execution of the decree taking services of another advocate. The said J.Sudhakar was the advocate for the plaintiff in O.S.No.192 of 1982 filed for partition and the signed blank ledger papers were utilized by the plaintiff and an agreement of sale was created to cause wrongful loss to the first defendant and making wrongful gain to the plaintiff. Hence, the plaintiff was put to strict proof of execution and payment of alleged part sale consideration. The alleged attestors of the agreement are the henchmen of the plaintiff. The plaintiff, taking advantage of the first defendant's old age, falling health and the fact that the son-in-law and his wife were not having worldly knowledge has ventured in the said course. In fact, the first defendant filed his counter affidavit in I.A.No.688 of 1989 long back and was pressing for its early disposal, but the plaintiff has been avoiding its disposal with an oblique intention of taking advantage of the first defendant's falling health and in order to gain advantage by raising some more disputes after the death of the first defendant. The plaintiff is afraid of facing the truth during the lifetime of the first defendant. The first defendant has no necessity to sell the suit house and the suit house is of the value of more than Rs.4,00,000/- and agreeing to sell the same for Rs.70,000/- does not arise. It is also equally false to state that the sale was proposed in order to provide money to his son-in-law.

On the above pleadings, the trial Court framed the following issues.

- 1) Whether the agreement of sale, dated 15.02.1988, is true and enforceable?
- 2) Whether the plaintiff is entitled for a decree of specific performance of contract or for the return of amount paid under sale agreement together with damages and interest as claimed by him?
- 3) To what relief?

Before the trial Court, P.Ws.1 to 4 were examined and Exs.A.1 and A.2 were marked on behalf of the plaintiff. On behalf of the defendants, the first defendant was examined as D.W.1 and an expert was examined as D.W.2 and Exs.B.1 to B.10 were marked. Apart from the said documentary evidence, Exs.C.1 to C.12 were marked on behalf of the Court.

During the pendency of the suit, the first defendant died and foster daughter of the first defendant was added in the place of the deceased first defendant on 22.07.1996 as the second defendant.

In view of the old age, the sole defendant was examined as D.W.1 first and the oral evidence of the plaintiffs was let in later.

The plaintiff was examined as P.W.1 and P.Ws.2 and 3 are the attestors of the alleged agreement of sale and P.W.4 is an advocate.

The trial Court dismissed the suit holding that the suit agreement was not genuine. The above Appeal is filed challenging the said Judgment and decree. The point for consideration in the present Appeal is whether the Judgment of the lower Court warrants any interference?

In his evidence, the plaintiff as P.W.1 stated that in the suit for partition in O.S.No.192 of 1982, he engaged one J.Sudhakar as advocate, but he has no previous acquaintance with the said advocate. He approached Sri B.Chandramouleswara Rao, advocate, with the suit summons in the said suit and he entrusted the matter to the said J.Sudhakar. He further stated that on 15.02.1988, one Gopala Krishna, Mohan Rao, Manmohan, husband of the second defendant, and others had talks with the plaintiff and the first defendant, which ultimately led to the finalization of the sale of the suit house

by the first defendant to the plaintiff. On the same day, the agreement was got typed and it is marked as Ex.A.2. The sale price was settled for Rs.70,000/- and it was agreed to pay half of the sale consideration immediately and the remaining half at the time of registration. Accordingly, he paid Rs.35,000/- to the first defendant on the date of Ex.A.2. He further stated that he got drafted sale agreement on paper through Bh.Nageswara Rao, advocate, who was examined as P.W.4, and that on that day, the said draft agreement, Ex.A.2, was typed in a type institute near Papaiahpet Chaman. The husband of the second defendant followed the plaintiff to the house of the said Bh.Nageswara Rao and the type institute. The first defendant was able to write, understand and read English. The first defendant went through Ex.A.2 and only after understanding the contents and after receiving Rs.35,000/-, he signed Ex.A.2. The said Gopala Krishna, Mohan Rao and husband of the second defendant were present at that time along with him. Gopala Krishna and Mohan Rao attested Ex.A.2 after the first defendant signed the same. On 16.04.1989, he requested the first defendant to receive the balance sale consideration, execute the regular sale deed, but the first defendant sought six months time and he agreed for the same. When he approached the first defendant in November, 1989, he asked the plaintiff to take back the sale consideration.

The plaintiff, Mohan Rao and Gopala Krishna went to the house of the first defendant at that time. On 15.09.1993, the first defendant died and the plaintiff performed his obsequies in the suit house. The first defendant was an in-patient in MGM Hospital, Warangal, preceding his death. The plaintiff and the first defendant's son-in-law looked after him while he was in hospital. Though he was having relationship with the first defendant, his foster daughter and son-in-law were creating hurdles. After the death of the first defendant, the brothers of second defendant and brothers-in-law mediated and a Panchayat was also held in that connection. The elders decided that

the suit house had to be given to him and an open plot at Shadnagar should be given to the second defendant. The document was written and it is with one of the Panchayatdars, and he is ready and willing to pay the remaining amount of consideration and bear the registration charges as on the date of deposition. In the cross-examination, he admitted that 4 or 5 years after the decree was passed in the suit for partition, disputes arose between him and the first defendant, but stated that the said disputes are related to the agreement in this case and apart from the said disputes, there are no other disputes. He denied the suggestion that he beat the first defendant when the first defendant was trying to raise a wall behind the suit property. But, he admitted that he filed two caveat petitions in the Court of the District Munsiff, Warangal, against the first defendant in the year 1986 and Exs.B.3 and B.4 are copies of the same. Another caveat filed under Ex.B.7 is in the Subordinate Court, Warangal. He further stated that the first defendant directly told him that he was intending to sell the said property and he told the same in the end of January, 1988. The first defendant executed the agreement in his house and it was executed on a working day about 6.00 p.m. He further stated that he does not remember the name of the type institute and the name of the typist, who typed Ex.A.2. He stated that the said type institute is not presently in existence as the same was demolished in a road widening in the year 1995. He further stated that he was having bank account with Andhra Bank and he borrowed an amount of Rs.35,000/- from Laxmi Kartri Finance, of which he was also one of the members, but he did not draw the amount from the bank account to meet the earnest money. He also stated that he does not remember the make of the typewriter on which Ex.A.2 was typed and only one copy was typed. He admitted that he did not mention in the plaint that Sri Nageswara Rao, advocate, gave draft of Ex.A.2. The suggestion that the first defendant signed on blank papers and handed over the same to advocate J.Sudhakar for being used in S.C.S.No.106 of

1985 was denied. He also denied the suggestion that he used the alleged blank papers on which the first defendant signed for preparing Ex.A.2. He also denied the suggestion that the letters in Ex.A.2 as also the spacing pattern and that of the plaint in S.C.S.No.106 of 1985 are akin to each other. Though Sri Nageswara Rao, advocate, had a typewriter, at the relevant time he had no typist. He admitted that J.Sudhakar, T.Mahendra Prasad and Nageswara Rao, are the juniors of Sri Bh.Chandramouleswara Rao. No period was specified in the agreement for completing the registration. After the death of first defendant's wife, the second defendant and her husband occupied the suit house and till such time, the husband of second defendant was living with his brothers. He occupied one of the rooms in the suit house after the death of the first defendant and his samans are also placed in the said room. Even before the obsequies were performed, the second defendant filed O.S.No.669 of 1993 on the file of the II Additional District Munsif, Warangal and obtained injunction against the plaintiff with regard to the suit house. The said injunction was confirmed by the appellate Court. The wife of first defendant died on 17.01.1985, whereas the first defendant died on 15.09.1993. He further stated that the arbitration referred to by him in chief examination was submitted by him in the case.

P.W.2 stated that he is a tenant in the house of the junior maternal uncle of the plaintiff. He lived as a tenant from 1984 to 1990. The first defendant agreed to sell the suit house to the plaintiff for a sum of Rs.70,000/- in February, 1988. He stated that he was not present when talks leading to the sale took place, but stated that the plaintiff brought a typed agreement of sale from the Bazar. The deceased first defendant went through the agreement personally after receiving half of the sale consideration and signed on the typed sale agreement. He attested the agreement as a first attesting witness. One Mohan Rao, PD of CKM College, Warangal also attested the said agreement. The agreement was executed and attested in

the house of the first defendant. The son-in-law of the first defendant was present at that time along with him. He stated that he does not remember the name of the wife of the first defendant. He further stated that he does not know the origin of proposal for sale. He also stated that he does not know where the draft of Ex.A.2 was prepared and where it was signed. The dispute referred by him in the chief examination started between parties one year after he joined the premises as tenant. There were dealings between him and the deceased first defendant. By the time, he reached the house of first defendant, Mohan Rao was already present there. The suggestions put to him with regard to sale transactions were denied.

P.W.3 stated that he was working as a Physical Director at CKM College at Warangal and he knows the plaintiff, his father and his two paternal uncles. He has been living in the same locality and that the plaintiff is his classmate from 9th class onwards upto graduation. The first defendant agreed to sell the suit house to the plaintiff on 15.02.1988 and at the request of the plaintiff, he went to the house of the first defendant for participating in talks and transaction. Himself, P.W.2 and the plaintiff went to the house of the first defendant. He was also present along with P.W.2 and husband of second defendant at the time of signing the agreement. The first defendant signed in his presence. After the death of the first defendant, second defendant and her husband brought one elder Ram Mohan from Hyderabad and sorted out the differences with the plaintiff. After deliberations, they agreed to vacate the house and execute registered sale deed. The settlement was reduced into writing and the document is now available with Ram Mohan. In the cross-examination, he stated that it was the first defendant who offered to sell the land in favour of the plaintiff and the terms were settled in the suit house itself. He further stated that he does not remember as to who drafted the agreement, as to where it was signed. He stated that he was present when

Ram Mohan, who was brought by the husband of second defendant, mediated between the plaintiff and the first defendant.

P.W.4, who is an advocate, from whom it was alleged that the draft agreement was taken, stated in his evidence that while he was working in chamber of Sri Bh.Chandramouleswara Rao, the plaintiff was visiting his house. In those days, the plaintiff came to him and requested to give a proforma of sale agreement and accordingly he gave a proforma to the plaintiff. In his cross-examination, he stated that in his proforma sale agreement, the words "shall mean and include his successor, legal representatives etc.," in respect of both vendor and vendee were there, but in Ex.A.2 they were not there. Further, paragraph 1 of the sale agreement was not found in his proforma and it was a specific reference made by the parties. He further stated that usually his proforma contains at the end the words "In witness whereof _____, the parties signed the documents", but such endorsement is not found in Ex.A.2.

As stated above, before the evidence of the witness on behalf of the plaintiff, the sole defendant deposed when he was alive. He spoke of the division of the properties through the intervention of the Court in a suit for partition in the year 1982. In the said partition, the suit house bearing No.13-7-121 fell to his share. The northern adjacent portion fell to the share of the plaintiff. The disputes arose when he wanted to construct a wall on the rear side of the house and he was beaten in that dispute. The plaintiff also filed caveats in that regard and they have not been in talking terms. The plaintiff was represented by J.Sudhakar, advocate, in the partition suit and he has been residing in the ground floor along with his daughter and son-in-law. His daughter is a foster daughter. She is his wife's sister's daughter. He performed her marriage with his youngest brother's wife's brother's son. After the death of his wife, his daughter and son-in-law were residing with him and they are looking after him. He never thought of selling his house. He

specifically denied that on 15.02.1988, he executed an agreement of sale and received Rs.35,000/- towards part sale consideration. He further stated that he signed on blank ledger papers and handed over to Sri J.Sudhakar at the time he filed the suit for recovery of money against one S.Hussain and K.S.Lingam. Ex.B.1 is the plaint in S.C.S.No.106 of 1985 on the file of the Principal Subordinate Judge, Warangal, and his advocate was J.Sudhakar. The said suit was decreed. Thereafter, he changed his advocate and appointed one Ajay Kumar for execution of the decree, but the signed papers were not returned to him by J.Sudhakar. The agreement of sale which bears his signatures was not typed in his presence. He also did not authorize or instruct for typing the sale agreement. He never signed in the presence of A.Gopala Krishna Murthy and N.Mohan Rao. Gopala Krishna Murthy was a tenant of his younger brother Ramaiah's house. He never came to his house. He does not know N.Mohan Rao. He got issued a notice to J.Sudhakar, advocate, under registered post and he gave a reply. The wall dispute in the rear side of the house is still subsisting. With a view to grab his house since he was issueless, the plaintiff filed the suit and Ex.A.1 is his signature, which he put it on a blank paper in the office of J.Sudhakar, advocate. He denied all suggestions relating to the alleged agreement of sale and talks relating to the same. He stated that since he changed his advocate, the said J.Sudhakar turned hostile to him. The said J.Sudhakar gave him the copy of the decree after putting him to lot of inconvenience and in those circumstances, he appointed another advocate for execution. He admitted that the obsequies were performed by the plaintiff on the death of his wife, but he stated that he has done it at the instance of the elders and giving an undertaking that he would not aspire in return thereof. He also admitted that when he was in hospital, the plaintiff slept in the hospital. He did not ask for that help and he was in coma.

D.W.2 is an Assistant Director, Forensic Science Laboratory, Hyderabad, having seventeen years experience in examining the documents. On request from the Court, he examined the disputed sale agreement and compared with the standard document, which was marked as Ex.B.1. Ex.C.2 is his opinion. He observed similarities in the minute and inconspicuous details between the questioned and standard characteristics. When all the typewriting characteristics are considered collectively, they lead to the conclusion that the standard typewriting characteristics marked S1 and S2 tally with the questioned typewriting characteristics. In the cross-examination, he stated that it is not possible for occurring of similarities, which are mentioned by him in his report when the matter was typed on two typewriters of the same company and of the same make.

A perusal of Ex.A.2, agreement of sale, does not indicate the period of one year mentioned by the plaintiff in his evidence. Though the schedule of property was clearly mentioned, the signature of the vendor was placed on the right side of the document along with the boundary on the southern side mentioned in the schedule of property.

The trial Court noticed several inconsistencies in the evidence of P.Ws.1 to 3 and in the plaint. The trial Court came to the conclusion that Ex.A.2 document was brought into existence taking advantage of availability of the signature of the deceased first defendant on ledger paper and by connecting the same, the suit was filed. The trial Court noticed that the presence of the husband of the second defendant at the time of sale transaction was not mentioned in the plaint. The trial Court also observed that if the plea set up by the plaintiff that the plaint schedule property was sought to be sold to provide funds for the development of the business of the son-in-law of the first defendant, the first defendant would have hurried the execution of registered sale deed in favour of the plaintiff for receiving the balance sale consideration and he would not have postponed the execution of the

registered sale deed. The other plea set up by the plaintiff that the first defendant wanted to shift his residence to the house of the foster daughter is also improbable as, if that was the intention of the first defendant, he would have vacated the suit house after execution of the agreement of sale or at least they would have registered the sale deed in favour of the plaintiff. The trial Court also noticed that the caveat petitions support the case of the first defendant with regard to the disputes that arose between him and the plaintiff regarding the raising of dividing walls and they were not in amicable terms. As can be seen from Exs.B.3 to B.7, caveat petitions, the trial Court observed that this is another circumstance to show that first defendant could not have agreed to sell the suit house to the plaintiff. The trial Court observed the inconsistencies in the evidence of P.Ws.1 and 2 with regard to the talks leading to the sale. The finding recorded by the trial Court that P.W.2 in categorical terms admitted with regard to the place of the preparation of the draft and place of signature would clearly show that he was not present at the time of signing the agreement. A perusal of the evidence of P.Ws.1 and 2 would support the finding recorded by the trial court regarding the doubtful evidence of P.'W.2. Similarly, the evidence of P.W.3 was also in contradiction with the evidence of P.W.2. Accordingly, the trial Court disbelieved the evidence of P.W.3 also. In view of the mutual contradictions of the evidence of P.Ws.1 to 3, the observation of the trial Court that P.Ws.2 and 3 were made to speak with regard to the corroborative evidence of P.W.1 is correct. The trial Court took the aid of the observations of Wilson R.Hassisson in his book 'suspects documents' as follows:-

“As it is rare to find a genuine signature conveniently placed at the bottom of an otherwise blank sheet, the forger has to make do with less favourable material. His efforts will often result in the production of a forged document which bears the signature in an unconventional place because it has had to be constructed around a pre-existing signature”.

Accordingly, the trial Court observed that the extension of the typed matter beyond the signature on Ex.A.2 would certainly throw a genuine doubt about the contentions of the plaintiff that the deceased first defendant agreed to sell the house and received earnest money to a tune of Rs.35,000/-. The evidence of D.W.2 also supported the case of the first defendant as the typed letters in original plaint in S.C.S.No.106 of 1985 tallied with the typed matter under Ex.A.2, agreement, and hence, the plea taken by the plaintiff that Ex.A.2, agreement, was got typed in a type institute was false. In view of the above contradictions, the finding recorded by the trial Court that the sale agreement, dated 15.02.1988, is not a genuine document and the same is unenforceable enabling the plaintiff for a decree of specific performance of agreement is unimpeachable. The trial Court carefully analysed the oral and documentary evidence of the parties and came to the said conclusion.

Apart from the evidence recorded by the trial Court, this Court also noticed that the plaintiff failed to prove his readiness and willingness to perform his part of the contract. The plaintiff stated that he borrowed the advance amount of Rs.35,000/- from the financier and in those circumstances, the burden is on him to prove that he has capacity to pay the balance sale consideration.

The Supreme Court in **Pushparani S. Sundaram vs. Pauline Manomani James**¹ and **Manjunath Anandappa vs. Tammanasa**², and a Division Bench of this Court in **Killamsetty Eswari vs. Pedada Tulasi Rao (died) per LRs**³, held that the plaintiff in a suit for specific performance of contract must not only raise a plea that he is ready and willing to perform his part of contract, mere averment is not sufficient, but there should be proof of the same. The law laid down in the said decisions depends on the facts of each case.

¹ (2002) 9 SCC 582

² (2003) 10 SCC 390

³ 2017 (3) ALD 573 (DB)

In the instant case, the petitioner though pleaded that he is ready and willing to perform his part of the contract, did not prove the payment of consideration at the time of entering into agreement of sale as well as his capacity to pay balance sale consideration thereafter. Now this Court uphold the finding recorded by the trial Court that the suit agreement itself is not a genuine document. In view of the same, the Appeal is liable to be dismissed on the ground of absence of proof of readiness and willingness of the plaintiff to perform his part of the contract also even it is assumed that the agreement was genuine.

On this ground also, the Judgment and decree of the trial Court can be upheld. In any event, the Appeal is liable to be dismissed and is accordingly dismissed, but without costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

20.04.2018
pln

A.RAMALINGESWARA RAO, J

