

THE HONOURABLE SRI JUSTICE M. SEETHARAMA MURTI

Appeal Suit No.73 of 1997

JUDGMENT:

This appeal suit, under Section 96 of the Code of Civil Procedure, 1908, is originally filed by the unsuccessful 7th defendant assailing the decree and judgment, dated 22.11.1996, of the learned Senior Civil Judge, Tanuku, passed in O.S.No.61 of 1985.

1.1 The appellants 2 to 6, who are the legal representatives of the said deceased appellant/ 7th defendant, are now prosecuting the appeal suit.

2. I have heard the submissions of *Sri T. Lakshminarayana*, learned counsel appearing for the appellants 2 to 6; of *Sri C. Ramachandra Raju*, learned counsel, appearing for the 1st respondent – plaintiff; of *Sri K.V. Raghu*, learned counsel, appearing for the respondents 5 and 6; and of *Sri K. Muralidhar Reddy*, learned counsel, appearing for the respondents 3, 4 and 7. I have perused the material record.

3. In this appeal suit, the parties shall hereinafter be referred to as plaintiff and defendants as arrayed in the suit.

4. As this is a first appeal suit and this Court is the last Court of fact, it is necessary to advert to the pleadings of the parties.

5. The case of the plaintiff, in brief, is this:

The property of an extent of 113 1/3 sq. yards, equivalent to 94.48 sq. mts, of Sajjapuram Village in Tanuku Municipal area, which is more fully described in the schedule annexed to the plaint, belonged to the 1st defendant by virtue of the settlement deed, dated 31.07.1982,

executed in her favour by her husband Indrayya. The husband of the 1st defendant offered the said plaint schedule property, which is a vacant site, for sale. The plaintiff, who was on the lookout for purchase of a suitable vacant site for construction of a building, both for commercial and residential purposes, having inspected the plaint schedule site, was satisfied about its utility for the purposes desired by him and offered to purchase the same. Bargaining was held through mediators. Finally, the 1st defendant, her husband and their children, the defendants 2 to 4, agreed to sell the plaint schedule site at the rate of Rs.315/- per square yard. They all represented that they have to discharge number of debts and that the plaint schedule property was mortgaged to the 7th defendant and the said mortgage debt is also to be discharged. It was understood that the plaint schedule site shall be measured and the price has to be worked out at the agreed rate, after such measurement. The possession of the plaint schedule property was agreed to be delivered at the time of registration of the sale deed. The parties agreed that the defendants shall discharge the mortgage debt from out of the sale consideration payable by the plaintiff and deliver the discharged mortgage bond as voucher relating to the discharge of the mortgage debt. It was also agreed that the amount for discharge of the mortgage debt shall be provided by the plaintiff before 10.07.1985 and that the plaintiff has to obtain the sale deed within three months from the date of agreement of sale that was executed, on 21.06.1985, after paying the balance of sale consideration and meeting the expenses for registration of the sale deed. The balance of sale consideration, which remains to be paid after discharge of the mortgage debt due to the 7th defendant, was agreed to be paid within three months from 21.06.1985. The defendants thus agreed to execute and register a sale deed either in

favour of the plaintiff or his nominee. In the event of delay on the part of the plaintiff in obtaining the sale deed, the defendants would be entitled to interest @ 18% per annum on the balance of sale consideration till payment of the same. Under the agreement of sale, the plaintiff paid Rs.500/- as advance from out of the sale consideration. The defendants 2 to 6 joined in the execution of the suit sale agreement at the request of the plaintiff, because it appeared from the record that the 1st defendant's husband executed the settlement deed in respect of his self-acquired property in favour of the 1st defendant and in order to prevent any possible claims by the defendants 2 to 6 including the defendants 5 and 6, who are minors are being represented by their natural guardian & father by that time. After the agreement of sale, the 3rd defendant represented that his mother wanted money from out of the sale consideration and, accordingly, the plaintiff paid Rs.300/- to him and obtained a receipt. The plaintiff made ready the amount for discharge of the mortgage debt as stipulated in the suit agreement of sale. He also made ready the balance of sale consideration for obtaining the registered sale deed. The defendants represented that the original title deed was with the mortgagee/ 7th defendant and that they would take the same at the time of discharge of mortgage debt. Though the plaintiff made several demands for execution of the sale deed and offered to pay the money required for discharge of the mortgage debt, the defendants did not evince interest. Therefore, having doubted their *bona fides*, the plaintiff got issued a notice, dated 09.07.1985. The 1st defendant got issued a reply notice with false and untenable allegations. It is alleged in the reply notice that the plaintiff informed the 1st defendant that he was backing out of the contract of sale and expressed regrets for entering into the contract of sale for a price fixed, which is

abnormal and high, and that he does not want to take the sale deed. It was also stated in the reply notice that on the intervention of respectable mediators (whose names are not mentioned in the reply notice), the dispute was settled between the plaintiff and the 1st defendant and that, as a consequence, the 1st defendant was directed by the mediators to sell the property to any person of her choice; that no purchaser came forward to purchase the property except the 7th defendant; that the 7th defendant offered to pay only Rs.15,000/-; and, that left with no option, the 1st defendant was forced to sell the plaint schedule property to the 7th defendant to discharge the mortgage debt due to her. It was also alleged in the reply notice that the site was not convenient for construction of pucca building and that the 1st defendant could persuade the 7th defendant with great difficulty to purchase the property, as said property is adjoining the backyard of the 7th defendant's property. It was also stated in the reply notice that the sale deed was executed and registered, on 02.07.1985, in favour of the 7th defendant. All the above allegations in the reply notice are false and frivolous and are made to avoid performance of the obligation of the defendants 1 to 6 under the suit sale agreement. The 7th defendant is none other than the wife of the brother of the husband of the 1st defendant. In fact, the 7th defendant, being the adjoining owner of the plaint schedule property, after coming to know of the suit agreement of sale between the plaintiff and the defendants 1 to 6, prevailed upon them to commit the breach of suit contract of sale and execute the sale deed in her favour in respect of the plaint schedule property. Soon after the agreement of sale, the plaintiff informed the 7th defendant about the suit agreement of sale in his favour and promised to discharge the mortgage debt before 10.07.1985. The 7th defendant is thus having full

knowledge of the agreement of sale in favour of the plaintiff. The relationship between the defendants 1 to 6 and the 7th defendant was the reason for the breach of suit contract of sale by the defendants 1 to 6. The 7th defendant, on second thoughts, wanted to purchase the plaint schedule property and made the defendants 1 to 6 to yield to her pressure and obtained the sale deed, dated 02.07.1985, and got the same registered at Eluru for fear of publicity, if it were to be registered at Tanuku. Therefore, the 7th defendant, who wanted to take advantage of the breach of suit contract of sale, is also liable to join the defendants 1 to 6 in executing the sale deed. The plaintiff is entitled to seek delivery of possession of the plaint schedule property from all the defendants and enforce the suit contract of sale against the 7th defendant also. The plaintiff is always ready to perform his part of contract. Since the defendants 1 to 6 committed breach of contract, the plaintiff could not wait till the expiration of the time set out for specific performance in the contract of sale. The plaintiff is alternatively claiming damages at Rs.35,700/- for the following reasons: 'The plaintiff with a view to have his shop and residence in one building opted to purchase the plaint schedule site as it is located near a very busy junction of Velpur road, which is developing into a commercial area; it is very difficult to the plaintiff to secure an alternative site of such an extent in which a building can be constructed both for commercial and residential purposes; the site is so conveniently situated to the plaintiff and his requirements near a busy market locality and commanding at the same time the privacy that is required for residential purpose; the plaintiff is a business man and has his shop in one of the by-lanes of the Velpur road; it is very difficult to the plaintiff to get an alternative site of such quality near about the place of his choice in that

price range.' Hence, the suit is filed for the relief of specific performance and alternatively for recovery of damages, which are estimated at Rs.35,700/-, for the loss sustained by the plaintiff and recoverable from the defendants and from the assets of the defendants 5 and 6.

6. The averments in the written statement of the 1st defendant, in brief, are as follows:

This defendant has got full rights over the plaint schedule property is true. It is also true that the said property is offered for sale to clear the debts. It is also true that the plaintiff offered a rate which is more than the market rate of the plaint schedule property and hence, the suit sale agreement was executed in favour of the plaintiff. This defendant is indebted to the 7th defendant. When the 7th defendant exerted pressure for clearing the debt due to her, the suit agreement of sale came into existence. It is also true that the plaint schedule property was agreed to be measured and the consideration is agreed to be arrived at after such measurement. The defendants 2 to 6 are not necessary parties, as they have no right in the plaint schedule property; however, they also joined in execution of the suit agreement of sale as desired by the plaintiff. The allegation that the 3rd defendant approached the plaintiff and asked him to pay some money from out of sale consideration stating that this defendant required some amount, is not correct. The 3rd defendant never dealt with any transactions of this defendant at any time. This defendant never sent the 3rd defendant to the plaintiff for receiving some amount from out of sale consideration as stated by the plaintiff. The 3rd defendant has not received any part of sale consideration as alleged by the plaintiff. The 3rd defendant made friendship with bad persons and was acting with an intention to cause

loss to this defendant and her family. As the plaint schedule property is not useful for the plaintiff and is not fit for use for major constructions and the rate offered was high and is more than the market rate, the plaintiff expressed inability in arranging for the sale consideration. Mediators compromised the matter between the plaintiff and the 1st defendant keeping in view the interests of both parties. It was agreed that the advance amount of Rs.500/- paid by the plaintiff shall be forfeited and this defendant shall be at liberty to sell the plaint schedule property to any person of her choice; and the sale agreement was cancelled. As no person came forward to purchase the plaint schedule property and as the 7th defendant pressurized this defendant to discharge the mortgage debt, this defendant, having no other option, has sold the plaint schedule property at the market rate and settled the mortgage debt and executed a sale deed, dated 02.07.1985, in respect of the plaint schedule property in favour of the 7th defendant and delivered possession of the same to her. The plaintiff knows about the execution of the said sale deed by this defendant in favour of the 7th defendant. Due to illegal encouragement of enemies, the plaintiff got issued a legal notice with false and invented allegations. This defendant gave a reply, dated 16.07.1985, with correct facts. Though there is a relationship between this defendant and the 7th defendant, admittedly the 7th defendant is the mortgagee/ creditor. The plaintiff has to pay the necessary amount and discharge the mortgage debt due to the 7th defendant before 10.07.1985. The plaintiff has no cause of action. The cause of action mentioned is not correct. The sale deed executed in favour of the 7th defendant is not collusive. The 7th defendant's paternal town is Euru and she is a resident of that place. Hence, the sale deed was registered in her town. The plaintiff is not entitled to

seek specific performance of the agreement of sale, which is cancelled, or the alternative relief of recovery of damages. Hence, the suit may be dismissed.

7. The defendants 2 and 3 adopted the written statement of the 1st defendant by filing a memo. The defendants 5 & 6 filed a written statement that they are not necessary and proper parties to the suit and that there is no cause of action against them.

8. The defence of the 7th defendant in her written statement, in brief, is this:

She adopts the written statement of the 1st defendant. The 1st defendant is liable to discharge the mortgage debt to this defendant. This defendant, being in need of money, pressurized the 1st defendant to repay the mortgage debt. Hence, the 1st defendant offered to sell the plaint schedule property. The plaintiff obtained the suit agreement of sale in his favour and agreed to provide the amount for discharge of the mortgage debt due by the 1st defendant to this defendant. However, after the sale agreement in favour of the plaintiff was cancelled in the presence of mediators, this defendant purchased the plaint schedule property on the pressure exerted by the 1st defendant and others, though the said site is not of much use and importance to this defendant. Since the property is adjacent to the backyard of the property of this defendant and as there is no other way to realize the mortgage debt, this defendant purchased the plaint schedule property for Rs.15,000/- under a registered sale deed and obtained the delivery of possession. It is false to allege that the plaint schedule property was sold for a consideration of Rs.38,000/-. It is a fact that this defendant purchased the plaint schedule property from the 1st defendant under a

registered sale deed is within the knowledge of the plaintiff and the plaintiff accepted the same. Hence, the plaintiff has no right to either question this defendant & her sale deed or seek specific performance of the suit agreement of sale or damages. There is no cause of action for the plaintiff against this defendant. The suit may be dismissed.

9. Taking into consideration the aforesaid pleadings, the trial Court settled the following issues for trial:

1. Whether D.2 to D.6 are not necessary parties to the suit?
2. Whether the 7th defendant is a true bona fide purchaser for value with notice of the existence of sale agreement?
3. Whether the plaintiff is entitled to the specific performance of the sale agreement?
4. Alternatively whether the plaintiff is entitled to a decree for Rs.35,700/- as damages against D-1 to D-4 and against the assets of D-5 and D-6?
5. To what relief?

[Reproduced verbatim]

10. At trial, the plaintiff was examined as PW1 and exhibits A1 to A5 were marked on his side. Defendants 1 to 6 have not adduced any evidence. The husband of the 7th defendant and a police constable, who was said to have mediated the matter between the plaintiff and the 1st defendant, were examined as DWs1 and 2. No documents are marked on the side of the 7th defendant.

11. On merits and by the decree & judgment impugned in this appeal suit, the trial Court decreed the suit of the plaintiff for specific performance of the suit contract of sale against the defendants 1 to 7 and directed the plaintiff to deposit the balance of sale consideration within two months from the date of the decree & judgment. Aggrieved thereof, the 7th defendant alone preferred this appeal suit. As already noted her LRs are prosecuting this appeal suit.

12. Learned counsel for the appellants made the following submissions in line with the grounds urged in the appeal suit:

‘Since the 7th defendant is not a party to the suit contract of sale, the suit for specific performance filed against her is not maintainable. In the circumstances stated by the 1st defendant and on the plaintiff voluntarily backing out, a mediation was held between the 1st defendant and the plaintiff and the suit contract of sale was cancelled and the mediators resolved that the plaintiff shall forego advance sale consideration of Rs.500/- and the 1st defendant shall be free to sell the suit schedule property to any person of her choice. After the cancellation of the suit contract of sale, the 1st defendant pressurized the 7th defendant, who is the mortgagee, to purchase the property. As there is no other source to realize her debt, the 7th defendant purchased the property. In the said circumstances and as the property is adjoining to the property of the 7th defendant/appellant and though it is not of much use to her and as the 1st defendant exerted pressure on her to purchase the plaint schedule property, which is adjacent to the backyard of the 7th defendant, she, having no other option to realize her mortgage debt, agreed to purchase the suit schedule property and indeed purchased the same under a sale deed, dated 02.07.1985, for the market value. The plaintiff, who is not in a position to perform his part of the contract, backed out from the contract of sale. The plaintiff is having knowledge of all the facts including the execution of the sale deed by the 1st defendant in favour of the 7th defendant. The plaintiff, having expressed a view that the sale consideration he agreed to pay for the plaint schedule property is high & is more than the market value and having found that the property is not suitable for construction of a building for residential & non-residential use as desired by him, backed

out from the transaction covered by the suit contract of sale and settled the matter before the mediators. Therefore, the plaintiff is not entitled to turn around and file the suit. Hence, the suit is misconceived and is liable for dismissal. The agreement of sale, which is cancelled, cannot be enforced in a Court of law. The mortgage debt is of the year 1982. Under the suit contract of sale, the plaintiff agreed to pay the amount, which is required to discharge the mortgage debt, before 10.07.1985, and failed to pay the said amount and backed out for the reasons stated by the 1st defendant in her written statement. The suit contract of sale is unregistered and is, therefore, inadmissible in evidence and is unenforceable. The plaintiff has taken a false plea of payment of Rs.300/- out of balance of sale consideration to the 3rd defendant allegedly on the 3rd defendant, who is the son of the 1st defendant, approaching the plaintiff for payment of part of sale consideration. The 1st defendant categorically denied the said part payment. Since a false plea of payment of part of sale consideration is taken, the trial Court ought not to have decreed the suit for specific performance. The trial Court ought to have seen that the 3rd defendant, who is the son of the 1st defendant, is not dealing with any of the affairs of the 1st defendant and that he made friendship with bad persons and is entertaining intentions to cause loss to his mother, the 1st defendant. The plaintiff having not examined either the scribe or the attestors of the suit contract of sale failed to prove the same and hence, the suit is liable for dismissal. The plaintiff has not sought the relief of recovery of possession of the plaint schedule property from this defendant and further failed to seek cancellation of the sale deed executed by the 1st defendant in favour of the 7th defendant; hence, the suit is liable for dismissal. A police constable, who mediated along with other

mediators, was examined as DW2 to prove the case pleaded in the written statement of the 1st defendant. He also attested the sale deed of the 7th defendant. The trial Court erroneously branded the said witness as an interested witness, because he had also attested the sale deed executed by the 1st defendant in favour of the 7th defendant. The said finding of the trial Court is erroneous. There is nothing wrong in a mediator attesting the sale deed of the 7th defendant, after the mediation was successful. Though the defendants 2 to 6, not being the owners of the property, are not necessary parties, the plaintiff insisted them to join the suit agreement. They are not necessary parties to the suit. Under the suit contract of sale, a time of three months was fixed for performance; but, the suit for specific performance was instituted prematurely even before the efflux of the said time. The trial Court failed to properly appreciate the facts and the oral evidence adduced on behalf of the defendants. The plaintiff prayed for granting the relief of damages. Thereby, the plaintiff admitted that he can be adequately compensated. Hence, suit for specific performance is not maintainable. This defendant need not join in execution of sale deed and delivery of possession of the plaint schedule property, as she is a *bona fide* purchaser of the plaint schedule property under a regular registered sale deed for valid consideration.

13. In reply, learned counsel for the 1st respondent - plaintiff, while supporting the decree and judgment of the trial Court, *inter alia*, contended as follows:

The 1st defendant and her children, who are defendants 2 to 6, together executed the suit contract of sale. The execution of the suit contract of sale and the payment of advance of Rs.500/- towards part payment of sale consideration is admitted. Subsequently, Rs.300/- was

paid to the 3rd defendant, who is the son of the 1st defendant. The said payment is made under a receipt, exhibit A2, dated 01.07.1995. Though a feeble contention that the 3rd defendant, who is the son of the 1st defendant, is not looking after her affairs and that she did not ask him to collect any money from the plaintiff towards part of sale consideration and that the 3rd defendant is connected with bad friendships & deals with an intention to cause loss to the 1st defendant, the said defence pleaded in the written statement of the 1st defendant is not translated into evidence by examining any of the defendants 2 to 6. Under the suit contract of sale, the plaintiff agreed to discharge the mortgage debt which the 1st defendant is liable to pay to the 7th defendant. The plaintiff was always ready and willing to perform his contract. When the plaintiff expressed readiness and willingness to perform his part of the contract, the defendants 1 to 6 did not evince any interest to discharge the mortgage debt. The 1st defendant, having offered the plaint schedule property for sale to enable her to discharge the mortgage debt due to the 7th defendant entered into the suit contract of sale on 21.06.1985. As per the terms of exhibit A1- suit contract of sale, time is available to the plaintiff upto 10.07.1985, to pay the amount due towards the mortgage debt. However, even before the said date, the 1st defendant executed a registered sale deed, dated 02.07.1985, in respect of the suit schedule property in favour of the 7th defendant. The 7th defendant, who is admittedly related to the defendants 1 to 6 and who is having property adjoining to the plaint schedule property prevailed upon the defendants 1 to 6 to commit breach of the suit contract of sale and execute a sale deed in her favour knowing fully well that the defendants 1 to 6 are obliged to execute a registered sale deed in favour of the plaintiff in respect of the plaint

schedule property pursuant to the suit contract of sale-exhibit A1. Thus, the 7th defendant became responsible for the defendants 1 to 6 in committing the breach of the suit contract of sale. Though the parties are residents of Tanuku and the property is situated at Tanuku, she got the sale deed registered in the sub-registrar's office, Euru, for fear of publicity if it were to be registered at Tanuku. To support the sale deed collusively executed by the 1st defendant in favour of the 7th defendant in breach of suit contract of sale, the defendants 1 to 7 invented a theory that the plaintiff backed out of the suit contract of sale and that the suit contract of sale was cancelled in the presence of mediators. A false theory of mediation was introduced and a police constable-DW2, who is a person interested in the defendants, was alleged to have mediated between the plaintiff and the 1st defendant. In-fact, DW2 signed the collusive sale deed executed by the 1st defendant in favour of the 7th defendant, on 02.07.1985. The names of the alleged mediators were not mentioned either in the reply notice or in the written statements of the defendants and the name of DW2 was pressed into service for the first time during the cross-examination of PW1. Having considered the facts correctly and appreciated the oral & documentary evidence in proper perspective, the trial Court rightly decreed the suit. In the facts and circumstances of the case, the appeal of the 7th defendant is devoid of merit and the decree and judgment impugned are sustainable under facts and in law. The defendants 1 to 6 have not contested the suit and preferred any appeal though the 1st defendant is closely related to the 7th defendant. Hence, the appeal suit may be dismissed.

14. I have given earnest consideration to the facts and submissions. I have gone through the pleadings and oral & documentary evidence.

15. Now the points for determination are:

- 1) Whether the suit contract of sale, exhibit A1, is true, valid and binding on the defendants?
- 2) Whether the suit contract of sale is cancelled in the circumstances stated in the defence?
- 3) Whether the plaintiff is entitled to specific performance of the suit contract of sale?
- 4) Whether the 7th defendant is a *bona fide* purchaser for a value and without notice of suit contract of sale? And, whether the 7th defendant is obliged under facts and in law to join defendants 1 to 6 in executing the registered sale deed in respect of the plaint schedule property in favour of the plaintiff?
- 5) Whether the judgment and decree of the trial Court are unsustainable under facts and in law?
- 6) To what relief?

16. POINT No.1:

Dealing first with the first issue as to whether the suit contract of sale is true, valid and binding, it is to be noted that it is manifest from the pleadings, which are narrated supra, that the defendants 1 to 6 and even the 7th defendant/ appellant are not disputing execution of the suit contract of sale, exhibit A1, by defendants 1 to 6. The plaintiff, who is examined as PW1 deposed in line with the case pleaded in the plaint and marked exhibit A1, the suit contract of sale. He deposed that the 1st defendant was the owner of the plaint schedule property and that he agreed to purchase the same from the 1st defendant for a consideration of Rs.35,700/-, that is, @ Rs.315/- per square yard and that exhibit A1, contract of sale was duly executed by the defendants 1 to 6; that the defendants 2 to 6, who are children of the 1st defendant, also joined in execution of exhibit A1 as desired by him; that he paid Rs.500/- to the

1st defendant as advance sale consideration under exhibit A1; that the subject property was mortgaged by the 1st defendant to the 7th defendant, who is her co-sister being the wife of the brother of her husband; and, that under exhibit A1 he agreed to provide the money for discharge of the said mortgage debt by 10.07.1985. Now turning to the defence of the defendants 1 to 6, it is to be noted that in the written statement filed on behalf of the said defendants, the 1st defendant pleaded as follows: '..... . It is true that the said property is offered for sale to clear the debts. It is true that the plaintiff offered a rate, which is more than the market rate of the plaint schedule property; and, hence, the suit sale agreement was executed in favour of the plaintiff. The 1st defendant is indebted to the 7th defendant. When the 7th defendant exerted pressure for clearing the debt due to her, the suit agreement of sale came into existence. It is also true that the plaint schedule property was agreed to be measured and the consideration at the agreed rate is to be arrived at after such measurement. The defendants 2 to 6 are not necessary parties, as they have no right in the plaint schedule property. However, they also joined in execution of the suit agreement of sale as desired by the plaintiff.' The further defence with regard to the cancellation of exhibit A1 is to the following effect: 'As the plaint schedule property is not useful for the plaintiff and is not fit for use for major constructions and as the rate that was offered was high and is more than the market rate, the plaintiff expressed his inability in arranging for the sale consideration. Mediators compromised the matter between the plaintiff and the 1st defendant keeping in view the interests of both parties. It was agreed that the advance amount of Rs.500/- paid by the plaintiff shall stand forfeited and that the plaintiff shall forego the same and that the 1st defendant shall be at liberty to

sell the plaint schedule property to any person of her choice; and the sale agreement was cancelled.' The defence of the 7th defendant also is that the plaintiff obtained the suit agreement of sale in his favour and agreed to provide the money for discharge of the mortgage debt due to her from the 1st defendant and that after cancellation of the suit sale agreement in the presence of mediators, she purchased the plaint schedule property on the pressure exerted by the 1st defendant & others, though the said site is not of much use and importance to her and as there is no other option to realize her mortgage debt. The above specific defence of the defendants 1 to 6 on one hand and that of the 7th defendant on the other positively shows that the exhibit A1 is duly executed by the defendants 1 to 6 in favour of the plaintiff with the terms incorporated therein. The said admissions are the best form of proof on which the plaintiff can rely to successfully contend that exhibit A1 is true, valid and binding on the defendants. As the execution of exhibit A1 and its truth & validity are admitted and that as the only defence of the defendants is that the exhibit A1 was cancelled pursuant to a mediation between the plaintiff and the 1st defendant, the contentions of the 7th defendant/appellant that exhibit A1 is not true and that its execution is not proved by examining its scribe and attestors are all contentions without merit and need no countenance being frivolous. For the aforesaid reasons, this Court finds that exhibit A1 is true, valid and binding on the defendants. This point is answered accordingly.

17. POINT No.2:

Dealing with the question as to whether exhibit A1 is cancelled in the circumstances stated in the defence, it is needless to state that the

initial onus of proof is on the defendants. In this regard, the specific defence of the 1st defendant, which can be culled out from her written statement is to the following effect: 'As the plaint schedule property being not fit for major constructions is not useful to the plaintiff and as the rate offered was high & is more than the market rate, the plaintiff expressed inability in arranging for the sale consideration. Hence, Mediators compromised the matter between the plaintiff and the 1st defendant keeping in view the interests of both parties. It was agreed that the plaintiff will forego the advance amount of Rs.500/- and that the same shall stand forfeited and that the 1st defendant shall be at liberty to sell the plaint schedule property to any person of her choice. Thus, the sale agreement was cancelled.' Per contra, the case of the plaintiff is that the above defence is false. The specific case of the plaintiff is this: 'The plaintiff agreed to provide the amount for discharge of the mortgage debt before 10.07.1985. A term accordingly was incorporated in exhibit A1. Even before the said date, the 1st defendant executed a sale deed in respect of the schedule property in favour of the 7th defendant, on 02.07.1985, and got the said collusive sale deed registered at the Sub Registrar's Office, Euru, though the property is situated at Tanuku, for fear of publicity in the event the document is registered at Tanuku. The theory of cancellation of exhibit A1 is invented to get over the said collusive transaction between the defendants 1 and 7, who are closely related and to defeat the just claim of the plaintiff under exhibit A1.' It is not in dispute that notices (exhibits A3 & A4) were exchanged prior to the institution of the suit. Either in the reply notice, exhibit A4, dated 16.07.1985, or in the defence of the 1st defendant or that of the 7th defendant, the names of the mediators, who allegedly compromised the matter and the date of

mediation are not mentioned. None of the defendants 1 to 6 were examined to prove the alleged compromise between the plaintiff and the 1st defendant in the presence of the mediators and the cancellation of exhibit A1 in the circumstances stated in the written statement filed by the 1st defendant. Thus the said defence remained a pleading and is not translated into evidence. Further, in the written statement of the 7th defendant, it is baldly pleaded as follows: 'After cancellation of the sale agreement by the mediators, pressure was exerted upon her by the 1st defendant and others to purchase the schedule property and that though the said site is not of much use & importance to her, nonetheless, as the property is adjacent to the backyard of her property and as there is no other option to realize the mortgage debt, she purchased the property from the 1st defendant for a consideration of Rs.15,000/- under the registered sale deed, the registration extract of which is marked as exhibit A5.' Thus, even in the defence of the 7th defendant, the names of the mediators and the date of the alleged mediation are not mentioned. It is apt to note that the 1st defendant pleaded that as the plaintiff expressed his inability to arrange for the balance of sale consideration and as the 7th defendant exerted pressure to discharge the mortgage debt, the exhibit A1 was cancelled in the presence of mediators. The 7th defendant pleaded that after the cancellation of exhibit A1, the 1st defendant exerted pressure upon her to purchase the property which is mortgaged to her and that though the property was not of much use and importance to her, she purchased the property having no other option to realize her mortgage debt and as the property is situate adjacent to the backyard of her property. These contrary defences of the two co-sisters expose the hollowness or the futility of the defence that exhibit A1 was cancelled. Admittedly, the

plaintiff agreed to provide for the amount for the discharge of the mortgage debt; and, under exhibit A1, the date '10.07.1985' is fixed for the same. However, even before the 10.07.1985, which is the date fixed for providing the amount for discharge of mortgage debt, the 1st defendant executed a registered sale deed, on 02.07.1985, in favour of the 7th defendant, who is her co-sister. There was no need for the 1st defendant to execute a sale deed in favour of the 7th defendant, on 02.07.1985, or to exert pressure on the 7th defendant to purchase the property, more particularly, as 10.07.1985, the date fixed for discharge of the mortgage debt under exhibit A1 is not a distant date from 02.07.1985. Further, the said sale deed, dated 02.07.1985, was got registered at Sub Registrar's office, Euru, though the parties are residents of Tanuku and the property is also situate at Tanuku. These circumstances decidedly probablize the contention of the plaintiff that the false theory of cancellation of exhibit A1 was invented by the defendants to get over the exhibit A1 and some how justify the collusive and *mala fide* sale transaction under the original of exhibit A5, sale deed, between the defendants 1 and 7. Be that as it may. Coming to the aspect as to whether the onus of proof is discharged by the defendants, what is to be noted is that for the first time, when PW1 was in the box, the names of the mediators were introduced in evidence and a suggestion was put to him to the effect that after measurements, he cancelled exhibit A1, sale agreement, in the presence of Mylavarapu Kanaka Rao and Akula Rama Rao on the ground that the site is not sufficient for construction of a shop and a residential house. He denied the said suggestion as 'not true'. The defence that the price fixed for the property under exhibit A1 was high & is more than the market rate and, therefore, the plaintiff expressed inability to arrange for balance

sale consideration and that in the presence of the mediators, the plaintiff agreed to forego the advance paid under exhibit A1 and that he also agreed that the 1st defendant can sell away the subject property to a person of her choice is not suggested to him. If really, exhibit A1 was cancelled in the presence of mediators, an endorsement ought to have been made on exhibit A1 stating that it is cancelled or in the alternative, it should have been taken return by the 1st defendant. Neither an endorsement of cancellation was got made on exhibit A1 nor was it taken return by the 1st defendant. Even assuming for a moment that exhibit A1 was not available at the time of mediation/ cancellation, yet the 1st defendant could have obtained a letter from the plaintiff that exhibit A1 was cancelled. Even that was not done. No explanation is forthcoming for not doing so. As rightly pointed out by the learned counsel for the plaintiff, DW1, who is the husband of the 7th defendant, in his evidence introduced a different theory with regard to mediation & cancellation of exhibit A1. He stated that he and his wife, the 7th defendant, pressed for payment of mortgage amount and the defendants 1 to 6 postponed repayment of the same and that on that he sent mediators and that the 1st defendant asked them to do whatever they liked and that on that he sent the mediators to the plaintiff and that the names of the mediators are Mylavarapu Kanaka Rao and Akula Pama Rao and that the plaintiff informed that he cannot purchase the property as the land is not suitable for his intended use and that on that, he (his wife) purchased the property with the condition to discharge the mortgage amount. His version is that when the 1st defendant, who is no other than the co-sister of his wife, was demanded to repay the mortgage debt due to his wife, she postponed repayment of the same; when he sent mediators to her she gave an adamant reply; then, he sent

the mediators to the plaintiff; and, that the plaintiff informed the mediators that he cannot purchase the property as the land is not suitable for his intended use. Nevertheless, the defence of the 1st defendant reflects that the mediation was between her and the plaintiff and that the exhibit A1 was cancelled in the presence of the mediators. Her defence shows that at the time of the mediation pleaded by her, neither the 7th defendant nor DW1 are in picture. Thus, DW1's evidence does not establish the theory that mediators settled the matter between the plaintiff and the 1st defendant as pleaded in the written statement of the 1st defendant. As already noted, the 1st defendant is not examined to prove the defence put forward with regard to the theory of mediation and cancellation of exhibit A1. Though DW2, who was a police constable and who was said to have acted as a mediator, was examined, in the light of the afore-stated reasons and for the reasons going to be assigned infra, it may be observed that his evidence is not going to advance the case of the 7th defendant/ appellant any further with regard to the theory of mediation and cancellation of exhibit A1. It is pertinent to note that DW2 deposed as follows: 'I acted as a mediator along with one Rama Rao, between the plaintiff and Sreeramulu, who is the husband of the 7th defendant. We were informed that the 1st defendant has to pay some amount to the 7th defendant and that the 1st defendant promised that she would pay after her property is sold to the plaintiff, since she executed an agreement in favour of the plaintiff. Therefore, we asked PW1 to inform Sreeramulu (DW1-the husband of the 7th defendant) as to when he would purchase the property. The plaintiff stated that he was not going to purchase the property since it is not sufficient for his intended construction. He also informed that he has no objection if the property is sold to third persons; and that he does not

want return of Rs.500/- which was paid as earnest money.’ Thus, this witness gave quite a different version, which does not match with the defence of the defendants 1 to 6 and the version spoken to by DW1. It is apt to note that the trial Court having assigned its own reasons for disbelieving the theory of mediation & cancellation of exhibit A1, further discarded the evidence of DW2 for the reason that he is a witness interested in the defendants as he has also attested the collusive sale deed between the defendants 1 and 7 which was registered at Euru. Thus, the defence of the 1st defendant regarding the mediation and cancellation remained a pleading as none of the defendants 1 to 6 were examined to substantiate the said defence and the evidence of DWs 1 & 2 on this aspect, as discussed supra, is of no avail. On such detailed examination of the evidence, this Court finds that the defendants, failed to establish that exhibit A1 is cancelled. If really, exhibit A1 was cancelled voluntarily by the plaintiff, there was no need for him to issue exhibit A3, notice, soon after coming to know that a sale deed was executed by the 1st defendant in favour of the 7th defendant, on 02.07.1985. For this the 1st defendant stated in her defence that due to illegal encouragement of enemies, the plaintiff got issued a legal notice with false and invented allegations. The said unsubstantiated and implausible defence lays bare the falsity of the defence. Further, there is one more important aspect, which shows the *mala fide* conduct of the defendants. The property is admittedly situated in Tanuku. The sale deed, dated 02.07.1985, executed by the 1st defendant in favour of the 7th defendant, was registered in the Sub Registrar’s office at Euru, though there is a Sub Registrar’s office at Tanuku, and the parties are residents of Tanuku. On this aspect, DW1 stated in his cross examination that his wife, the 7th defendant, and the 1st defendant went to Euru to

see his ailing brother-in-law and that they obtained sale deed in favour of his wife as his wife and the defendants 1 to 6 were residing at Euru. The plaintiff's contention is that the said sale deed, which is collusively executed, was clandestinely got registered at the sub-registrar's office, Euru, for fear of publicity, if it is to be registered in the sub-registrar's office at Tanuku and that the said course was adopted by the defendants with a *mala fide* intention. This conduct of the defendants in having the sale deed between the defendants 1 and 7 registered at Euru suggests that the defendants 1 to 6 and the 7th defendant acted in collusion to somehow defeat the just claim of the plaintiff under exhibit A1. In the circumstances, the case of the plaintiff that the 7th defendant, to whom the schedule property was mortgaged by the 1st defendant, was initially interested in discharge of her debt and that after exhibit A1 was obtained by the plaintiff, she had second thoughts and wanted to purchase the schedule property and made the defendants 1 to 6 to yield to her pressure and obtained the sale deed, dated 02.07.1985, and thus, the 7th defendant having pressurized the defendants 1 to 6 to commit the breach of exhibit A1 contract of sale took advantage of the same and that the defendants invented the theory of mediation and settlement, after the plaintiff having come to know of the collusive sale deed issued a legal notice under exhibit A3 seeking specific performance of exhibit A1, which is having acceptable merit, deserves favourable consideration. For the aforesaid reasons this Court finds that exhibit A1, the suit contract of sale, is not cancelled. The point is answered accordingly.

18. POINT No.3:

Dealing now with the vital question as to whether the plaintiff is entitled to seek the relief of specific performance of exhibit A1, it is to be noted that this question need not engage this Court for long, in view

of the findings that exhibit A1 is true, valid & binding and that it is enforceable and was not cancelled. Coming to the aspect of readiness and willingness, what is to be noted is that it is not the case of the defendants 1 to 6, who are the vendors under exhibit A1 - contract of sale, that the plaintiff is not ready and willing to perform his part of the contract. It is their specific defence that the plaintiff backed out of the contract. This aspect has already been dealt with supra by this Court and this Court found favour with the case of the plaintiff that the 7th defendant having pressurized the defendants 1 to 6 to commit breach of exhibit A1, took advantage of the same and that the defendants invented the theory of mediation & settlement and that the plaintiff having come to know of the collusive sale deed executed by defendants 1 to 6 in favour of the 7th defendant issued a legal notice and having received a litigious reply under exhibit A4 filed the suit for specific performance of exhibit A1. Having regard to the evidence brought on record on the aspect of readiness and willingness coupled with the findings under points 1 & 2 supra, it can safely be held that the plaintiff is always ready & willing to perform his part of the contract and is, therefore, entitled to seek the relief of specific performance of exhibit A1. Nonetheless, before arriving at a final conclusion on this point, it is necessary to deal with certain contentions of the learned counsel for the appellant-7th defendant.

Firstly: Since it is contended on behalf of the 7th defendant that in view of the defence of the defendants 1 to 6 that no amount much less Rs.300/- was paid towards part of sale consideration and that the plea of part payment of Rs.300/- taken by the plaintiff is false, it is necessary to refer to the contentions of the parties in the first place. The plaintiff pleaded and deposed that after execution of exhibit A1,

the 3rd defendant, who is the son of the 1st defendant and who is also one of the executants of exhibit A1, came and represented that his mother wanted money from out of the sale consideration and that therefore, he/ PW1 paid Rs.300/- and obtained exhibit A2 - receipt from the 3rd defendant evidencing the said payment. PW1 affirmed in his evidence that the 3rd defendant received Rs.300/-, on 01.07.1985, and gave exhibit A2, receipt. In the written statement, the 1st defendant contended to the effect that the 3rd defendant, who is her son, never dealt with her affairs at any time and that she never sent the 3rd defendant to the plaintiff for payment of any money and that the 3rd defendant has not received any part of the sale consideration and that the 3rd defendant acts against her interests and that he keeps bad company and that his intention is to cause loss to the 1st defendant. However, to substantiate this defence, none of the defendants 1 to 6 were examined. A bald suggestion is given to the plaintiff (PW1) that he did not pay Rs.300/- to the 3rd defendant and he denied the said suggestion as 'not true'. Since the part payment made is sufficiently established by the testimony of PW1, which is cogent, and as his evidence is amply corroborated by exhibit A2-receipt, and as this is a matter between the defendants 1 to 6 and the plaintiff, and as the said defendants failed to establish their defence by adducing any evidence in rebuttal, the 7th defendant's contention, which is devoid of any substance, is liable for rejection. Hence, rejected.

Secondly: It is contended on behalf of the 7th defendant that exhibit A1 is an unregistered agreement of sale and, therefore, it is inadmissible in evidence and that on the basis of such unregistered contract of sale, the plaintiff is not entitled to seek specific performance and that exhibit A1, which is unregistered, cannot be relied

upon under the proviso to Section 49 of the Indian Registration Act, 1908, as the purpose for which exhibit A1 is being relied upon is the main purpose and not a collateral purpose. It is to be noted that exhibit A1 was executed in the year 1985. As per the law prevailing as on that date, agreement of sale of immovable property of any value is not required to be registered. Be it noted that the amendment requiring an agreement of sale of immovable property of the value of rupees one hundred and upwards was inserted by AP Act 4 of 1999 with effect from 01.04.1999. Since exhibit A1 is not a compulsorily registerable document and as it is not in dispute that it is sufficiently stamped, it can be admitted in evidence and the proviso to Section 49 referred to supra, which deals with documents which are required to be registered but not registered, has no application to the facts of the case. Hence, the contention of the 7th defendant which is misconceived is accordingly rejected.

Thirdly: It is also contended that under exhibit A1, dated 21.06.1985, a time of three months was fixed for performance, but, the suit was instituted prematurely, on 30.07.1985. The terms of exhibit A1 reflect that it was agreed that the plaintiff shall provide the amount for the discharge of the mortgage debt due to the 7th defendant before 10.07.1985; but, even before the said date arrived, the 1st defendant executed a sale deed in favour of the 7th defendant, on 02.07.1985, contrary to the terms of exhibit A1. On coming to know of the same, the plaintiff issued a notice; and later, he filed the suit after receiving a litigious reply under exhibit A4. Therefore, the contention that the suit is premature is misconceived and untenable. Such a contention is not open to the party responsible for breach of the contract.

Fourthly: It is finally contended that the plaintiff did not seek the reliefs of cancellation of the sale deed executed by the 1st defendant in favour of the 7th defendant and recovery of possession of the property. It is to be noted that when a sale deed is executed by the vendors under a contract of sale in breach of the contract of sale, the vendee is entitled to ignore the sale transaction and seek specific performance against the vendors as well as the purchaser, as per the settled legal position. Further, in a suit for specific performance of a contract of sale, the relief of recovery of possession need not be specifically asked for as it is a necessary corollary to the decree for specific performance. In the light of the provisions of Section 28 of the Specific Relief Act, 1963, and Section 55(1)(f) of the Transfer of Property Act, 1882, it can now be safely concluded that even in the absence of any specific clause in the decree for recovery of possession, the executing court is undoubtedly and unhesitatingly competent to order delivery of the property covered by the suit agreement of sale. It is also well established that the decree for mere specific performance implies a decree for possession also. The provisions of Section 28 of Specific Relief Act and Section 55(1)(f) of the TP Act obligate the seller to deliver the property. {Nakshtrapum Venkateswarlu v. Smt. Bathula Ankamma [2012(3) ALD 682]; Babu Lal v. M/s. Hazari Lal Kishori Lal [AIR 1982 SC 818] & V. Narasimha Chary v. P. Radha Bai and Ors. [1999(5) ALT499]}

Fifthly: One more contention of the 7th defendant is that since exhibit A1-contract of sale is not signed by both the vendors and the purchaser and as it is only signed by the vendors, it is not a valid contract. The said contention is not sound in view of the following ratio in the decision of the Supreme Court in Alka Bose vs. Parmatma Devi

and Ors [AIR2009SC1527]: “ All agreements of sale are bilateral contracts as promises are made by both - the vendor agreeing to sell and the purchaser agreeing to purchase. On the other hand, the observation in S.M. Gopal Chetty (AIR 1998 Madras 169) that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it. Section 10 of the Act provides all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act.” “In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale.”

Lastly and before concluding the discussion on this point, it is to be noted that without producing any material it is contended on behalf of the 7th defendant that the plaintiff did not deposit the balance of sale consideration within two months from the date of decree of the trial Court and that, therefore, the plaintiff is not entitled to any relief. Learned counsel for the plaintiff contended that it is for the trial Court to examine the said aspect at an appropriate later stage on the merger of the decree of this Court with that of the trial Court and that

defendants 1 to 6 who are satisfied with the decree of the trial Court did not assail the same before this Court and that the 7th defendant has no locus to raise such pleas as the defendants 1 to 6 are the persons entitled to receive the balance of sale consideration and not the 7th defendant. He would further submit that this Court while making the interim stay absolute, by its order, dated 15.10.1999, permitted the plaintiff to withdraw the amount of balance of consideration already deposited by him without prejudice to the contentions in the appeal and on the undertaking that he will redeposit the same into the trial Court in the event of the dismissal of the appeal and hence, the contentions of the 7th defendant are untenable. In view of the said interim orders of this Court and having regard to the submissions, this Court finds that there is no merit in the contentions of the 7th defendant.

On the above analysis and as none of the contentions of the 7th defendant merit consideration, the point is answered holding that the plaintiff is entitled to seek specific performance of exhibit A1.

19. POINT No.4:

The next question is as to whether the 7th defendant is a *bona fide* transferee of the schedule property and without notice of exhibit A1. The further question is as to whether the 7th defendant is also obliged under facts and in law to join defendants 1 to 6 in executing the registered sale deed/ conveyance in favour of the plaintiff, in respect of the plaint schedule property, pursuant to exhibit A1. The 7th defendant contends that since she is not an executant of exhibit A1, she need not join the defendants 1 to 6 in the execution of conveyance in favour of the plaintiff. Under the points supra, this Court recorded findings that exhibit A1 is true, valid & binding and that it is not cancelled. The 1st

defendant having executed the sale deed, dated 02.07.1985, in favour of the 7th defendant and the 7th defendant having obtained the said sale deed raised a defence that in the presence of mediators the matter was compromised between the plaintiff and the 1st defendant and that exhibit A1 was cancelled. The said defence is disbelieved by this Court and it is held that the plaintiff is entitled to seek specific performance of exhibit A1. The 7th defendant, who along with the defendants 1 to 6 has taken a false plea of cancellation of exhibit A1 and who purchased the property for Rs.15,000/-, that is, for a consideration which is far less than the consideration of Rs.35,700/- which the plaintiff agreed to pay under exhibit A1, is not a transferee in good faith and for value. In the circumstances, the 7th defendant is bound to join defendants 1 to 6, who are the executants of exhibit A1, in executing a conveyance pursuant thereto in favour of the plaintiff, in view of the settled legal position that in a suit for specific performance of contract of sale where the property is sold to another, conveyance should be ordered to be executed by the contracting parties as well as the subsequent transferee more particularly when the transferee had express notice of the prior agreement. Further, in view of Section 19 of the Specific Relief Act, specific performance of a contract may be enforced against any person claiming title arising subsequent to the contract of sale, when such transferee is not a *bona fide* purchaser and had notice of the original contract of sale. The point is answered accordingly in favour of the plaintiff and against the 7th defendant.

20. POINT No.5:

As a sequel to the afore-stated findings of this Court on points 1 to 4 supra, it is to be held that the contention of the appellant/7th defendant that the decree and judgment of the trial court are

unsustainable under facts and in law is without merit and is liable for rejection. On carefully evaluating the oral and documentary evidence and after going through the judgment of the trial Court, this Court, for the reasons assigned in this judgment, finds itself in agreement with the findings recorded by the trial Court on the issues settled and accordingly holds that the trial Court is justified in decreeing the suit of the plaintiff. In that view of the matter, the well considered judgment of the trial Court brooks no interference. For the afore-stated reasoned findings recorded on the points supra, this Court finds that the appeal suit, which is without merit, is liable for dismissal. The point is accordingly answered against the appellant/ 7th defendant.

21. POINT No.6:

In the result, the appeal suit is dismissed with costs. Having regard to the facts and circumstances and the interim orders of this Court, the plaintiff is granted a time of one month from the date of receipt of a copy of this judgment for depositing/ re-depositing the balance sale consideration, in the event he has withdrawn the deposited amount pursuant to the interim orders.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

16.11.2018

Note: LR copy to be marked.

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VV/ VJL/ RAR