

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

APPEAL SUIT No.1224 OF 1999

Between:

P.V.Chowdary (died),
And others.

....Appellants

and

Lingala Narasanna (died),
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 20.04.2018

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

+ APPEAL SUIT No.1224 OF 1999

% 20.04.2018

P.V.Chowdary (died),
And others.

....Appellants

vs.

\$ Lingala Narasanna (died),
And others.

....Respondents

!Counsel for the appellants : Sri O.Manohar Reddy

^Counsel for the Respondents : Sri D.Jagan Mohan Reddy

<Gist :

>Head Note :

? Cases referred

1. (2002) 9 SCC 582
2. (2003) 10 SCC 390
3. (2013) 15 SCC 27
4. (2015) 8 SCC 695
5. 2017 (3) ALD 573 (DB)
6. (2000) 6 SCC 420
7. (2006) 5 SCC 340
8. (2009) 5 SCC 182



THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

APPEAL SUIT No.1224 OF 1999

JUDGMENT:

The unsuccessful defendants in O.S.No.72 of 1997 on the file of the Court of the Senior Civil Judge, Penukonda preferred the present Appeal. The respondent herein, who is the plaintiff in the said suit, filed the suit for specific performance of agreement of sale dated 16.03.1985 executed by the first defendant in favour of the plaintiff and two others to the extent of share of the plaintiff and for delivery of possession or in the alternative for recovery of Rs.1,07,811/- with future interest @ 12% per annum and for costs of the suit.

The plaintiff's case is that the first defendant was the absolute owner of the property mentioned in the schedule to the plaint. He agreed to sell the property mentioned in 'A' schedule to the plaintiff on 16.03.1985 in favour of the plaintiff, Dasari Anjaneyulu and Chinna Nagaraju @ Rs.19,000/- per cent. The total extent of 'A' schedule property is Acs.0.25 cents situated in Survey No.524-1B of Dharmavaram Town, Ananthapur District. The purchasers agreed to purchase 1/3rd share of the said property and the first defendant agreed to sell the same. On the date of agreement of sale, the first defendant received a sum of Rs.1,00,000/- out of which, an amount of Rs.33,334/- was paid by the plaintiff towards advance money and for execution of agreement of sale in favour of the plaintiff and two others. The plaintiff paid a further amount of Rs.50,000/- on 12.08.1985 to the first defendant for his share of balance consideration. The same was endorsed on the photostat copy of the agreement of sale given to the plaintiff. The plaintiff further stated that he was always ready and willing to perform his part of the contract but the first defendant was evading to perform his part of the contract on some or other ground stating that there were some family disputes. The plaintiff also learnt that one Govinda Chowdary filed a suit alleging that he was having share in the family properties of the defendants and the said suit was pending on the file of the Subordinate Judge, Ananthapur, wherein he obtained a temporary

injunction in respect of the plaint schedule property. Though, in the agreement, it was stated that the balance consideration had to be paid on or before 30.06.1985, it was agreed that time was not the essence of the contract. The first defendant already executed a regular sale deed in respect of 2/3rd share of the plaint 'A' schedule property but the possession of the same was not delivered to the purchasers, in whose favour the agreement was executed along with the plaintiff. Though the plaintiff made a number of demands to accept the balance sale consideration and execute a regular sale deed, followed by a registered notice, the sale deed was not executed and the notices were also not received by the first defendant. The plaintiff sought for repayment of the amount of Rs.88,334/- received by the first defendant in case the Court was not inclined to order specific performance, by calculating interest @ 12% per annum from 16.03.1985 to 12.08.1985 on Rs.33,334/- and from 12.08.1985 to 14.03.1988 and arriving at an amount of Rs.1,07,811. Accordingly, he sought for specific performance of agreement of sale dated 16.03.1985 and for consequential delivery of possession or in the alternative, to pass a decree for a sum of Rs.1,07,811/- with future interest @ 12% per annum.

The first defendant filed a written statement admitting the execution of agreement of sale dated 16.03.1985, in favour of the plaintiff and two others @ Rs.19,000/- per cent. It was also admitted that an amount of Rs.1,00,000/- was received as advance amount, but it was stated that the said amount was paid only by Dasari Anjaneyulu and Chinna Nagaraju and the plaintiff never contributed any amount towards advance amount paid. After execution of the agreement, the other two vendees paid a sum of Rs.50,000/- each and the plaintiff also paid a sum of Rs.50,000/- and got an endorsement made on photostat copy of the agreement. Subsequently, the two other vendees got executed a registered sale deed in respect of their 2/3rd share of the property, but the plaintiff came and represented that he was not in a position to take the registered sale deed and he returned the original agreement stating that he

would receive the amount of Rs.50,000/- a little later. The plaintiff was never ready and willing to perform his part of the contract and time was already treated as essence of the contract. The plaintiff did not pay the amount within the stipulated time on 30.06.1985 and he was given an opportunity of two more months and accordingly, he paid an amount of Rs.50,000/- on 12.08.1985, but he could not get the balance sale consideration and the agreement was returned. In view of the breaches committed by the plaintiff, he was not entitled for the discretionary relief of specific performance. The allegation that the possession was not delivered to other two vendees after execution of the registered sale deed was not correct. The first defendant has not returned the original agreement and kept the same with him was denied. The defendant was always ready and willing to return the sum of Rs.50,000/ and he was not aware of sending any notice by the plaintiff and hence, the refusal does not arise.

The plaintiff filed rejoinder denying the allegation that since the plaintiff did not pay the amount, he was given an opportunity of two more months time and accordingly, he paid a sum of Rs.50,000/- before 30.08.1985.

On the above pleadings, the following issues were framed for consideration by the trial Court:

- “1. Whether the plaintiff is entitled for the relief of specific performance?
2. Whether the plaintiff is entitled to recover Rs.1,7811/- (sic. Rs.1,07,811/-) and not only Rs.50,000/- with future interest at 12%?
3. To what relief?”

The trial Court split the first issue into five points and they are as follows:-

- “1. Whether the plaintiff paid his part of advance consideration on the date of Ex.A.1, agreement?
2. Whether the time was the essence of the contract?
3. Whether the plaintiff was always ready and willing to perform his part of the contract?
4. Whether the suit by the sole plaintiff is maintainable?

5. Whether the Govinda Chowdary is a necessary party to the suit? What is the effect of his non-impealed?"

In support of the case of the plaintiff, he was examined as P.W.1 and Exs.A.1 to A.13 were marked. The first defendant's son was examined as D.W.1 and two other vendees under the agreement were examined as D.Ws.2 and 3. Exs.B.1, dated 18.08.1989, certified copy of the decree in O.S.No.123 of 1986 on the file of the Subordinate Judge, Anantapur, was marked on behalf of the defendants.

On the basis of oral and documentary evidence, the lower Court came to the conclusion that D.Ws.2 and 3 are blindly supporting the first defendant for reasons known to them and their evidence cannot be made the basis to hold that the plaintiff has not paid his part of consideration amount at the time of Ex.A.1, agreement of sale, particularly when Ex.A.1, agreement of sale and subsequent conduct of the first defendant in Ex.A.4, endorsement, would clearly bring out that the plaintiff along with D.Ws.2 and 3 paid Rs.1,00,000/- on the date of Ex.A.1, agreement of sale, as advance sale consideration and subsequently paid Rs.50,000/- on 12.08.1985 towards balance sale consideration. Accordingly, the trial Court held that the plaintiff, D.Ws.2 and 3 altogether paid a sum of Rs.1,00,000/- as advance consideration and the plaintiff paid his 1/3rd share of Rs.33,334/- to the first defendant. The trial Court held that though time was made the essence of contract in Ex.A.1, agreement of sale, the first defendant, by his subsequent conduct has waived the said terms and hence the first defendant cannot rely on the said circumstance to non-suit the plaintiff. With regard to the readiness and willingness of the plaintiff, the trial Court noticed that the first defendant executed sale deeds in favour of D.Ws.2 and 3 under Exs.A.5 and A.6 on 10.12.1985 and they, in turn, sold the said extent of land in favour of the wife of Govinda Chowdary, by name Lakshmi Chowdary, by executing registered sale deed, dated 02.08.1993. The suit for partition was filed by Govinda Chowdary in O.S.No.123 of 1986 on 01.10.1986. The trial Court also observed

that the notice sent to Noohtimadugu address under Ex.A.12 to the first defendant was returned with an endorsement that he was absent during delivery times on 14th, 15th and 16th October and he refused to receive the same on 19.10.1985. In view of the same, the trial Court observed that the first defendant refused to receive the notice issued by the plaintiff and the subsequent conduct of the first defendant was not proper. The lower Court brushed aside the argument that the delay in filing the suit, though within the time of limitation, should disentitle the plaintiff for the relief for specific performance of the agreement of sale. The lower Court gave a finding that the plaintiff was always ready and willing to perform his part of contract. The trial Court also held that though there was a compromise decree in O.S.No.123 of 1986, the share of the plaintiff was kept intact and hence, the suit in the present form by the plaintiff is maintainable for the land of an extent of Acs.8 ^{1/3} cents of the property. With regard to maintainability of the suit without impleading Govind Chowdary, the trial Court observed that the plaintiff filed I.A.No.426 of 1993 seeking to add Govinda Chowdary as defendant No.12 in the suit, but the said application was dismissed on 31.12.1996. In those circumstances, the plaintiff cannot be found fault for not impleading Govinda Chowdary as defendant in the suit. Though Govinda Chowdary can be said to be a proper party, the effect of non-impleadment of him in the suit, is not due to any fault of the plaintiff and it could not affect the relief of specific performance of the agreement of sale. On the second issue of the entitlement of the plaintiff for refund of the amount, the plaintiff was held to be entitled for refund of the amount and accordingly the suit was decreed with costs directing the defendants 2 to 11 to execute a registered sale deed conveying title in respect of the plaint schedule property in favour of the plaintiff within a period of three months from the date of the decree by accepting the balance sale consideration by its judgment and decree, dated 18.01.1999. Challenging the said judgment and decree, the present Appeal is filed.

The point for consideration in the present appeal is whether the plaintiff was ready and willing to perform his part of the contract and whether decree passed by the trial court is proper or not?

The learned counsel for the appellants raised the following contentions:-

The plaintiff failed to aver in the plaint with regard to his readiness and willingness to perform his part of contract and prove the same and hence, he is not entitled for the discretionary relief of specific performance. Learned counsel further submitted that the suit is bad for non-joinder of other two purchasers, who are parties to the agreement along with the plaintiff. He lastly submitted that in view of the facts and circumstances of the case, the trial Court has not properly exercised its direction. He relied on **Pushparani S. Sundaram vs. Pauline Manomani James¹**, **Manjunath Anandappa vs. Tammanasa²**, **I.S.Sikandar vs. K.Subramani³**, **Padmakumari vs. Dasayyan⁴** and **Killamsetty Eswari vs. Pedada Tulasi Rao (died) per LRs⁵**.

Learned counsel for the respondent submitted that since the plaintiff deposited the balance sale consideration before the trial Court, it is sufficient compliance for his readiness and willingness and no further proof is required. He relied on **Motilal Jain vs. Ramdasi Devi⁶**, **Panchanan Dhara vs. Monmatha Nath Maity⁷** and **N.Srinivasa vs. Kuttukaran Machine Tools Limited⁸**.

The undisputed facts in the instant case are that the first defendant was absolute owner of the agricultural land of an extent of Acs.7.47 cents situated in Survey No.524-1B of Dharmavaram Town and Municipality and out of the same, he wanted to sell Acs.0.25 cents of land to the plaintiff and two others under an agreement of sale dated 16.03.1985, which is marked as Ex.A.1. He received an amount of Rs.1,00,000/- towards advance sale consideration

¹ (2002) 9 SCC 582

² (2003) 10 SCC 390

³ (2013) 15 SCC 27

⁴ (2015) 8 SCC 695

⁵ 2017 (3) ALD 573 (DB)

⁶ (2000) 6 SCC 420

⁷ (2006) 5 SCC 340

⁸ (2009) 5 SCC 182

stipulating in the agreement that the balance sale consideration was to be paid on or before 30.06.1985. Thereafter, the two other vendees under Ex.A.1, agreement, got registered sale deeds executed in their favour in respect of $2/3^{\text{rd}}$ share of the property on 06.12.1985 and 09.12.1985 respectively under Exs.A.5 and A.6. The plaintiff paid an amount of Rs.50,000/- on 12.08.1985 to the first defendant beyond the period of two months period of the date specified in the agreement and the first defendant has accepted the same by making an endorsement on the copy of the agreement of sale. In the meanwhile, it appears that one Govinda Chowdary, who is the son of the sister of the first defendant, filed O.S.No.123 of 1986 on the file of the Subordinate Judge, Ananthapur, seeking partition of the properties held by the joint family claiming $3/8^{\text{th}}$ share therein. The property covered by Ex.A.1, agreement of sale, is also part of the said property. In the said suit, the two other vendees under Ex.A.1, agreement of sale, were arrayed as defendants 14 and 16. The matter was compromised ultimately on 18.06.1989 and 'B' schedule in the compromise decree states that an extent of $16^{2/3}$ cents on the western side of Survey No.524-1B belongs to defendants 14 to 17, according to the sale deed executed by the first defendant. It is also agreed that the plaintiff and defendant No.7 should have the right in the balance $1/3^{\text{rd}}$ on the Eastern side, which is the subject matter of the present suit and it was held that the first defendant had to take responsibility to settle the said dispute and give the said portion to the plaintiff and defendant No.7. The plaintiff issued a notice under Ex.A.7 on 14.09.1987 and the notices were refused and they were marked as Exs.A.10, 12 and 13. Insofar as the property purchased by the two other vendees under Ex.A.1, agreement of sale is concerned, they executed a registered sale deed in favour of the plaintiff in O.S.No.123 of 1986, Govinda Chowdary on 02.08.1993 and 28.12.1994 respectively under Exs.A.8 and A.9. The plaintiff filed the suit originally before the learned Subordinate Judge, Ananthapur in O.S.No.39 of 1988 and it was transferred to the Court of the Senior Civil Judge, Penukonda, by the orders of the District Judge,

Ananthapur, on 01.08.1997 and the same was re-numbered as O.S.No.72 of 1997 consequent to transfer. The first defendant expired *pendentelite* and his legal representatives were brought on record as defendants 2 to 11. The son of the first defendant was examined as D.W.1 and the two other vendees under Ex.A.1, agreement of sale, were examined as D.Ws.2 and 3.

A perusal of E.A.1, agreement of sale, dated 16.03.1985, shows that the land of an extent of Acs.0.25 cents in Survey No.524-1B was agreed to be sold by the first defendant at the rate of Rs.19,000/- per cent and he received the advance amount of Rs.1,00,000/- on the date of the agreement. The balance sale consideration was agreed to be paid on or before 30.06.1985. It was also stated that the advance amount would be forfeited in case of non-payment of balance consideration within the date and in case of failure of the first defendant to execute the sale deed in spite of paying the balance sale consideration, the parties were given liberty to deposit the balance sale consideration and get the document registered.

In view of the submission made by the learned counsel for the appellants that the plaintiff failed to aver his readiness and willingness and the pleadings of the plaintiff were not in conformity with Order VI Rule 3 CPC and clause 3 of Form 47 in appendix A, it has to be seen whether such a pleading was there by the plaintiff and what is the effect of absence of such pleading as per the provisions of CPC. To examine this point, it is relevant to extract Order VI Rule 3 CPC and clause 3 of Form 47 in appendix A in this order and the same reads as under.

Order VI Rule 3 of CPC reads as under:

“3. Forms of pleading.- The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.”

Form 47 in Appendix A of CPC reads as under:

“No.47
(Specific Performance (No.1))
(Title)

A.B., the above named plaintiff, states as follows:-

1. By an agreement dated the _____ day of _____ and signed by the defendant, he contracted to buy of [or sell to] the plaintiff certain immovable property therein described and referred to, for the sum of _____ rupees
2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.
3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.
4. *[facts showing when the cause of action arose and that the Court has jurisdiction]*
5. The value of the subject matter of the suit for the purpose of jurisdiction is _____ rupees and for the purpose of court fees is _____ rupees.
6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit."

It is also relevant to refer to 16(c) of the Specific Relief Act, which is as follows:-

"16. Personal bars to relief.- Specific performance of a contract cannot be enforced in favour of a person-

(a) ...

(b) ...

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.- For the purpose of clause (c),-

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

In the light of the above provisions of CPC, it is relevant to refer to the paragraphs 4, 5 and 6 of the plaint and the same reads as under.

"(4) On 16-3-1985, the defendant agreed to sell the property mentioned in the A schedule in favour plaintiff, Dasari Anjaneyulu and Chinna Nagaraju at the rate of Rs.19,000.00 (Nineteen thousand only) per cent. Each of the above said persons agreed to purchase 1/3 share and the property

mentioned in the B schedule allotted to the share of plaintiff, and the defendant agreed to sell the same to the plaintiff. On the even date, the defendant received a sum of Rs.1,00,000.00 (one lakh), out of which a sum of Rs.33,334.00 is paid by the plaintiff towards advance money and executed an agreement of sale in favour of the plaintiff, Anjaneyuulu and Chinna Nagaraju. The photostat copy of the agreement executed by the defendant is herewith filed and the plaintiff crave leave of this Honourable Court to read the same as part and parcel of this plaint.

(5) On 12-8-85, the plaintiff paid Rs.50,000.00 to the defendant towards his share of balance consideration. The defendant endorsed the same on the photostat copy of the agreement given to the plaintiff.

(6) The plaintiff is always ready and willing to perform his part of the contract. The defendant is always evading to perform his part of the contract on some or other ground stating that there are some family disputes.”

In **Pushparani S. Sundaram's** case, the Supreme Court held that mere averment is not sufficient but there should be proof of the same. In the said case, the plaintiff has not come to the witness box and also did not even send any communication or notice to the defendant therein about his willingness to perform his part of the contract. No evidence was let in in support of his plea and hence, it is distinguishable on facts.

In **Manjunath Anandappa's** case, the plaintiff served a notice upon the second defendant only after expiry of the period of three years. He filed the suit after coming to know of the fact that the first defendant transferred the property in favour of third party and the first defendant did not receive any notice. In fact, the plaintiff filed the suit after six years from the date of entering into the agreement of sale. The Supreme Court observed as follows:-

“The decisions of this Court, therefore, leave no manner of doubt that a plaintiff in a suit for specific performance of contract not only must raise a plea that he had all along been and even on the date of filing of suit was ready and willing to perform his part of contract, but also prove the same. Only in certain exceptional situation where although in letter and spirit, the exact words had not been used but readiness and willingness can be culled out from reading all the averments made by the plaintiff as a whole coupled with the materials brought on record at the trial of the suit, to the said effect, the statutory requirement of Section 16(c) of the Specific Relief Act may be held to have been complied with.”

Thus, the above decision is also distinguishable on facts.

In **I.S.Sikandar's** case, the suit was filed eleven months after expiry of the limitation period stipulated in the agreement, to get the sale deed executed in favour of the plaintiff. The sale consideration of Rs.48,000/- was paid to defendants 1 to 4 after the termination of the earlier agreement on 10.04.1985 by notice dated 28.03.1985. The plaintiff did not get the agreement of sale executed by paying the remaining consideration to defendants 1 to 4. The plaintiff has not asked the defendants 1 to 4 to get the necessary permission from the Urban Land Ceiling and Income Tax Department after paying the Layout charges to the authorities concerned for getting the sale deed executed in his favour. Thus, the facts in the said case are also different.

In **Padmakumari's** case, the plaintiff agreed for payment of balance sale consideration more than nine months from the date of execution of the agreement to sell, but the plaintiff argued that the payment of balance consideration would arise as per the terms and conditions of the contract agreed upon by the defendants 1 to 11, if they had measured the suit schedule property and since they failed to discharge their part, time was not the essence of the contract. The Supreme Court held that the said contention raised by the plaintiff is unacceptable as the question of taking measurement could not arise before the plaintiff performs his part of the contract for payment of balance sale consideration within the period stipulated in the agreement. Further, after committing default by the plaintiff, the defendants 1 to 11 entered into another agreement with defendants 12 to 15 as the sale deed was registered in their favour by taking the consideration. Hence, the facts of the case are also different from the facts in the present case.

The last decision relied upon by the learned counsel for the appellants is that of **Killamsetty Eswari** decided by the Division Bench of this Court. The plaintiff though stated his readiness and willingness to perform the essential terms of the contract did not produce any proof to show his readiness.

In the present case, the plaintiff contributed his share of the advance sale consideration at the time of Ex.A.1, agreement of sale, followed by payment of Rs.50,000/- on 12.08.1985, which was accepted by the first defendant. In the evidence of D.W.1, a suggestion was made stating that the plaintiff had Acs.20.00 of dry land and Acs.4.00 of wet land and was getting the yield of 200 bags of paddy and 200 bags of groundnut and earning Rs.1,00,000/- to Rs.1,50,000/- at the time of Ex.A.1. Another suggestion was also put to him stating that right from the beginning, the plaintiff was ready and willing to perform his part and get a valid sale deed executed, but the first defendant was evading the same. The refusal of the notice issued by the plaintiff on 24.09.1987 asking the defendants to receive the balance sale consideration and execute a registered sale deed clearly indicates the readiness and willingness of the plaintiff. This was further supported by deposit of balance sale consideration in the Court at the time of filing the suit. Hence, the decisions relied on by the learned counsel for the appellants are not applicable to the facts of the present case though there cannot be any dispute on the point of law.

Learned counsel for the respondents by relying on the decision in **Manjunath Anandappa's** case, drew the attention of this Court to paragraph 24 of the said decision and submitted that in view of the deposit of the amount in the Court, it is sufficient compliance under Section 16(c) of the Specific Relief Act. He also relied on paragraph 9 of the decision in **Motilal Jain's** case, which are as follows:-

“9. That decision was relied upon by a three-Judge Bench of this Court in **Syed Dastagir vs. T.R.Gopalakrishna Setty** ((1999) 6 SCC 337), wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed: (SCC Headnote)

"Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of 'readiness and willingness' has to be in spirit and substance and not in letter and form."

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfill his part of the obligations under the contract which is the subject matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale."

In **Panchanan Dhara's** case, the point of limitation for filing suit for specific performance was considered and held that the suit filed within the period of three years from the date of agreement of sale would be in order.

Lastly, he submitted that in a contract for sale of immovable property, the time is not the essence of the contract. Even if there is an express stipulation to that effect, the said presumption can be rebutted. He placed reliance on **N.Srinivasa's** case in this regard.

In the instant case, the first defendant accepted the payment beyond the period stipulated in the contract and he did not issue any notice terminating the contract by stipulating the period thereafter. Further, when a notice was issued by the plaintiff, he refused to receive the same. The suit cannot be held bad for non-joinder of other two purchasers along with the plaintiff since Anjaneyulu and Chinna Nagaraju already got sale deeds executed and in turn, they executed sale deed in favour of in favour of the plaintiff in O.S.No.123 of 1986.

The last submission made by the learned counsel for the appellants that the trial Court has not exercised its discretion properly while decreeing the suit for specific performance has also to be rejected in view of the observations in **Manjunath Anandappa's** case, which are as under:

“37. In **U.P. Coop. Federation Ltd. v. Sunder Bros.** (AIR 1967 SC 249) the law is stated in the following terms: (AIR p.253, para 8)

“8. It is well-established that where the discretion vested in the court under Section 34 of the Indian Arbitration Act has been exercised by the lower court the appellate court should be slow to interfere with the exercise of that discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion. This principle is well-established; but, as has been observed by Viscount Simon, L.C., in **Charles Osenton & Co. v. Johnston** (1942 AC 130 : (1941) 2 All ER 245 (HL)) AC at p. 138:

"The law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well-established, and any difficulty that arises is due only to the application of well-settled principles in an individual case'."

38. Yet again in **Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha** ((1980) 2 SCC 593 : 1980 SCC (L&S) 197 : AIR 1980 SC 1896) the law is stated in the following terms: (SCC pp.624-25, para 73)

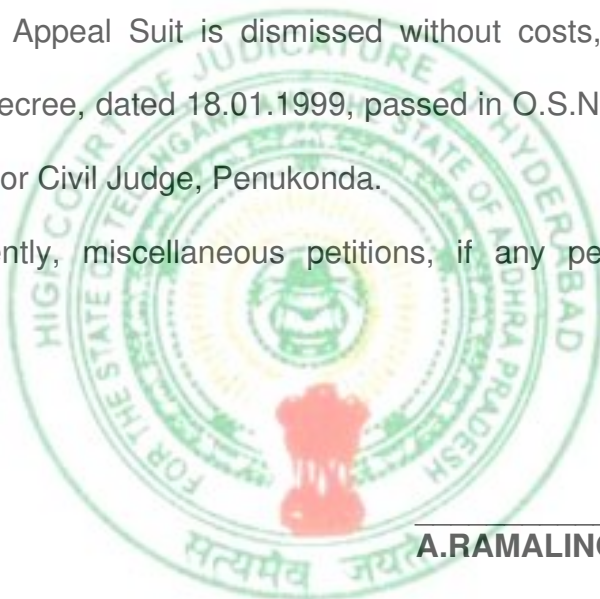
"73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service

of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine." (emphasis in original)"

In the instant case, the trial Court exercised its discretion and when the said discretion is not clearly wrong on the face of it, it is not proper for this Court to interfere with the said discretion exercised by the trial Court. Accordingly, the Appeal Suit is dismissed without costs, by confirming the Judgment and Decree, dated 18.01.1999, passed in O.S.No.72 of 1997 by the Court of the Senior Civil Judge, Penukonda.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

20.04.2018
pln



A.RAMALINGESWARA RAO, J