HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

C.M.A.Nos.231, 237, 249, 253, 630 & 672 of 2018

COMMON JUDGMENT:

(per Hon'ble Sri Justice Suresh Kumar Kait)

Since common questions of law and fact are involved, all these appeals are heard together and are being disposed of by this common judgment.

2. Appellants are respondents/defendants before the trial Court, whereas, respondents are petitioners/plaintiffs.

3. For the sake of convenience, parties are referred to as petitioners and respondents, as arrayed before the trial Court.

4. Vide the present appeals, the respondents/defendants have challenged the order dated 27.02.2018 passed in I.A. Nos.1127 & 1128 of 2017 in O.S.No.751 of 2017 on the file of XI Additional Chief Judge, City Civil Court at Hyderabad, whereby, the aforesaid I.As. filed under Order XXXIX Rules 1 and 2 of CPC by the petitioners/ plaintiffs to restrain the respondents, their heirs, successors-in-interest, agents etc., from changing the nature of the petition schedule properties pending disposal of the suit, have been allowed.

5. Respondent Nos.1 to 7 have approached the petitioners along with one Late N. Manik Reddy representing that they are the owners

of land admeasuring 44 acres in Sy.Nos.103/2017 to 2019 situated at Bandlaguda Village and Mandal, Hyderabad. They entered into agreements of sale to sell the said extent in three bits admeasuring 20 Acres, 15 Acres and 9 Acres, in favour of respondent Nos.8 and 9 (i.e., plaintiff No.8 and defendant No.1). Out of the said 44 Acres, an extent of 15 Acres was laid out into residential plots, named as 'Samatha Colony'. The plots in such layout are conveyed to various purchasers through registered sale deeds. The sale transaction in respect of remaining land of 29 Acres is not completed due to various reasons. Respondent Nos.8 and 9 (i.e., plaintiff No.8 and defendant No.1) expressed their inability to go ahead with the agreement of sale, but they were ready to relinquish their rights under the said agreement of sale in favour of respondent Nos.1 to 7, enabling them to enter into fresh sale transactions with other parties. Thus, respondent Nos.1 to 7 offered to sell the said 29 Acres of land to the petitioners.

6. In the negotiations held between the petitioners and respondent Nos.1 to 7, respondents 8 and 9 also participated and reiterated their desire to opt out of the agreements of sale entered with respondent Nos.1 to 7 and Late Manik Reddy, on payment of money. It is agreed among the respondents that, respondent Nos.8 and 9 shall be entitled to receive the sale consideration amount of Rs.2 Crores payable in respect of 20 Acres of land and respondent Nos.1 to 7 shall be entitled to receive the sale consideration amount of Rs.96,75,000/- in respect of 9 Acres of land. Further, respondent Nos.8 and 9 represented that

out of the layout made in 15 Acres of land, they have purchased plots covering an extent of 6 Acres from the plot purchasers by getting the sale deeds cancelled and they will get said extent of 6 Acres conveyed through respondent Nos.1 to 7 in favour of the petitioners for a total sale consideration of Rs.60,00,000/-.

7. It is the further case of petitioners that the terms as agreed among the petitioners and respondents during the negotiations were reduced into an agreement of sale dated 28.02.2004. Accordingly, an amount of Rs.20,00,000/- was paid to respondent Nos.1 to 7 in respect of Schedule -'C' property and an amount of Rs.1,15,000/- was paid to respondent Nos.8 and 9 in respect of the Schedules –'A' and 'B' properties. The balance of sale consideration amount is stipulated to be paid in three installments i.e., 1st installment amount of Rs.26,00,000/- to respondent Nos.1 to 7 and Rs.48,33,000/- to respondent Nos.8 and 9 on or before 31.10.2010; the 2nd installment amount of Rs.26,00,000/- to respondent Nos.1 to 7 and Rs.48,33,000/- to respondent Nos.8 and 9 on or before 30.06.2005; and the 3rd installment amount of Rs.24,75,000/- to respondent Nos.1 to 7 and Rs.48,33,100/- to respondent Nos.8 and 9 on or before 31.12.2005. It is further stipulated in the agreement that respondent Nos.1 to 7 shall execute and register the sale deed/deeds with the consent of respondent Nos.8 and 9 in favour of petitioners or their nominees in proportion to the sale consideration amounts received by

them from time to time by retaining 25% of the amount as caution deposit, which is adjustable at the end of sale transaction.

8. It is further stated that though respondent Nos.8 and 9 represented that the sale deeds executed in favour of various plot holders covering an extent of 6 Acres were got cancelled by them, the petitioners, on verification, came to know that no deeds of cancellation were executed and registered, and the ownership of said plots still remained with the plot holders and no portion of Schedule – 'B' property is available for conveyance. It is stipulated in the agreement that if the sale deeds that are cancelled cover an extent less than 6 Acres, the proportionate sale consideration amount will be reduced from the amount payable to respondent Nos.8 and 9 in respect of schedule – 'B' property. Thus, the petitioners have to pay the sale consideration amount in proportion to the extent available for conveyance.

9. It is the further case of petitioners that respondent Nos.1 to 7 represented that declarations were filed by respondent Nos.4 and 7 along with Late N. Manik Reddy, declaring the above said lands under the provisions of Urban Land (Ceilings & Regulations) Act before SO & CA, ULC, Hyderabad and such declarations were filed due to over sight. They further represented that since the lands are agricultural lands, it was not incumbent upon them to file such declarations and that a writ petition is pending before this Court in that regard. All the

respondents undertook to contest the pending cases, if any, and would get the same cleared.

10. When the petitioners approached the respondents to pay the 1st installment of balance sale consideration amount on the stipulated date by requesting the respondents to execute and register the sale deeds equivalent to 75% of sale consideration amount paid and the amount offered to be paid by them, the respondents represented that they are unable to execute and register any deed of conveyance as the entire land except 3000 square meters out of the land held by them, is in the Urban Agglomeration of Hyderabad and is declared as surplus land. Possession of the said land was taken over by the ULC authorities and handed over to the concerned MRO on 02.08.1999, prior to execution of agreement of sale in favour of petitioners. They further represented that, as the suit for partition filed by some of the co-pattadars is pending, they are not in a position to convey the property by receiving the balance sale consideration amount till the said suit is disposed of and requested the petitioners to pursue the litigations and that the moment the litigation is cleared, they will receive the balance sale consideration amount and will execute and register the sale deeds in favour of petitioners. However, the petitioners, after due verification, came to know that the lands agreed to be sold to them by respondents 1 to 7 are declared as surplus lands, except an extent of 3000 square meters and the possession of surplus land was taken over by the Government on 02.08.1999. The appeals filed by the declarants were

dismissed by the Appellate authority on 28.03.2000, on the ground of delay. A writ petition in W.P.No.8431 of 2000 was filed by the declarants before this Court questioning the order dated 06.08.1982 passed by SO & CA, ULC, Hyderabad and the orders dated 28.03.2000 passed by the Commissioner of Appeals and the same are pending for adjudication. The petitioners also noticed that the partition suit filed by one Mr. Sam Reddy Narayana Reddy and 31 others in O.S.No.841 of 1997 on the file of II Additional Senior Civil Judge, Ranga Reddy District against Late Manik Reddy and respondent Nos.4 and 7 and others, was pending. After coming to know of the pending litigations, the petitioners pursued the same, and even now, they are pursuing the pending cases at their own costs. Respondent Nos.1 to 4 and 7 are co-operating with them by signing the required papers and they have successfully pursued the litigations concerning the Urban Land Ceilings. Due to their efforts, the entire land became free of any litigation under the provisions of ULC Act. When the Government made attempts to interfere with the possession of respondent Nos.1 to 7 over the said land, the petitioners got filed the writ petition in W.P.No.20845 of 2009 before this Court and the same was allowed directing the Government not to interfere with the possession of the subject land. Now, the writ appeal preferred by the Government is pending before this Court, however, no interim orders are granted in favour of the Government. The suit for partition in O.S.No.841 of 1997 was dismissed on 21.02.2005. Against said judgment, A.S.No.557

of 2005 was preferred by the legal heirs of one Marri Malla Reddy and the same is pending. In that, this Court has granted injunction restraining the respondents therein including respondent Nos.1 to 7 herein. Therefore, the sale transaction could not be completed due to pendency of litigation and subsistence of injunction orders.

11. The further case of the petitioners is that since the land has become free of litigation under the provisions of ULC Act, the petitioners approached respondent Nos.1 to 7 during the 3rd week of January 2015 offering to pay the balance sale consideration amount and to obtain sale deeds after obtaining permission of this Court in the pending appeal. They requested the aforesaid respondents to co-operate with them in filing the petition seeking permission of this Court in A.S.No.557 of 2005. But, the respondents are not inclined to co-operate with the petitioners unless higher consideration amount than the amount agreed, is paid to them. Respondent Nos.1 to 7, in collusion with respondent Nos.8 and 9, turned hostile and are offering to sell the property to some 3rd parties by ignoring the rights of the petitioners under the agreement of sale, dated 28.02.2004 with an ulterior motive of illegal gain and to cause wrongful loss to the petitioners. Respondent Nos.8 and 9, having agreed to relinquish their rights under the agreement of sale executed by respondent Nos.1 to 7 in their favour, and having received huge amounts towards consideration, have no subsisting rights whatsoever, against the suit property, and respondent Nos.8 and 9 have no say in the matter,

except to receive their share in the balance amount. The petitioners, on coming to know that the respondents are offering suit schedule property for sale to the 3rd parties for higher amounts, immediately on 09.07.2015, got issued a legal notice to the respondents calling upon them to receive the balance sale consideration within one week and to file a petition seeking permission of the Court to alienate the property and to execute a registered sale deed in favour of the petitioners after granting of permission by the Court to alienate the property. The said notices were served upon respondent Nos.2 to 7 and the notice sent to respondent No.1 was returned with an endorsement "left India". The notice sent to respondent No.8 was returned with an endorsement "left without instructions", and the notice sent to respondent No.9 was returned with an endorsement "no such person on this house number". After service of notices on respondent Nos.2 to 7, they along with respondent Nos.8 and 9, approached petitioner Nos.1 to 3 on 30.07.2015 and proposed to negotiate with them to resolve the issue. But, the negotiations are going on and are being prolonged on one pretext or the other.

12. It is the further case of the petitioners that meanwhile, respondent Nos.1 to 9 have taken up developmental activities in the petition schedule properties by converting the same into plots through respondent Nos.10 and 11. When the petitioners objected against such activities on 30.07.2017, respondent Nos.10 and 11 replied that they are aware of the agreement of sale executed by respondent Nos.

1 to 9 in favour of petitioners and that respondent Nos.1 to 9 promised to settle the matter, and that on such assurance of respondent Nos.1 to 9, respondents 10 and 11 have taken up developmental activities. When the petitioners questioned respondent Nos.1 to 9 on 01.08.2017 about the developmental activities being carried out by respondent Nos.10 and 11, they gave evasive reply. With such conduct of respondent Nos.1 to 9, petitioners presume that respondent Nos.1 to 9 are not willing to perform their part of contract. It appears, the respondents have also settled the matter with the appellants in A.S.No.557 of 2005 pending before this Court and the appellants may withdraw such appeal at any time. Respondent Nos.10 and 11, having knowledge of agreement of sale between the petitioners and respondent Nos.1 to 9, are proceeding with developmental activities in spite of protest being made by the petitioners. Therefore, the petitioners sought interim injunction pending disposal of the suit, which has been granted by the Trial Court vide impugned orders.

13. Being aggrieved, CMA Nos.231 and 237 of 2018 have been filed by defendant Nos.2, 4, 5, 6 and 7, CMA Nos. 249 and 253 of 2018 have been filed by defendant Nos.10 and 11 and CMA Nos.630 and 672 of 2018 have been filed by defendant Nos.8 and 9.

14. Heard learned Counsel for the parties in length and perused the material on record.

15. Learned Senior counsel appearing on behalf of appellants in CMA Nos.249 and 253 of 2018 i.e., defendant Nos.10 and 11, argued that these Companies have taken the land admeasuring 29 Acres in Sy.Nos.103/2017 to 2019 situated at Bandlaguda Village, for development, from respondent Nos.1 to 7. Accordingly, respondent Nos.1, 2 and 4 to 7 have executed a registered Development Agreement-cum-GPA, dated 24.11.2016 and 15.11.2016 vide document Nos. 31879 of 2016 and 30496 of 2016 respectively, in respect of land admeasuring Ac.25-20 gts. Later, respondent No.3 also executed another agreement of sale for sale of land admeasuring Ac.3-20 gts. Under the said documents, the respondents have delivered the physical possession of the said lands to their Companies to develop the lands and to convert the land into plots. These Companies have developed the lands by investing Crores of rupees and also sold plots to prospective buyers from time to time and the buyers are in physical possession of their respective plots. Under the said development agreements, respondent Nos.1, 2 and 4 to 7 agreed to sell the land for a consideration of Rs.1,40,00,000/- per acre and after series of deliberations, the said respondents have received a sum of Rs.1 Crore from the appellants (Companies) on 03.10.2016 by executing a receipt and the transaction under the said receipt was witnessed by plaintiff Nos.1 to 3. Apart from the same, the plaintiffs have also received substantial amounts from these Companies from time to time and passed receipts relinquishing their alleged rights over

the suit property. They also agreed that the transaction of sale and the development activities shall conclude smoothly without causing any hurdle to their Companies and the defendants are given to understand from the petitioners and respondent Nos.1 to 7 that all the alleged transactions among themselves are nullified and there are no agreements subsisting among them. Based on the said assurance, these Companies entered into registered documents and developed the land.

16. It is further argued that to the knowledge of appellants, there is no subsisting agreement between the petitioners and respondent Nos.1 to 7 in respect of the suit property. Petitioner Nos.1 to 3 and respondent Nos.1 to 7 have time and again asserted that no agreements are subsisting between them. Further, to the knowledge of these appellants, respondent Nos.1 to 7 have fought out the litigation with the Government and ULC with regard to declaring the suit land as surplus land and after series of battles before the Special Officer, ULC and this Court, respondent Nos.1 to 7 got released the land from the bracket of ceiling, and thereafter, sold the land to the appellant-Companies under development agreements. However, the petitioners cannot take advantage of such litigation for the sake of limitation.

17. Learned Senior Counsel submitted that taking advantage of litigation pending among respondent Nos.1 to 7 and others, the petitioners are tying to create a cause of action. There is no document to show that the petitioners were always ready and willing to perform

their part of obligation under the alleged agreement of sale. It shows that the agreement was not in existence and it is brought up for the purpose of present suit.

18. Learned counsel further submitted that the appellant-Companies have taken up developmental activities on the suit property by converting into plots, but the petitioners never objected for such developmental activities, as they are fully aware about their documents and also witnessed such documents and received money also by saying that they will not interfere with their possession. Since the alleged agreement is unenforceable, the petitioners have no *prima facie* case or balance of convenience in their favour and they have not approached the Court with clean hands. Therefore, they are not entitled to seek the equitable relief of injunction which has been granted by the learned trial Court.

19. It is further submitted that vide receipt dated 03.10.2016, petitioner Nos.1 to 3 have taken an amount of Rs.1 Crore from respondent Nos.10 and 11 towards part sale consideration amount in pursuance of agreement of sale dated 10.10.2016 in respect of Sy.Nos.103/2015 to 2017 admeasuring 29 Acres situated in the village mentioned above. However, this fact is nowhere mentioned in the suit for specific performance. Therefore, as they have concealed this fact, the learned trial Court ought not to have granted injunction. It is further submitted that even the suit is not maintainable on the ground

of concealment. Therefore, the present appeals may be allowed by setting aside the impugned order passed by the trial Court.

20. To strengthen his argument, learned counsel for appellants has relied upon a judgment reported in ***S.P.Chengalvaraya Naidu (dead) by LRs v. Jagannath (dead) by LRs and others***[1], wherein, the Hon'ble Supreme Court has held as under:

> *"7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the Court. The High court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the, illegal-gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.*
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> *8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by paying fraud on the Court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to got an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the*

[1] AIR 1994 SUPREME COURT 853

property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non production and even non-mentioning of the release deed at the trial tantamounts to paying fraud on the Court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If the withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party."

21. It is pertinent to mention here that the petitioners did not press the petition against respondent No.9 i.e., defendant No.1 by filing a memo.

22. Since the learned Counsel appearing on behalf of the other appellants have also argued on the lines of the learned Senior Counsel appearing on behalf of the appellants in C.M.A.Nos.249 and 253 of 2018, we are not discussing the arguments advanced by them.

23. Respondent Nos.2, 4 and 6 have filed their counter affidavits before the trial Court and the said affidavits were adopted by respondent No.7. Respondent No.8 filed counter affidavit before trial Court and same was adopted by respondent No.9 by filing memo.

24. Respondent No.3 filed separate counter affidavit, in which, he also admitting the facts admitted by respondent Nos.2 and 4 to 6 and contended that if the registration of sale deeds by respondent Nos.1 to 7 happens to be impossible or inconvenient because of law or circulars or circumstances, then the purchasers i.e., petitioners shall take substitute documentation to conclude the transaction, but, the petitioners never came forward to perform their part of contract by paying the balance sale consideration amount within the time as specified in the contract. It is the duty of the petitioners to get permissions, clearances as required for the conclusion of sale transaction at their expenses and energies and respondent Nos.1 to 9 shall sign, prepare, submit and do all the requirements to get such clearances or permissions either from the authorities or from the Courts. However, the petitioners failed in their duty for conclusion of sale transaction. The petitioners never approached these respondents offering to pay the 1st installment of the balance sale consideration amount on the stipulated date i.e., 31.10.2004 and requested for execution of registered sale deeds equivalent to 75% of sale consideration amount paid by the petitioners. The petitioners, having failed to pay the balance sale consideration amount as per the agreement of sale dated 28.02.2004, failed to discharge their part of contractual obligation and kept silent for 11 years by sending legal notice dated 09.07.2015, with false allegations. It is utter false to state that the respondents taken up developmental activities in the suit

schedule properties by converting the same into plots through respondent Nos.10 and 11 and that the petitioners objected to such developmental activities on 13.07.2017, and that respondent No.3 promised to settle the matter with the petitioners. The petitioners approaching the respondents on 01.08.2017 questioning the developmental activities of respondent Nos.10 and 11 in the suit schedule property and demanding to receive the balance sale consideration amount and execute the sale deeds, are all false. Respondent No.3 reliably learnt that the petitioners, having lost hope of specific performance of agreement of sale dated 28.02.2004 after issuing legal notice on 09.07.2015, without his knowledge, introduced defendant No.10 to defendant Nos.1, 2 and 4 to 9, and in their presence, defendant Nos.1, 2 and 4 to 9 and 10 entered into agreement of sale in respect of suit schedule properties on 03.10.2016. Thereby, defendant No.10 agreed to purchase part of schedule property and petitioner Nos.1 to 3 were witnesses to the said agreement of sale.

25. In the counter affidavit of respondent No.3, it is further stated that the suit schedule properties are joint family properties and there is a dispute with regard to the shares of the family members. Accordingly, respondent No.3 filed a partition suit vide O.S.No.66 of 2017 before the City Civil court, Hyderabad and the same is pending. The suit filed by the petitioners is barred by limitation and the petitioners failed to pay the 1st installment amount by 31.10.2004 and

that time is the essence of contract. Therefore, the petitioners are not entitled to any injunction, which has been granted by the trail Court.

26. Respondent No.8 has filed counter affidavit before the trial Court and the same was adopted by respondent No.9 by filing a memo. In his counter-affidavit, respondent No.8 has admitted the tri-party agreement between respondent Nos.1 to 7, petitioners and respondent Nos.8 and 9 on 28.02.2004 against Schedules-A, B and C properties and about petitioners paying an amount of Rs.1,15,00,000/- by agreeing to pay the remaining amount of Rs.1,45,00,000/- in three equal installments. As per the conditions stipulated, the petitioners alone should take all steps to get clearances, permissions and settlement of disputes, if any, at their risk and investment. In such event, they should be co-operated in all means by respondent Nos. 1 to 7.

27. It is further stated in the counter affidavit of respondent No.8 that as the petitioners failed to pay amounts as per the terms of agreement dated 28.02.2004, the said agreement is deemed to be cancelled. The petitioners as well as respondent Nos.10 and 11 suppressed all the material facts. When the petitioners failed to fulfill the agreement of sale dated 28.02.2004 due to some disputes with regard to ULC, respondent No.8 has worked to clear the cases with ULC. During the year 2016, petitioners and respondent Nos.1 to 9 approached respondent Nos.10 and 11 and offered to sell an extent of

29 Acres in Sy.Nos.103/2017 to 2019 situated at Bandlaguda Village. Accordingly, respondent Nos.1 to 7 executed Development Agreement-cum-GPA in favour of respondent Nos.10 and 11. Some of the petitioners also witnessed the said document. Respondent Nos.10 and 11 agreed to pay amounts to the petitioners and respondent Nos.8 and 9 to relinquish their rights over the suit schedule lands. Respondent Nos.10 and 11, having agreed to pay an amount of Rs.17 Crores to respondent Nos.8 and 9, paid only an amount of Rs.2,50,00,000/-. Thereafter, respondent Nos.10 and 11 entered into MOU with respondent No.8 on 08.03.2017 stating that respondent Nos.10 and 11 shall pay the sum of Rs.17 Crores to respondent No.8 with an understanding that the advance paid earlier be deducted and the balance amount of Rs.14,50,000/- be paid to respondent No.8. Respondent Nos.10 and 11 issued post-dated cheques on different dates, ending by 30.08.2017. But, an amount of Rs.2 Crores only was encashed under those cheques, dated 02.04.2017, and other cheques were returned for insufficient funds. On that, respondent No.8 issued notice under Section 138 of Negotiable Instruments Act (N.I.Act) to respondent Nos.10 and 11 and filed a complaint before the VIII Metropolitan Magistrate, Ranga Reddy District against respondent No.10. Respondent No.8 is taking necessary proceedings before Court of law for recovery of Rs.12,50,00,000/-. Therefore, the rights under the agreement of sale dated 28.02.2004, stands relinquished in favour of respondent Nos.10 and 11. The agreement dated 28.02.2004, is not

subsisting and it is barred by limitation. Therefore, the learned trail Court ought to have dismissed the petition filed by the petitioners by not granting injunction.

28. It is not in dispute that respondent Nos.1 to 7 are the original owners of petition schedule properties. Initially, they entered into an agreement of sale with respondent Nos.8 and 9 for sale of the petition schedule properties, but due to various reasons, such sale agreement is not completed. Accordingly, with the consent of respondent Nos.8 and 9, respondent Nos.1 to 7 entered into a tri-party agreement with the petitioners. The petitioners have agreed to purchase the petition schedule properties by paying a total sale consideration of Rs.2 Crores to respondent Nos.8 and 9 in respect of Petition Schedule-A property and Rs.60 Lakhs in respect of Petition Schedule-B property. They also agreed to pay Rs.96,75,000/- to respondent Nos.1 to 7 in respect of Schedule-C property. On the date of Ex.P-1 agreement i.e. 28th February 2004, the petitioners paid Rs.20 Lakhs to respondent Nos.1 to 7 in respect of Schedule-C property and also paid Rs.1,15,00,000/- to respondent Nos.8 and 9 in respect of Schedules-A and B properties.

29. As per Ex.P-1/original agreement of sale dated 28th February 2004, Urban Land Ceiling Proceedings were pending against the petition schedule properties. The petitioners shall themselves get clearances, permissions etc., for conclusion of the sale transaction. If registration of sale deeds happens to be impossible or inconvenient for

any reason of law or circulars or circumstances, the petitioners shall take substitute documents to conclude the transaction.

30. The case of the petitioners-plaintiffs is that they have approached the respondents-defendants offering to pay the 1st installment of balance sale consideration amount on the stipulated date and requested them to execute and register the sale deeds equivalent to 75% of sale consideration amount paid by them. However, the respondents represented that they were unable to execute and register the sale deeds as the entire extent of land, except 3000 square metres out of the land held by them, is in Urban Agglomeration of Hyderabad and is declared as surplus land and possession of the same was taken-over by the U.L.C. Authorities and was handed over to the concerned M.R.O. on 2nd August 1999 prior to the agreement of sale. It was also represented that a suit for partition filed by some of the co-pattadars is pending and unless the said suit is disposed of, they are not in a position to convey the property by receiving the balance sale consideration. Thus, they requested the petitioners to pursue the litigations and they will receive the balance sale consideration and execute registered sale deeds immediately after such litigations are cleared. The partition suit in O.S.No.841 of 1997 on the file of II Senior Civil Judge, R.R. District was dismissed on 21st February 2005. Against such judgment, an appeal in A.S.No.557 of 2005 is said to be pending even till date. In the said appeal, there is an injunction

restraining the defendants from alienating the property. The said fact of pendency of A.S.No.557 of 2005 and the existence of injunction order in such appeal till today, is not disputed by the respondents. Therefore, the contention of petitioners/plaintiffs that they could not proceed further on Ex.P-1/Original agreement of sale dated 28th February 2004, appears to be genuine, as held by the trial Court.

31. It is pertinent to mention here that though the agreement of sale/Ex.P-1 prescribes the payment schedule for the payments to be made by the petitioners, there is no default clause in the said agreement. None of respondent Nos.1 to 9 chose to cancel the agreement/Ex.P-1 before executing Exs.R-5 to R-10. If respondent Nos.1 to 9 had any intention of giving-up the contract under Ex.P-1 for non-payment of balance sale consideration amounts by the petitioners, they should have issued a notice to the petitioners demanding payment in time and cancel the said agreement. But, no such steps have been taken by respondent Nos.1 to 9. Moreover, there is no stipulation of time for obtaining sale deeds by the petitioners, except for payment of balance sale consideration.

32. In addition to above, as per Ex.P-1, there are pending litigations on the petition schedule properties. It places onus on the petitioners to clear-off such litigations with their own expenses and efforts. It shows that because of such pending litigations on the petition schedule

properties, parties to the agreement did not fix any time for its conclusion. Thus, time is not the essence of contract under Ex.P-1.

33. It is important to note that vide Ex.P-2/Office copy of legal notice dated 9th July 2015, the petitioners demanded the respondents to receive the balance sale consideration and file a petition seeking permission of the Court to alienate the property. They also demanded the respondents to execute and register the sale deeds in favour of petitioners after obtaining such permission from the Court. Admittedly, the said notice under Ex.P-2 was received by the respondents, but, none of them chosen to give reply to the petitioners. On the other hand, they executed Exs.R-1 and R-5 to R-10 subsequent to Ex.P-2.

34. The case of the respondents is that the transactions between respondent Nos.1 to 9 with respondent Nos.10 and 11 were known to the petitioners and the petitioners themselves proposed respondents 10 and 11. Ex.R-5/Receipt dated 3rd October 2016, shows that petitioner Nos.1 to 3 received an amount of Rs.1 Crore from respondent Nos.10 and 11 towards part sale consideration amount for 29 Acres in Survey Numbers 103/2015 to 17 of Bandlaguda village. Ex.R-10/Receipt dated 24th September 2016, shows that respondent Nos.1, 2, 4 to 7 and son of respondent No.4 Sri N.Mahender Reddy received a sum of Rs.1 Crore from respondent Nos.10 and 11, and as such, receipt was witnessed by petitioners 1 to 3/plaintiffs 1 to 3.

Petitioner Nos.4 to 8/plaintiff Nos.4 to 8 were not parties to the receipts under Exs.R-5 and R-10. Therefore, Exs.R-5 and R-10 mentioned above cannot take away the rights of petitioner Nos.4 to 8.

35. It is pertinent to mention here that there is no whisper in Ex.R-5/Receipt executed by petitioners 1 to 3, about Ex.P-1 agreement dated 28th February 2004. Moreover, the said petitioners are not competent to sell 29 Acres of land situated in Survey Numbers 103/2015 to 17 of Bandlaguda village to respondent Nos.10 and 11. Therefore, Ex.R-5/Receipt dated 3rd October 2016, cannot bind petitioner Nos.4 to 8, because, they were not parties to the said document.

36. In the case of **S.P.Chengalvaraya Naidu** (supra), the Hon'ble Supreme Court has held that there is legal duty cast upon the parties to come to Court with a true case and prove it by true evidence. The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. It is further held that a litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation.

37. Admittedly, in the present appeals, petitioner Nos.1 to 3 executed receipt/Ex.R-5, dated 3rd October 2016, in favour of

respondent Nos. 10 and 11 (Companies). However, there is no mention about such receipt in the plaint, whereas, petitioner No.3/plaintiff No.3 has filed an affidavit on his behalf and on behalf of other plaintiffs. But, the fact remains that the suit is filed for specific performance against the other respondents but not against respondent Nos.10 and 11. Thus, though there is no mention of Ex.R-5 in the plaint, the same cannot come in the way of granting injunction.

38. We note that in Ex.R-5/Receipt dated 3rd October 2016, it is mentioned that an amount of Rs.1 Crore was received towards part sale consideration amount in pursuance of agreement of sale dated 10th October 2016. However, no such agreement is placed on record before the trial Court by respondent Nos.10 and 11. There is also no explanation as to how Ex.R-5/Receipt dated 3rd October 2016 could mention the agreement of sale dated 10th October 2016 in respect of land in Survey Nos.103/2015 to 2017, admeasuring 29 Acres situated at Bandlaguda, Hyderabad. It appears that the petitioner-plaintiffs and all the respondent-defendants are hiding the true facts and transactions took place between them. Therefore, the benefit of the dictum of Supreme Court in **S.P.Chengalvaraya Naidu**'s case (supra), cannot be given to either of the parties.

39. Therefore, in view of the pending litigations against the petition schedule properties and payment of substantial amounts by the

petitioner-plaintiffs to respondent-defendant Nos.1 to 9, and as there is no stipulation of time limit for obtaining sale deeds by the petitioners, and further, as the agreement of sale/Ex.P-1 is not revoked by respondent Nos.1 to 9 till date, we are of the considered opinion that the interim injunction restraining defendant Nos.2 to 11, their heirs, successors in interest, agents etc., from changing the nature of petition schedule properties pending disposal of the suit, is justified.

40. In view of the above discussion, we find no merit in the present appeals.

41. All the appeals are accordingly dismissed with no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

2nd August, 2018

Gvl/ajr