

THE HON'BLE SRI JUSTICE SANJAY KUMAR

SECOND APPEAL NOS.1112, 1237, 1250 AND 1265 OF 2018

COMMON JUDGMENT

These four second appeals under Section 100 CPC arise out of the concurring judgments of the first appellate Court of the learned XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri, in separate appeals arising out of the dismissal of four suits. However, the defendants in all the four suits were the same. In consequence, the respondents in these four second appeals are common. M.Sreedevi was the plaintiff in three of the suits while in the fourth suit, the plaintiff was one P.Raj Narsing Rao. Further, the case of the appellants in these appeals is also the same. The appeals are therefore amenable to common disposal at this stage.

Specific performance suits in O.S.Nos.6, 7, 8 and 9 of 2013 were instituted on the file of the learned Additional Junior Civil Judge, Ranga Reddy District at Malkajgiri, against the same set of six defendants. M.Sreedevi was the sole plaintiff in O.S.Nos.7 and 8 of 2013 while one L.Subhash Rao and she were the plaintiffs in O.S.No.9 of 2013. L.Subhash Rao thereafter executed registered assignment deed dated 03.11.2014, whereby he assigned his rights in the suit schedule property in favour of M.Sreedevi. He therefore ceased to have interest in the litigation. O.S.No.6 of 2013 was filed by P.Raj Narsing Rao. All these suits were dismissed by the trial Court, *vide* separate judgments dated 24.11.2015. Aggrieved by the dismissal of O.S.Nos.7, 8 and 9 of 2013, M.Sreedevi preferred A.S.Nos.9, 10 and 11 of 2016 respectively before the first appellate Court. Similarly, P.Raj Narsing Rao, the sole plaintiff in O.S.No.6 of 2013, filed A.S.No.8 of 2016 before the first appellate Court. These four first appeals were dismissed by

separate judgments dated 09.04.2018. S.A.Nos.1112, 1237 and 1250 of 2018 were filed by M.Sreedevi aggrieved by the dismissal of A.S.Nos.9, 10 and 11 of 2016 respectively while S.A.No.1265 of 2018 was preferred by P.Raj Narsing Rao against the dismissal of A.S.No.8 of 2016.

Heard Sri M.S.Prasad, learned senior counsel representing Sri Anish Sathya Kamal, learned counsel for M.Sreedevi, Sri Dida Vijaya Kumar, learned counsel for Sri P.Raj Narsing Rao, the appellants in these appeals, and Sri M.V.S.Suresh Kumar, learned senior counsel appearing for Sri Ashok Reddy Kanathala, learned counsel on caveat for respondents 1 to 5 in each of these appeals.

Parties shall hereinafter be referred to as arrayed in the suits.

The case of the plaintiffs was as follows: One T.Narayan Reddy was the absolute owner of an extent of Acs.12.03 guntas out of a total extent of Acs.20.11 guntas in Sy.No.56 of Dammaiguda Village, Malkajgiri Mandal, Ranga Reddy District. He obtained a layout from the Gram Panchayat and converted the extent of Acs.12.03 guntas into residential plots. During his life time, T.Narayan Reddy along with defendants 1 to 5, who are his sons and daughters, and T.Laxma Reddy, his deceased son, sold several plots to defendant 6. Plot Nos.139, 140, 159, 160, 143, 156, 137, 138, 161 & 162 (claimed by M.Sreedevi) and Plot Nos.141, 142, 157 & 158 (claimed by P.Raj Narsing Rao) (*hereinafter*, 'the suit plots') are stated to be amongst the plots sold to defendant 6. Having received the entire sale consideration, they executed Receipt dated 19.11.1990 and delivered possession of the plots to defendant 6. They also executed registered deed of General Power of Attorney (GPA) bearing Document No.472 of 1990 dated 19.11.1990 delegating all powers, including the power of conveyance, to defendant 6. After execution of this document, the minor son of T.Narayan Reddy, viz.,

T.Laxma Reddy, died unmarried. In the year 1995, defendant 6 offered to sell the suit plots to the plaintiffs and agreements of sale were executed in this regard on 02.04.1995, 03.04.1995 and 04.04.1995. It is the case of the plaintiffs that defendant 6 delivered possession of the suit plots to them and that they have been in possession since then. It was their further claim that at the time of execution of these agreements of sale, defendant 6 assured them that after obtaining necessary permission from the competent authority under the Urban Land (Ceiling & Regulation) Act, 1976 (for brevity, 'the Act of 1976'), he would get the plots registered in their names. However, in spite of several requests, he failed to do so and kept postponing the matter, stating that the process of obtaining permissions was in progress. In the year 2008, the Act of 1976 was repealed but when the plaintiffs approached defendant 6 and requested him to register sale deeds, he postponed the matter stating that his mother was sick. The plaintiffs waited for some time and again approached defendant 6 during April, 2012 and requested him to register sale deeds but he kept postponing the matter. The plaintiffs thereafter found that many people were coming and enquiring about the suit plots and they finally confronted defendant 6 on 19.12.2012 and he refused to perform his part of the obligation. They asserted that they were always ready and willing to obtain sale deeds in their favour by incurring requisite expenditure for stamp duty and registration charges but as defendant 6 refused to cooperate, they were constrained to file the suits seeking specific performance of their respective agreements of sale.

Defendants 1 to 5 filed written statements in each of the suits, wherein they admitted the title of their predecessor-in-title, T.Narayan Reddy, over the extent of land admeasuring Acs.12.03 guntas in Sy.No.56 of Dammaiguda Village and the conversion of the said land into residential plots

under an approved layout. They however denied that they, along with T.Narayan Reddy and T.Laxma Reddy, executed a deed of General Power of Attorney in favour of defendant 6. They also denied selling the suit plots to defendant 6. They claimed that the suit agreements of sale were not binding on them, pointing out that the plaintiffs had never issued any legal notice to them calling upon them to execute sale deeds. They further asserted that the suits were barred by limitation. According to them, as both T.Narayan Reddy and T.Laxma Reddy had expired long ago, the GPA dated 19.11.1990 was an invalid document, in any event, as the agency created thereby stood terminated upon their death.

Defendant 6 filed a written statement supporting the claim of the plaintiffs. He stated that he paid the entire sale consideration and thereupon, the deed of GPA dated 19.11.1990 was executed in his favour. He further claimed that he was in possession and had executed the suit agreements in favour of the plaintiffs in respect of the suit plots. According to him, he was pursuing the competent authority for obtaining permission to execute registered sale deeds in favour of the plaintiffs but after the repeal of the Act of 1976, the registration authorities informed him that photo forms and thumb impressions of the principals would be required for such execution but when he approached defendants 1 to 5, they refused to co-operate and dodged on one pretext or the other. He admitted that after execution of the sale agreements, the plaintiffs were in possession of the suit plots. He claimed that as the deed of GPA was coupled with interest, death of one or two of the principals would not cancel the agency. He concluded by stating that he was always ready and willing to perform his part of the contract.

On the basis of the above pleadings, the trial Court settled the following issues for consideration:

1. Whether the plaintiffs are ready and willing to perform her/his part of the contract?
2. Whether the plaintiffs are entitled for specific performance of the agreements of sale dated 02/03/04.04.1995?
3. Whether the suits are barred by limitation?
4. If so to what relief?

M.Sreedevi was examined as P.W.1 in O.S.Nos.7, 8 and 9 of 2013 while P.Raj Narsing Rao was examined as P.W.1 in O.S.No.6 of 2013. V.Chidambara Rao was examined as P.W.2 in all the suits while E.Satyanarayana Rao was examined as P.W.3 in O.S.Nos.6, 7 and 8 of 2013. P.N.Kalyan Chakravarthi Rao, defendant 6, and T.Kalpana, defendant 5, were examined as D.Ws.1 and 2 in all the suits. Exs.A1 to A3 were marked on behalf of the plaintiff in O.S.Nos.6, 7 and 8 of 2013 while Exs.A1 to A4 were marked in O.S.No.9 of 2013. D.W.1 (defendant 6) got marked Exs.B1 to B10 while defendant 5 (D.W.2) got marked Exs.B11 to B13. Ex.A1 in each of the suits was the suit agreement of sale executed in April, 1995, while Ex.A2 in O.S.Nos.6, 7 and 8 of 2013 was the registered deed of GPA dated 19.11.1990. It was marked as Ex.A3 in O.S.No.9 of 2013 as the registered assignment deed executed by L.Subhash Rao in favour of M.Sreedevi was marked as Ex.A2 therein. The Receipt dated 19.11.1990 was marked as Ex.A3 in O.S.Nos.6, 7 and 8 of 2013 and as Ex.A4 in O.S.No.9 of 2013.

The trial Court took note of the fact that the plaintiffs had not examined the attesting witnesses of the deed of GPA dated 19.11.1990 despite the denial by defendants 1 to 5 as to its very execution. Further, the trial Court noted that neither the deed of GPA nor the Receipt dated 19.11.1990 contained an averment to the effect that defendant 6 had purchased the suit plots. The trial Court also noted that the Receipt did not even mention the alleged sale consideration paid by defendant 6. The name

of the person to whom the Receipt was issued was also not mentioned therein. It appears that defendant 5 (D.W.2) admitted the signatures, not only of herself but also of her family members, in the said Receipt and also the execution of the deed of GPA but claimed that no sale consideration was paid to them for the property covered by the said GPA. No evidence was produced by defendant 6 in proof of payment of such sale consideration. The trial Court noted that there was no explanation as to why defendant 6, who claimed to have purchased a vast extent of land admeasuring 14,800 square yards after payment of the entire sale consideration, had not obtained an agreement of sale or a written conveyance deed. Further, the GPA document showed that defendant 6 was only authorized thereby to sell or mortgage the suit plots on behalf of the principals and no more. The trial Court therefore held that there was no evidence to prove the factum of the alleged sale transaction in favour of defendant 6. P.W.3, who claimed to be one of the attesting witnesses to the suit agreements of sale, deposed that he did not know where the agreements of sale were executed and that he affixed his signature thereon only after they were drafted. Further, there was no evidence to show that defendants 1 to 5 had any knowledge about the suit agreements of sale or that consideration was paid to them by the plaintiffs, in terms of the GPA. The trial Court was also apprised of the fact that M.Sreedevi was the sister of defendant 6 while P.Raj Narsing Rao was his own uncle and that this fact was not disclosed in the suit complaints. Having regard to all these circumstances, the trial Court opined that there were several suspicious circumstances surrounding the suit agreements of sale and therefore, the said agreements could not be held to be true, valid and binding on defendants 1 to 5. Further, the trial Court noted that except for averring that the plaintiffs were ready and willing to perform their part of the

contract, no evidence had been let in, in proof thereof. As the suit agreements were executed in April, 1995, and as the plaintiffs had not even issued any notice to defendants 1 to 5 before institution of the suits, the silence on the part of the plaintiffs was held to be a strong circumstance to suspect the very genuineness of the suit agreements. On the issue of limitation, the trial Court held that even if the claim of the plaintiffs and defendant 6 was to be accepted, as the Act of 1976 stood repealed in the year 2008 and as the plaintiffs admittedly did not issue any notice either to defendant 6 or to defendants 1 to 5, calling upon them to register sale deeds in their favour, the delay on their part was fatal. The claim of the plaintiffs that the period of limitation only started to run from 19.12.2012, when defendant 6 orally refused to register the sale deeds, was not accepted. The suits were accordingly held to be barred by limitation. In the light of the findings rendered on all the issues, the trial Court held that the plaintiffs were not entitled to any relief and dismissed the suits.

In appeal, the first appellate Court framed the following points for consideration in each of the appeals:

1. Whether the plaintiffs are always ready and willing to perform her/his part of contract under Ex.A1?
2. Whether the plaintiffs are entitled for specific performance of Ex.A1 suit agreements of sale?
3. Whether the suits of the plaintiffs are barred by the period of limitation?
4. Whether the impugned judgments and decrees are sustainable on law and facts?
5. To what relief?

Dealing with the contention of the appellants that the GPA was coupled with interest and that the death of two of the principals had no impact thereon, the first appellate Court held that on the strength of the GPA

and the Receipt, it was not possible for the Court to come to a definite conclusion that the GPA was coupled with interest. Pointing out that the GPA and the Receipt were executed on the same day, the first appellate Court opined that the probability of omitting to mention payment of the sale consideration in the GPA did not arise. On this basis, the first appellate Court concluded that no interest was created in favour of defendant 6 over the suit plots under the GPA. The first appellate Court noted that T.Narayan Reddy died by the date of filing of the suits while his minor son, T.Laxma Reddy, expired even as on the date of the suit agreements of sale, inasmuch as the same was mentioned therein. As there was no evidence forthcoming as to whether the widow of T.Narayan Reddy was alive or not, the first appellate Court opined that she would be one amongst his heirs and upon the death of T.Narayan Reddy and T.Laxma Reddy, the GPA automatically got terminated. On the issue of possession, the first appellate Court noted that neither in the GPA nor in the receipt, was there any recital as to handing over of possession of the suit plots to defendant 6 and the oral evidence of P.W.3 on this aspect could not be accepted. The first appellate Court confirmed the finding of the trial Court that the suit agreements of sale were not binding on defendants 1 to 5 in the light of these circumstances. The first appellate Court took note of the claim of defendant 6 that he had paid the entire sale consideration at the time of execution of the GPA and observed that there was no reason forthcoming as to why he did not obtain sale deeds or at least an agreement of sale-cum-GPA, if he had done so. Opining that the documents under which defendant 6 claimed rights appeared doubtful, the first appellate Court held that equity was not in favour of granting the discretionary relief of specific performance. On the issue of limitation, the first appellate Court took note of the fact that the plaintiffs had never issued

any written notice to defendants 1 to 6 calling upon them to come forth and execute registered sale deeds, though they claimed that the suit agreements were executed as long back as in April, 1995. The readiness and willingness pleaded by the plaintiffs was therefore held to be unacceptable. That apart, the suits were held to be barred by limitation. The first appellate Court observed that compliance with Form Nos.47 and 48 in Appendix-A to the Code of Civil Procedure, 1908, was a must and in the absence thereof, the equitable relief of specific performance could not be granted. The first appellate Court therefore found no reason to interfere with the findings of the trial Court and accordingly upheld the dismissal of the suits.

The following substantial questions of law are sought to be raised by the appellants in the present second appeals:

1. Whether the Courts below are justified to refuse specific performance by holding that the GPA would come to an end on the death of Narayan Reddy i.e. the father of defendants 1 to 5 and their brother Laxma Reddy when defendants 1 to 5 are also parties to the said GPA?
2. Whether the Courts below are justified in refusing the specific performance by considering the deaths of Narayan Reddy and Laxma Reddy though Exs.B11 and B12 were not duly issued by the competent authorities as per the provisions of the Registration of Births and Deaths Act, 1969?
3. Whether the Courts below are justified in refusing specific performance since respondents 1 to 5 apart from their liability having executed the GPA had also liable under the pious obligation since their father's and their brother's death share was devolved on them on their death?
4. Whether the Courts below are justified in refusing specific performance since the GPA and the receipt go to establish that respondent 6 is having an interest in the subject matter property as per Section 202 of the Contract Act and the GPA is to be construed as a GPA coupled with interest as per the receipt since it is a contemporaneous document as it was executed on the same day disclosing the payment of sale consideration to defendants 1 to 5?

5. Whether the Courts below are justified in refusing specific performance though respondents 1 to 5 are estopped from pleading and contending contrary to the suit agreements of sale, the GPA and the receipt?
6. Whether the Courts below are justified in refusing specific performance though D.W.2 on oath categorically deposed on various material issues of the transaction in these cases and had they been considered, ought to have decreed the suits. So non-consideration of the evidence of D.W.2 led to erroneous findings resulting in refusal of specific performance?
7. Whether the interpretation of the GPA and the receipt done by the Courts below erroneously and which has a bearing on the rights of the parties to the /s constitutes a substantial question of law?

It may be noted that T.Narayan Reddy admittedly died on 09.05.1995 (Ex.B11-Certificate of Death dated 17.04.1998) while it is the case of defendants 1 to 5 that T.Laxma Reddy died on 06.10.1995 (Ex.B12 certificate of death dated 27.11.1995). Sri M.S.Prasad, learned senior counsel, would however contest this date of death of T.Laxma Reddy, pointing out that Ex.B12 was written on a printed form with the year printed thereon as 20__ and therefore, the said certificate was clearly ante-dated. He however admits that the suit agreements of sale mention the fact that T.Laxma Reddy had already expired by the date of their execution and therefore, he must have died even before April, 1995.

Though in their written statements, defendants 1 to 5 thought it appropriate to deny the very execution of the deed of GPA dated 19.11.1990, defendant 5, deposing as D.W.2, admitted execution of the said GPA and also the signatures of not only herself but also her family members in the Receipt dated 19.11.1990.

At this stage, it would be relevant to examine the crucial documents which form the back bone of the plaintiffs' case.

The registered GPA, bearing Document No.472/1990, was executed on 19.11.1990 by T.Narayan Reddy and his sons and daughters in favour of defendant 6 stating to the effect that they nominated, constituted and appointed him as their true and lawful attorney in respect of Plot Nos.135 to 143, 156 to 167, 189 to 196, 200 to 202, admeasuring 8,000 square yards, along with theater area of 6,800 square yards in Sy.No.56, totaling to 14,800 square yards. They stated that their attorney was authorized to do the following acts, deeds and things in their name and their behalf:

1. 'To undertake the said property and to develop it on our behalf;
2. To sell, mortgage, gift, alienate the said property to and any purchaser/purchasers on our behalf;
3. To Receive the sale consideration from the purchaser / purchasers and to issue valid receipts for the same with his / her signature on our behalf;
4. After the sale transaction is over the accounts of consideration should be handed over to us.
5. To file applications, papers, documents in respect of the said property in any of the Office such as civil, revenue etc. on our behalf;
6. To appoint advocates, agents to protect the said property from any litigations and to fix their remunerations as our attorney feels fit and proper on our behalf;
7. Generally to do whatsoever in respect of the said property as our attorney deems fit and proper on our behalf;
8. This power of attorney is 'IRREVOCABLE'.

The Receipt dated 19.11.1990 appears to have been scripted after execution of the aforestated GPA. This document bears the signatures of T.Narayan Reddy and all his sons and daughters, who were the executants of the GPA, and it reads as under:

'RECEIPT'

Received the full Consideration from the VENDEES in respect of the Plot Nos. 135 to 143, 156 to 167, 189 to 186, 200 to 202 and 6,800 Sq.Yards of Theater area in Survey No.56 situated at

DAMMAIGUDA, MALKAJGIRI Mandal, Ranga Reddey District and that in pursuance of having received the entire amount of the Sale Consideration we are today executed an irrevocable General Power of Attorney in his favour and having received the entire amount, we hereby discharge him from any further payment in respect of the above said property, hence this receipt is executed by us, this day, 19th NOV' 1990.

1. T.NARAYANA REDDY S/O T.LAXMA REDDY.
2. T.JANARDHAN REDDY S/O T.NARAYANA REDDY.
3. T.MOHAN REDDY S/O T.NARAYANA REDDY.
4. T.VENKAT REDDY S/O T.NARAYANA REDDY.
5. T.LAXMA REDDY S/O T.NARAYANA REDDY.
6. T.BHARATHAMBA W/O ANJI REDDY.
7. T.KALPANA W/O CHANDRA REDDY.'

Be it noted that the contents of this Receipt militate against the recitals in the GPA. Notably, Clause 4 in the GPA requires defendant 6 to hand over the account of the consideration received after the sale transaction was over whereas the Receipt states to the effect that he stood discharged from any further payment in respect of the property. If that was the case, there is no explanation as to why the GPA document was even kept alive and why a written document was not obtained indicating the change in status of the GPA holder. In any event, the GPA remained operative and the suit agreements of sale were executed by defendant 6 quoting the said GPA as the source of his power to do so. Though T.Narayan Reddy was alive as on the date of execution of the suit agreements of sale, T.Laxma Reddy had expired by then and a recital to this effect was made in each of the agreements. The question that would arise is whether the death of T.Laxma Reddy had the effect of terminating the agency created under the GPA dated 19.11.1990, whereby the very execution of the suit agreements by the GPA holder would be rendered illegal.

In this regard, Sections 201 and 202 of the Indian Contract Act, 1872 (for brevity, 'the Act of 1872') state as under:

'201. Termination of agency:— An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.'

'202. Termination of agency, where agent has an interest in subject-matter:— Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.'

It is therefore clear that the agent must himself have an interest in the property which forms the subject-matter of the agency for Section 202 of the Act of 1872 to have application, whereby death of one of the principals would not have the automatic effect of terminating the agency, in terms of Section 201 thereof.

The recitals in the deed of GPA dated 19.11.1990 would therefore have to be examined to ascertain as to whether any interest was created in the agent thereby. Though Sri M.S.Prasad, learned senior counsel, would contend that the Receipt dated 19.11.1990 must be held to be a part of the very same transaction, we are of the opinion that the very execution of this Receipt is shrouded in doubt and the same cannot be looked into for the purpose of ascertaining as to whether any interest was created in the agent by execution of the GPA. Further, when the said deed of GPA was registered, Section 91 of the Indian Evidence Act, 1872, does not allow anything to be added or supplemented to the contents of the said deed. However, perusal of clauses 1 to 8 of the GPA does not demonstrate any creation of interest in

the agent in relation to the property which was the subject-matter thereof. All that he was authorized to do was to sell, mortgage, gift or alienate the said property to any purchaser or purchasers on behalf of the principals, receive sale consideration from them by issuing valid receipts and thereafter account for the said consideration by handing it over to the principals. Not an iota of interest was created in the agent himself in relation to the said property or in the sale proceeds.

As rightly pointed out by both the Courts below, the Receipt dated 19.11.1990, which seems to put a different colour altogether on the relationship between the principals and the agent, leaves a lot to be desired. Had it been a fact that defendant 6 paid the entire sale consideration to the principals, whereby they discharged him from the responsibility of making further payment in respect of the suit plots, steps would have been taken to either cancel the registered GPA or at least create a fresh written document indicating that it was no longer operative. No steps whatsoever were taken in this regard by defendant 6. Further, no proof was produced by defendant 6 in evidence of his having paid the entire sale consideration for this large extent of 14,800 square yards in the year 1995 itself.

In the light of these circumstances, the finding of the Courts below that no interest was created in the agent by execution of the GPA dated 19.11.1990 is incontrovertible. However, we may note that defendants 1 to 5 surprisingly claimed that T.Laxma Reddy died after execution of the suit agreements whereas the plaintiffs claimed that he expired even before such execution. It is the plaintiffs version which would have the effect of nullifying the deed of GPA as on the date of execution of the suit agreements while the version of defendants 1 to 5 would leave the suit claims unimpaired, as the suit agreements would then have to be treated as valid as they were

executed by the GPA holder during the life time of all the principals. This Court is therefore not inclined to rest its verdict on this dubious and debatable point. That being so, though reference was made to M.JOHN KOTIAH V/ s. A.DIVAKAR¹ and SIDDAREDDY VENKATA NAGARAJA REDDY V/ s. MIR SHAHAMAT ALI KHAN² in the context of the deed of GPA dated 19.11.1990 not creating any interest in the property which was the subject-matter thereof, as this Court is not inclined to hold on this aspect conclusively, the judgments are eschewed from consideration.

What is fatal to the claim of the appellants is the delay on their part in seeking specific performance, apart from the various other suspicious circumstances which haunt their suit claim. Admittedly, both M.Sreedevi and P.Raj Narsing Rao are related to defendant 6. According to defendant 6, he agreed to sell them the suit plots owing to his financial requirements in the year 1995. Being his own sister, the claim of M.Sreedevi that he was not co-operating thereafter for execution of the sale deeds citing their mother's ill health appears to be rather farfetched. So too, the claim of P.Raj Narsing Rao, his own uncle. Further, when the suit agreements clearly brought out the fact that defendant 6 had executed them only in the capacity of a GPA holder of T.Narayan Reddy and his sons and daughters, there is no explanation forthcoming as to why the plaintiffs never approached defendants 1 to 5. So much so that they did not even issue a notice to them before filing the subject suits.

In this regard, it may be noted that Order 6 Rule 3 CPC states that the forms of pleading in Appendix-A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used

¹ AIR 1985 AP 30

² 2017 (3) ALD 163

for all pleadings. Form Nos.47 and 48, relating to specific performance, in Appendix-A to the Code of Civil Procedure, 1908 read 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 ofrupees.

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 isrupees.

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.’

‘No. 48
Specific Performance (No.2)
(Title)

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

1. On the day of, 19, the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed. The defendant, was absolutely entitled to the immovable property described in the agreement.

2. On the day of, 19, the plaintiff tendered rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the day of, 19, the plaintiff again demanded such transfer. [Or the defendant refused to transfer the same to the plaintiff.]

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

6. *[Facts showing when the cause of action arose and that the Court has jurisdiction.]*

7. 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.

8. The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [following the terms of the agreement];

(2) rupees compensation for withholding the same.'

Dealing with these Forms in BADDAM PRATHAP REDDY V/ s.

CHENNADI JALAPATHI REDDY³, a learned Judge of this Court observed:

'16. Reading Form Nos.47 and 48 of CPC together and Section 16(c) of the Specific Relief Act, it has to be held that ordinarily the requirement of law is issuance of a registered notice by the plaintiff demanding the accepting of (balance) sale consideration and execution of sale deed by the vendor (first defendant). Section 16(c) of the Specific Relief Act lays down that the plaintiff has to aver and prove that he has performed or has always been ready and willing to perform his part of the contract. A contract for sale of immovable property has to be performed by the buyer in accordance with Sections 54 and 55 of the Transfer of Property Act, 1882 (Transfer of Property Act, for brevity). Section 55 of the Transfer of Property Act, contains the rights and liabilities of buyer and seller. Section 55(1)(d) of the Transfer of Property Act lays down that seller is bound to execute proper conveyance of the property when the buyer tenders the amount due in respect of the price at a proper time and place. Section 55(5)(b) of the Transfer of Property Act is to the effect that buyer is bound to pay at the time and place of completing the sale, the purchase money to the seller and then request for a proper conveyance deed. The execution of conveyance deed, as a duty of the seller and as a right of buyer, has a commonality with reference to time and place of completing transaction. There cannot be better evidence of showing compliance with these provisions than the buyer sending a registered notice to the seller demanding execution of a conveyance deed. Indeed, this conclusion is supported by the law laid down by the Supreme Court.'

³ 2008 (5) ALD 200

The learned Judge went on to hold that even an oral demand may constitute sufficient compliance with the requirements of Form Nos.47 and 48 but the proof of such oral demand would have to be strong and unimpeachable. The learned Judge concluded that if the requirement of sending a notice demanding execution of the sale deed is not complied with prior to filing of the suit, it would weaken the case of the plaintiff to enforce specific performance in respect of immovable property. If a notice is issued by the plaintiff, *per* the learned Judge, it would by itself lead to an inference that the plaintiff was ready and willing to perform his part of the contract and the mere averment that the plaintiff was ready and willing to perform his part of contract would not be sufficient for enforcement of the contract.

Reference in this regard was made by the learned Judge to PUSHPARANI S. SUNDARAM V/ s. PAULINE MANOMANI JAMES⁴, wherein the Supreme Court observed that Section 16(c) of the Specific Relief Act, 1963, requires that not only should there be a plea of readiness and willingness but it also has to be proved. The Supreme Court went on to hold that failure of a plaintiff to come into the witness box by itself may not be a factor to conclude that he was not ready and willing but when the plaintiff did not come into the witness box and did not even send any communication or notice to the defendant about his willingness to perform his part of the contract, there would be no evidence to prove readiness and willingness.

The learned Judge accordingly concluded that law can be taken to be well settled that a suit for specific performance has to comply with the requirements prescribed in Section 16(c) of the Specific Relief Act, 1963, and Form Nos.47 and 48 of Appendix-A to the Code of Civil Procedure, 1908. The learned Judge held that if a suit is filed for specific performance without

⁴ (2002) 9 SCC 582

making a prior demand by way of a notice on the defendant, such a suit would not be in compliance with Form Nos.47 and 48 and it would therefore be liable to be dismissed. The learned Judge however added a caveat that in an appropriate case, subject to strictly proving the averment, an oral demand can also be proper compliance with this requirement of law.

In *MANJUNATH ANANDAPPA V/ s. TAMMANASA*⁵, the Supreme Court observed that a suit filed six years after the date of entering into the agreement of sale without bringing on record any material to show that the plaintiff ever asked the owner of the property to execute a deed of sale, would disentitle such a plaintiff from seeking the relief as he failed to approach the Court within a reasonable time. Reference was made to *K.S.VIDYANADAM V/ s. VAIRAVAN*⁶, wherein the Supreme Court held that even where time is not the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances.

In *VAN VIBHAG KARAMCHARI GRIHA NIRMAN SAHKARI SANSTHA MARYADIT (REGD.) V/ s. RAMESH CHANDER*⁷, the Supreme Court observed that in the event the sale deed could not be executed due to the provisions of the Act of 1976, a suit for specific performance could have been easily filed subject to the provisions of Section 20 thereof and a conditional decree could be passed for specific performance subject to exemption being obtained under the said provision.

In *M.RANGAIAH V/ s. T.V.SATYANARAYANA RAO*⁸, a learned Judge of this Court held that the requirements of Form Nos.47 and 48 of Appendix-A to the Code of Civil Procedure, 1908 were substantive in nature

⁵ (2003) 10 SCC 390

⁶ (1997) 3 SCC 1

⁷ AIR 2011 SC 41

⁸ 2009 (5) ALD 663

and before filing a suit for specific performance, the plaintiff must issue notice to the defendant calling upon him to perform his part of the contract.

In the light of the aforestated case law, the failure on the part of the plaintiffs to issue a written notice either to defendants 1 to 5 or to defendant 6 has to be viewed seriously. All the more so, as the delay of 18 years stares them in the face. It is not open to them to baldly claim that the period of limitation started running upon the oral refusal by their own relation, defendant 6, to execute sale deeds in their favour.

On the question of whether the questions framed in these appeals would qualify as substantial questions of law, reference may be made to *STATE BANK OF INDIA V/ s. S.N.GOYAL*⁹, wherein the Supreme Court dealt with what would be a substantial question of law and observed:

'13. Second appeals would lie in cases which involve substantial questions of law. The word "substantial" prefixed to "question of law" does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the */is* between the parties. "Substantial questions of law" means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law. It is said that a substantial question of law arises when a question of law, which is not finally settled by this Court (or by the High Court concerned so far as the State is concerned), arises for consideration in the case. But this statement has to be understood in the correct perspective. Where there is a clear enunciation of law and the lower court has followed or rightly applied such clear enunciation of law, obviously the case will not be considered as giving rise to a substantial question of law, even if the question of law may be one of

⁹ (2008) 8 SCC 92

general importance. On the other hand, if there is a clear enunciation of law by this Court (or by the High Court concerned), but the lower court had ignored or misinterpreted or misapplied the same, and correct application of the law as declared or enunciated by this Court (or the High Court concerned) would have led to a different decision, the appeal would involve a substantial question of law as between the parties. Even where there is an enunciation of law by this Court (or the High Court concerned) and the same has been followed by the lower court, if the appellant is able to persuade the High Court that the enunciated legal position needs reconsideration, alteration, modification or clarification or that there is a need to resolve an apparent conflict between two viewpoints, it can be said that a substantial question of law arises for consideration. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case. Be that as it may.'

Earlier, in *SANTOSH HAZARI V/s. PURUSHOTTAM TIWARI (DECEASED) BY LRS.*¹⁰, the Supreme Court observed that to be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned.

More recently, in *SK.BHI KAN V/ s. MEHAMOODABEE*¹¹, it was held that interpretation of a document to examine its effect would involve questions of law and the same would constitute a substantial question of law as required under Section 100 CPC.

The substantial questions of law raised in these appeals revolve only around the deed of GPA and the Receipt, both dated 19.11.1990. Interpretation of these documents would, no doubt, constitute substantial questions of law. But, even if it is to be accepted that by virtue of the deed of GPA, defendant 6 executed valid suit agreements of sale in favour of the plaintiffs, the delay on their part in seeking relief apart from their failure to

¹⁰ (2001) 3 SCC 179

¹¹ (2017) 5 SCC 127

comply with the requirements of law before instituting the subject suits warranted denial of relief to them. As the substantial questions of law sought to be raised merely concentrate upon the deed of GPA and the Receipt and no question of law has been raised with regard to the disentitlement to seek relief attaching to the plaintiffs owing to their own delay and their failure to meet the legal requirements, these second appeals do not warrant consideration. It is also to be remembered that grant of specific performance is essentially a discretionary relief in terms of Section 20 of the Specific Relief Act, 1963. Allowing a party to come before the Court 18 years after the execution of an agreement, seeking specific performance thereof, would invariably have the effect of giving such a plaintiff an unfair advantage over the defendant in the light of escalating land prices and all the more so, when the case of the plaintiff is shrouded in suspicious circumstances. Therefore, refusal of this discretionary relief by the Courts below, given the facts and circumstances of the cases on hand, does not warrant interference. This Court therefore holds that both the Courts below rightly construed and interpreted the contents of the deed of GPA dated 19.11.1990 and the Receipt dated 19.11.1990. No question of law, much less a substantial question of law, arises in the context of the aforestated aspects, which do not even find mention in the framed questions of law.

The second appeals are therefore devoid of merit and are accordingly dismissed. Pending miscellaneous petitions, if any, in all cases shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

16th NOVEMBER, 2018

Sv