

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.4816 of 2014

ORDER:

Out of the revision petitioners, K.Balraj-defendant No.1, since died, represented by his legal representatives Kamalamma, Manemma, Das, Aruna and Bagya, revision petitioners 1 to 5 (not parties to the original suit) and other defendants 2 to 5 Anasuya, Narayana and Suseela, sisters and brother of said Balraj and Balamani, another daughter of Balraj, are the revision petitioners 6 to 9. Defendant No.6 to the suit by name K.Amarender Reddy is the revision respondent and J.Narahari Rao is the revision respondent No.2, who was the plaintiff in O.S.No.156 of 2000 on the file of I Additional District Judge, Rangareddy District at L.B.Nagar.

2. The suit filed by said Narahari Rao against the defendants supra including K.Amarender Reddy (defendant No.6) was for the specific performance as per the plaint averments based on the contract for sale dated 12.02.1990 for an extent of Ac.11.03 guntas in Survey Nos.5 to 7, 10/ 1, 11/ 1, 12/ 1 and 12/ 42 situated at Ammuguda Village, Medchal Mandal, Rangareddy District for sale consideration of Rs.1,10,000/- per acre and paid an advance of Rs.1,18,250/- and later the oral Sale Agreement was reduced into writing by

Memorandum of Sale Agreement dated 30.03.1990 non-possessory saying the defendant No.6-Amarender Reddy, representing defendants 1 to 5, and one Akkamma and K.Shankaraiah as their G.P.A. holder entered the said oral Agreement. It further shows from the plaint averments that the defendants 1 to 5 orally entered into Sale Agreement with defendant No.6 on 20.10.1984 for the properties admeasuring Ac.42.16 guntas including Survey Nos.13 & 14 among the other supra. The defendants 1 to 5, Akkamma and Shankaraiah supra also executed a registered irrevocable G.P.A. dated 01.06.1989 in favour of defendant No.6. Consequently defendant No.6, representing defendants 1 to 5, and Akkamma and Shankaraiah entered into the suit sale agreement, from the suit claim, with the plaintiff. It shows defendants 1 to 5, Akkamma and Shankaraiah filed O.S.No.28 of 1982 and there was an *ex parte* decree in their favour passed by the District Munsiff, Medchal on 13.06.1986 and on appeal, the said *ex parte* decree was set aside by remanding the matter to the trial Court. One Hasthinapuri Co-operative Housing Society Limited was impleaded in the suit as defendant No.11 and the suit in O.S.No.28 of 1982 was ultimately decreed in their favour on 27.06.1996. The further plaint averments in O.S.No.156 of 2000 shows the plaintiff during the pendency of suit in O.S.No.28 of 1982, during 1991

to 1996, paid the balance sale consideration to the defendants 1 to 5 through defendant No.6. Despite demands, the defendants did not obtain the Urban Land Ceiling clearance/ permission for alienation, which made the plaintiff to issue legal notice. After issuing reply with false averments denying specific performance, the defendants 1 to 5 colluded with defendant No.6 (Amarender Reddy) in their claim of they revoked G.P.A. executed to defendant No.6 in the year 1997 and the reply also indicates Ankamma and Shankaraiah died in 1992 and 1993 respectively.

3. Defendant No.1 filed written statement, adopted by the defendants 2 to 5, disputing the so-called oral and memorandum of sale agreements supra, said to have been entered by defendant No.6 on their behalf with the plaintiff, by claiming as collusive and fabricated including the so-called alleged payment receipts saying defendant No.6 did not inform them about the alleged Sale Agreement with the plaintiff, leave apart by the date of alleged oral Sale Agreement dated 12.02.1990, there is a suit in O.S.No.28 of 1982 pending before the District Munsiff, Medhcal, that was decreed only on 27.06.1996, to which defendant No.6 herein not even party including to the appeal against it in A.S.No.49 of 1996 in the District Court, Rangareddy, and defendant No.6/ alleged G.P.A. did not take any steps and the plaintiff

did not speak as to why he kept quiet although. One B.S.Shetty fraudulently obtained the Sale Deed dated 22.05.1964 for Survey Nos.13 & 14, from which the defendants 1 to 5 as the plaintiffs filed O.S.No.28 of 1982 supra. Pending A.S.No.49 of 1996 against O.S.No.28 of 1982, the defendants 1 and 3 entered into compromise with defendant No.11 of O.S.No.28 of 1982 (The Hasthinapuri Co-operative Housing Society Limited) and they relinquished their rights in Survey Nos.13 & 14 for Ac.20.00 cents and rest of the land delivered to the defendants 1 and 3 by the Hasthinapuri Co-operative Housing Society Limited by recording compromise and consequent to E.P.No.6 of 1998, dated 23.06.1998, delivery through bailiff was made and later defendants 1 to 5 entered into Sale Agreement with third-parties by delivering possession to the said third-party vendee and the present suit claim of plaintiff is not only false, but also unsustainable.

4. The written statement of defendant No.6 is with contentions referring to Sale Agreement dated 20.10.1984 entered by him for Ac.42.16 guntas for Rs.5.00 lakhs and suppressing the said Sale Agreement defendants 1 to 5 entered into Sale Agreement with one R.Muthu Swamy and his son R.Shashidharan Raju in 1986 and later defendants 1 to 5, Akkamma and Shankaraiah entered into Sale Agreement with defendant No.6 on 16.04.1989 from the re-negotiations for

Rs.40.00 lakhs and received a further sum of Rs.5.00 lakhs by cheque dated 16.04.1989 and with a view to settle the matter amicably, another agreement dated 25.04.1989 was entered into between Akkamma, Shankaraiah and defendants 1 to 5, Muthu Swamy and Shashidharan Raju. Muthu Swamy and Shashidharan Raju have agreed to share mutual benefits of the sale transactions entered into by Akkamma, Shankaraiah etc. in favour of defendant No.6. Pursuant to it, Akkamma, Shankaraiah and defendants 1 to 5 executed an irrevocable registered G.P.A. dated 01.06.1989 referred in the plaint supra. Defendant No.6 has already paid the entire sale consideration to the vendors as per the agreement and as per the irrevocable G.P.A., he entered into the suit sale agreement with plaintiff for the plaint schedule of Ac.11.03 guntas supra and received the sale consideration and the alleged collusion between defendant No.6 and defendants 1 to 5 is untrue and the revocation of G.P.A. by defendants 1 to 5 is illegal for the said G.P.A. is backed by interest and defendant No.6 got right to deal with the suit property and the suit transactions bind himself and defendants 1 to 5.

5. The trial Court after full-fledged trial, from the evidence of PW1 with exhibits A1 to A7 and from the evidence of defendant No.1-DW1, defendant No.6-DW2 and two more witnesses DWs 3 and 4 with exhibits B1 to B36, held the

plaintiff is entitled for specific performance of the contract for sale in directing the defendants to execute Sale Deed in favour of the plaintiff in respect of the suit schedule property and deliver possession, subject to condition of obtaining necessary permission for alienation under the Urban Land Ceiling Act. It is observed that the cancellation of G.P.A. under Ex.B5, dated 01.02.1997, has no affect on Ex.B11-irrevocable G.P.A., dated 01.06.1989, supra.

6. The First Appeal in O.S.No.532 of 2005, came before the Division Bench of this Court, was ended in dismissal on 10.10.2006 confirming the trial Court's decree and judgment. The defendants 1 to 5 and legal representatives of said Balraj preferred Civil Appeal No.837 of 2007 before the Apex Court. During pendency of the appeal before the Supreme Court supra, I.A.No.5 of 2010, to delete the name of K.Amarender Reddy-defendant No.6 (R2) from the Second Appeal, was filed and it was allowed on 12.07.2010 in terms of the prayer and at the risk of the appellants. Later, I.A.No.6 of 2010 was filed before the Supreme Court to record the compromise allegedly arrived among the left over parties (plaintiff and defendants 2 to 5 and the legal representatives of defendant No.1). Since all the parties to the compromise were not present before the Supreme Court, the counsel for appellant sought permission to

withdraw the Civil Appeal and accordingly, the same was permitted by dismissal of the appeal, which reads as under:

“I.A.No.6 of 2010 filed by the appellants is taken on board. By the said application, the appellants pray for the disposal of the Civil Appeal in terms of Memorandum of Compromise dated 09.07.2010 reached between the parties. All the parties who have signed the Memorandum are not present. However, learned counsel for the appellants submitted that he may be permitted to withdraw the appeal itself in view of the settlement reached out of the Court. The appeal is dismissed as withdrawn.”

Later, I.A.No.7 of 2010 was filed for modification of the orders passed in I.A.No.6 of 2010 and it was allowed and the Civil Appeal before the Supreme Court was disposed of in terms of the Memorandum of Compromise supra. Later, Amarender Reddy filed I.A.Nos.8 to 12 of 2010 to recall the orders passed in I.A.No.5 of 2010 deleting his name as respondent No.2 in Civil Appeal 837 of 2007 and to set aside the compromise recorded in I.A.No.6 of 2010. M/s. Ashwini Constructions, in whose favour the Sale Deed was executed by the plaintiff in respect of the property, filed I.A.Nos.13 to 15 of 2010 to come on record to get relief referred therein and those petitions were disposed of on 08.08.2013 holding the Memorandum of Compromise supra will not affect the rights of Amarender Reddy in respect of the property involved in the litigation and the order, dated 07.09.2012, of disposing of the appeal in terms of the compromise referred supra is

accordingly modified. A perusal of the record shows one Sri P.P.Rao, Senior Counsel appeared for the appellants, one Sri Dushyant Dave, Senior Counsel appeared for Amarender Reddy in I.A.Nos.8 to 10 of 2010, Sri Naphade, Senior Counsel appeared for M/s. Ashwini Constructions, who filed I.A.Nos.13 to 15 of 2010. One Altaf Ahmad, Senior Counsel appeared for the plaintiff J.Narahari Rao before the Supreme Court in the said Civil Appeal and the applications in I.A.Nos.5 to 15 of 2010 supra.

7. In the background of facts, I.A.No.1618 of 2010 filed by defendants 2 to 5 and legal representatives of late Balraj-defendant No.1 against J.Narahari Rao, the order therein speaks that the counter filed by J.Narahari Rao-respondent is admitting the claim of the petitioners-defendants 2 to 5 and the legal representatives of defendant No.1-Balraj supra is say of no objection if the adjustment of decree in whole to the satisfaction of respondent-plaintiff is recorded and certified. The order dated 18.11.2010 in I.A.No.1618 of 2010 speaks the litigation covered by the suit for specific performance is confirmed in the appeal in the High Court and the matter went upto the Supreme Court and the events in the Supreme Court supra, mentioning in nut shell herein saying, as per the terms of the compromise the parties have to comply certain obligations and according to the defendants 1 to 5-the

petitioners, they complied with their obligations, but the same cannot be certified by the Court as no matter is pending before the Supreme Court and now the plaintiff through G.P.A. filed counter of no objection if the adjustment of decree is certified as claimed by the defendants 1 to 5 in allowing the adjustment. It is impugning the same in I.A (SR) No.1353 of 2011 filed by the said Amarender Reddy against the defendants 1 to 5 and the plaintiff etc to set aside the said recording of adjustment of decree sought and passed in I.A.No.1618 of 2010 dated 18.11.2010. The averments therein of Amarender Reddy-defendant No.6/petitioner and third-party to I.A.No.1618/2010 are that originally late Anjaiah was the owner of Ac.31.13 guntas in Survey Nos.13 & 14 and some other survey numbers of 5 to 7, 10/ 1, 11/ 1, 12/ 1 and 12/ 42 of Ac.11.03 guntas of Ammuguda village that was succeeded by Shankaraiah, Balraj etc., who executed the Sale Agreement dated 20.10.1984 in his favour for the self-same land and they also executed the registered G.P.A. dated 01.06.1989 bearing document No.523/ 4 of 1989 and delivered the possession under Panchanama to him even earlier on 31.08.1986. According to the executant of G.P.A., pursuant to the Sale Agreement supra, Shankaraiah and Akkamma died and the remaining principals have cancelled the G.P.A. on 14.05.1997. In fact, the G.P.A. holder already entered the Sale Agreement

with Narahari Rao-plaintiff covered by Memorandum dated 30.03.1990. Pursuant to which, Narahari Rao filed O.S.No.156 of 2000, that was decreed against defendants 1 to 5 and their G.P.A. holder/ defendant No.6/ petitioner/ Amarender Reddy. On 30.06.2005, the trial Court held negating the contest of defendants 1 to 6 of the G.P.A. executed to defendant No.6 is invalid or cancelled saying the said G.P.A. valid and cancellation has no effect as G.P.A. for interest, and A.S.No.532/ 2005, preferred by the defendants 1 to 5 in the High Court, was ended in dismissal on 10.10.2006. Pending said First Appeal, some third-parties want to come on record as respondents 3 to 56 as alleged subsequent alignees by defendants 1 to 5 and they were not permitted to come on record. Defendants 1 to 5 filed Civil Appeal No.837 of 2007 before the Supreme Court where they filed an application cause deleted the names of R3 to R56, who were third-parties chosen to come on record in the First Appeal supra. Further, they filed I.A.No.5 of 2010 to delete the petitioner herein/ Amarender Reddy/ defendant No.6 as R2 to the appeal from the array, that was allowed by the Apex Court on 12.07.2010. Later I.A.No.6 of 2010 was also filed by the said appellants before the Supreme Court with terms of compromise between the other parties to the suit dated 09.07.2010 and the appeal was ultimately dismissed as

withdrawn from some of the parties to the compromise sought to record in I.A.No.6 of 2010 were not present as disposed of. Narahari Rao entered into the Memorandum of Understanding dated 06.02.1992 with M/s. Ashwini Constructions of the assignment of the contract for sale to work out for consideration and also executed the Supplementary Agreement to it dated 07.02.2007. Further, the plaintiff Narahari Rao has also addressed a letter dated 03.05.2010 to Amarender Reddy mentioning the Memorandum of Understanding and the Supplementary Agreement entered by him with M/s. Ashwini Constructions. After disposal of the Civil Appeal in the Supreme Court, the petitioner-Amarender Reddy being the G.P.A. holder executed the Sale Deed on 28.07.2010 in favour of M/s. Ashwini Constructions for the schedule property. While so, the plaintiff and defendants 1 to 5 and the legal representatives of defendant No.1 of O.S.No.156 of 2000 filed I.A.No.1618 of 2010 on 18.11.2010 to record the satisfaction of the decree settled out of Court, and the same was recorded by the Court. Aggrieved thereby, an unnumbered petition in I.A. (SR) No.1353 of 2011 was filed to set aside the said recording of adjustment in I.A.No.1618 of 2010. The plaintiff as respondent No.10 to it remained *ex parte*, but for others of defendants 1 to 5 and legal representatives of defendant No.1 contested and out of

whom, a counter filed by respondent No.7 saying the petitioner-Amarender Reddy cannot contend that G.P.A. still subsist for two of the members executed the G.P.A., dated 01.06.1989, died by names Shankaraiah and Ankamma. Defendant No.6 was only the G.P.A. holder of the original parties and once the original parties on record, he is not necessary party to I.A.No.1618 of 2010 and has no *locus standi* to question the order, atleast to seek for its setting aside by filing the unnumbered petition in I.A (SR) No.1353 of 2011, leave apart pursuant to the G.P.A., said Amarender Reddy already executed the Sale Agreement dated 30.03.1990 in favour of the plaintiff Narahari Rao (R10) and consequently the G.P.A. ceases its force and hence, he cannot claim to act as G.P.A. to entertain further transactions, but for perform acts of completing the sale transaction in favour of Narahari Rao.

8. Based on the respective contest, the impugned order was passed by the lower Court on 01.05.2014 in I.A. (SR) No.1353 of 2011 by allowing the application by setting aside the recording of satisfaction of the decree in I.A.No.1618 of 2010 supra with observation, particularly in answering the point at paragraph No.19 on the G.P.A. is in subsistence or not that the G.P.A. executed in favour of Amarender Reddy by defendants 1 to 5 and Shankaraiah is with interest and the

principal has also admittedly received entire consideration from Amarender Reddy, and the G.P.A. speaks Amarender Reddy was given all the rights including executing the Sale Deed and receiving the sale consideration. It is also observed by the trial Court in the judgment in O.S.No.156 of 2000 of no recital in G.P.A. that the G.P.A. holder has to pay the sale consideration to original owners and the G.P.A., in fact, is irrevocable. It is also observed that the cancellation of G.P.A. has no effect on the enforceability of G.P.A. and the High Court upheld in A.S.No.532 of 2005 by confirming the trial Court's judgment and the appeal before the Supreme Court was withdrawn, and as per orders of the Supreme Court in I.A.No.5 of 2010, filed for deletion of the name of petitioner Amarender Reddy, who was arrayed as R2 to the Supreme Court appeal, is allowed in terms of the prayer and at the risk of the appellant, and as per further orders in disposal of I.A.Nos.8 to 15 of 2010 supra observed on seeing the plaint it cannot be said the *prima facie* case of Amarender Reddy had no stake in the proceeding and thereby, the order in I.A.No.7 of 2010, dated 07.09.2012, was modified on 08.08.2013 and disposed of the petitions saying the above referred Memorandum of Compromise will not affect the rights of Amarender Reddy with respect to the property which was involved in the litigation. In view of the above, Balraj and

other original owners do not have competency to deal with the property and they cannot enter into any compromise, as their interest in the schedule of property was already transferred in favour of the agreement holder and G.P.A. holder Amarender Reddy, and as such the petition in I.A.No.1618 of 2010 filing and getting order is nothing but playing fraud on the Court. Hence, K.Balraj and others cannot give consent for recording of satisfaction of the decree in O.S.No.156 of 2000. It is also observed that the petitioner Amarender Reddy also as G.P.A. holder could not execute any Sale Deed in favour of Narahari Rao in respect of the schedule property and thereby, even as on today Narahari Rao is holding only decree for specific performance and no Sale Deed executed pursuant to the decree. To say, he will not get absolute rights over the schedule of property. As per Section 54 of the Transfer of Property Act, Narahari Rao, who holds Agreement of Sale, got limited rights in respect of the schedule of property, who in turn executed the Memorandum of Understanding and the Supplementary M.O.U. in favour of M/s. Ashwini Constructions in respect of the schedule of property including in addressing letters to Amarender Reddy stating because of his old-age and pre-occupation he is not able to deal with the properties and thereby, he assigned decree in favour of M/s. Ashwini Constructions to execute.

The defendants 2 to 5 and legal representatives of defendant No.1-Balraj (Judgment Debtors to the decree) are not parties to the M.O.U. entered into between Narahari Rao and M/s.Ashwini Constructions. Before the Supreme Court, M/s.Ashwini Constructions has filed I.A.Nos.13 to 15 of 2010 to implead it in Civil Appeal No.837 of 2007 on the ground of Amarender Reddy as a nominee of J.Narahari Rao executed the Sale Deed in favour of M/s. Ashwini Constructions on 28.07.2010. Once the Sale Deed is executed by Amarender Reddy, his power will be ceased is one of the contentions. The original decree holder J.Narahari Rao by virtue of M.O.U. with M/s. Ashwini Constructions has no interest over the property to compromise with defendants 2 to 5 and legal representatives of Balraj-defendant No.1 by filing I.A.No.1618 of 2010. It is further observed on the strength of G.P.A. of the Sale Agreement executed by Balraj and others supra, Amarender Reddy executed the Sale Agreement in favour of the plaintiff Narahari Rao, based on which the suit in O.S.No.156 of 2000 is filed and was decreed and the same was confirmed in A.S.No.532 of 2005 and in Civil Appeal No.837 of 2007 before the Supreme Court taken the steps supra in disposal ultimately and the Supreme Court observed in I.A.Nos.8 to 15 of 2010 while disposal of it cannot *prima facie* be said that Amarender Reddy had no stake in the proceeding.

To say, the Memorandum of Compromise entered into between the decree holder J.Narahari Rao and the Judgment Debtors Balraj etc. will not affect the said rights of Amarender Reddy as G.P.A. once subsists, and the petitioner-Amarender Reddy should have been made the party if at all to I.A.No.1618 of 2010 and filing of the petition before his back as observed supra is playing fraud on Court to set aside the same of recording of satisfaction/adjustment of decree thereby.

9. The same is impugned in the present Civil Revision Petition with contentions in the grounds of revision are that the Court below failed to see that the application, filed under Section 151 C.P.C. by Amarender Reddy/ revision respondent No.1/petitioner in the unnumbered petition in I.A.(S.R) No.1353 of 2011, to set aside the compromise being adjustment recorded in I.A.No.1618 of 2010 supra is not maintainable as contended in the counter in opposing the petition. The Court below did not assign any reasons by answering the maintainability, leave about the G.P.A. Amarender Reddy has no *locus standi* to file such a petition by virtue of the G.P.A. and the impugned order passed by the Court below is by improper appreciation of the facts, that too when he is only the Agreement of Sale holder and G.P.A. and pursuant to the already entered Agreement of Sale with the

plaintiff, which is the subject matter of the suit in O.S.No.156 of 2000 having received the sale consideration and failed to execute the Sale Deed, which made the plaintiff to file the suit and obtained decree and Amarender Reddy in fact supported the case of J.Narahari Rao in the said suit for its decree, which was confirmed in the appeal by the High Court and during pendency of the Civil Appeal before the Supreme Court supra, the defendants-revision petitioners entered compromise with J.Narahari Rao. The Memorandum of Compromise dated 09.07.2010 was filed before the Supreme Court in I.A.No.6/2010, that was allowed in observing the parties to the compromise were not present and therefore, the counsel for appellant therein sought permission to withdraw the appeal. Hence, the appeal is dismissed as withdrawn, which necessitated filing of I.A.No.1618 of 2010 and once that was allowed there is no illegality and getting the adjustment recorded by the trial Court for passing the impugned order on the unnumbered petition of Amarender Reddy by the Court below in setting aside the same, much less by saying playing any fraud on the Court therein. It should have seen by the Court below that what the Supreme Court in disposal of I.A.Nos.8 to 15 of 2010 and of the orders in I.A.Nos.6 & 7 of 2010 speaks is the appellants pray for disposal of the appeal in terms of the Memorandum of Compromise

between the plaintiff and defendants 1 to 5-appellants, dated 09.07.2010, and all the parties signed the Memorandum of Compromise and duly represented therefrom allowed and ordered the terms of Memorandum and the Civil Appeal was disposed of in terms of the Memorandum of Compromise dated 09.07.2010 and in view of the Supreme Court orders, there is no need to set aside the adjustment of decree recorded by the Court below and the impugned order of the lower Court is thereby liable to be set aside for defendant No.6-Amarender Reddy is only the proforma party being G.P.A. holder for defendants 1 to 5 in the suit and there is no misinterpretation nor any wrong conclusion in I.A.No.1618 of 2010 for said Amarender Reddy is only one of the proforma defendant and not even the decree holder and has no subsisting right over the subject matter and he has no say in the settlement arrived at between the decree holder and the judgment debtors, that were not properly considered by the Court below. The Court below erred in considering the alleged transactions between J.Narahari Rao and M/s. Ashwini Constructions, which will alien to the suit proceedings and thereby, sought for setting aside the order of the lower Court, allowing I.A. (S.R) No.1365 of 2011, and to dismiss the same consequently. Whereas the learned counsel for Amarender

Reddy-revision respondent No.1 supported the impugned order of the Court below in all aspects.

10. Heard both sides at length and perused the material on record.

11. Though the original Sale Agreement in favour of Amarender Reddy executed by Balraj and others, who are defendants 1 to 5, and Akkamma and Shankaraiah in the year 1984 was independent and the same was not G.P.A-cum-Sale Agreement to call it as irrevocable G.P.A. for interest and even the subsequent irrevocable G.P.A. is not the G.P.A.-cum-Sale Agreement by canceling the earlier Sale Agreement, once the trial Court categorically held in its judgment as referred supra of the G.P.A. is for interest and irrevocable do not specifically referred to Sections 201 and 202 of the Indian Contract Act in this regard and the same not interfered in confirming the trial Court's judgment by the Division Bench of the First Appellate Court; even the entire matter is at large including without any cross appeal to attack any finding, that too in the appeal filed by the defendants 1 to 5 against the plaintiff and said Amarender Reddy, leave about Amarender Reddy in what capacity implemented even as proforma party the impleadment of him either in the suit or in the appeal is consequent to the original Sale Agreement entered into by the

defendants 1 to 5 and Akkamma and Shankaraiah in favour of Amarender Reddy in the year 1984 and the subsequent irrevocable G.P.A. entered with him by them referring to the Sale Agreement for the trial Court's conclusion of the G.P.A. therefrom is for interest for earlier no practice of execution of a composite document of G.P.A.-cum-Sale Agreement. That said finding once attained finality, there is nothing at this stage for this Court to interfere in so far as that finding is concerned. Leave about it operates if not as *resjudicata*, at least as an obitor of that finding reached finality in the suit and appeal including from withdrawal of the appeal before the Supreme Court.

12. The next question to consider is from the irrevocable G.P.A. for interest in favour of Amarender Reddy, pursuant to which the Sale Agreement entered by him with the plaintiff J.Narahari Rao that was therefrom decreed the suit not only against Amarender Reddy, but also against the principal defendants 1 to 5 also from impleading the legal representatives of defendant No.1-Balraj after his death. In the appeal before the Supreme Court, even Amarender Reddy as P2 to the appeal before the Supreme Court was withdrawn from the array by filing I.A.No.5 of 2010, what the Supreme Court observed in so permitting the withdrawal is at the risk of the appellants. Leave about the compromise arrived

between J.Narahari Rao-plaintiff, and the other defendants 2 to 5 and legal representatives of defendant No.1 other than Amarender Reddy (defendant No.6), since deleted from the array as R2 in the appeal before the Supreme Court, and even the Supreme Court chosen to record the compromise, that was filed and borne by record before the Supreme Court from some of the parties not present could not be recorded and consequently permitted to withdraw the appeal, pursuant to the compromise that was also the modified order in I.A.No.7 of 2010, and it is later from what Amarender Reddy filed the petition so also M/s.Ashwini Constructions, pursuant to the M.O.U. and Supplementary M.O.U. entered by them with Narahari Rao of the auctionable claim to enforce the decree for assignment of the rights thereunder as per the settled law including from the expression of the Apex Court in this regard an assignee of a decree can execute the decree as held in Dhani Ram Gupta V. Lala Sri Ram¹. Leave about suit for specific performance is virtually a decree defining rights and obligations to work out further by final decree application or the like as held in Babu Lal v. Hazari Lal Kishori Lal² and Kumar Dharendra Mullick v. Tivoli Park Apartments (P) Ltd.³. Leave about the above, undisputedly Amarender Reddy (defendant No.6) already executed Sale Deed in favour of

¹ AIR 1980 SC 157

² AIR 1982 SC 818

³ 2005 (9) SCC 262

M/s. Ashwini Constructions therefrom or otherwise of whatever rights he got over the property as so called irrevocable G.P.A. holder of defendants 1 to 5. In fact, what the Supreme Court observed in disposal of I.A.Nos.8 to 15 of 2010 of the compromise of the suit claim by adjustment between the plaintiff-Narahari Rao and the defendants 2 to 5 and legal representatives of defendant No.1 will not affect the rights of Amarender Reddy as G.P.A. holder for interest over the property. Once it will not affect the rights of Amarender Reddy with respect to the property which was involved in the litigation, pursuant to the said Supreme Court order in its saying from reading of the plaint it cannot *prima facie* be said Amarender Reddy had no stake in the proceeding from that observation in culminating under the Doctrine of Merger of the Apex Court's incidental proceeding even out of the suit claim decree confirmed in the First Appeal. From the said disposal by the Supreme Court, though it cannot be said Amarender Reddy has no iota of right or interest over the property, from whatever his interest not chosen to compromise with plaintiff Narahari Rao and M/s. Ashwini Constructions (subsequent vendee) viz., the decree holder and his assignee of the rights of decree consequently once entered into compromise with the original defendants, the principals to the G.P.A. for interest executed in favour of Amarender Reddy by them, to

that extent of the compromise even not liable to be set aside. In fact what Amarender Reddy got rights pursuant to irrevocable G.P.A. alienated by him by execution of Sale Deed in favour of the assignee of the decree (from decree holder Narahari Rao) with M/s. Ashwini Constructions as per the settled law also in this regard under Sections 201 and 202 of the Contract Act as laid down in Siddareddy Venkata Nagaraja Reddy v. Mir Shahamat Ali Khan⁴ referring to Suraj Lamp & Industries (P) Ltd. v. State of Haryana⁵. As the decree can be recorded satisfaction of what is the interest the said judgment debtors can convey, but for to say whether it creates and confers full rights of the *lis* covered by the full satisfaction recorded in I.A.No.1618 of 2010 in view of the observations of the Supreme Court that it cannot be said that Amarender Reddy has no interest from reading of the plaint and whatever the compromise recorded will not affect his rights and what is observed by the trial Court, confirmed in lower appellate Court, did not hit by any specific terms. Once the trial Court categorically held of the G.P.A. is irrevocable and for interest and the cancellation of it by the defendants 1 to 5 and others will not affect the enforceability of the G.P.A. and what the Supreme Court observed of some element of rights subsists to Amarender Reddy, that was in fact conveyed

⁴ 2017 (3) ALD 163

⁵ 2012 (1) SCC 656

by Amarender Reddy to M/s. Ashwini Constructions undisputedly. In view of the above cloud from factual matrix on the scope of law clarified, there is no necessity to refer any other expressions placed reliance by both sides, for nothing involved to interpret herein further of the G.P.A. in favour of Amarender Reddy is irrevocable or not and with what consequences, for the reason the trial Court itself clarified as irrevocable and made final by appeal confirmation judgment though not in specific terms, that too what the Apex Court also held impliedly as irrevocable G.P.A. and the cancellation has thereby with no effect.

13. Having regard to the above, the order of the lower Court to set aside the compromise alleging it is a fraud on Court in obtaining the order in I.A.No.1618 of 2010 is not sustainable, but for to say the order holds good, however, the order will not take away what are the rights of Amarender Reddy for the G.P.A. for interest in so far as the decree enforceability as one of the judgment debtors impliedly concerned, leave about the Sale Deed executed by him of that interest besides other rights, if any in favour of M/s. Ashwini Constructions and from which he also cannot re-agitate the issue, for whatever more left if any was covered by the order in I.A.No.1618 of 2010.

In the result, this Civil Revision Petition is partly allowed by setting aside the impugned order in I.A. (S.R.) No.1353 of 2011, however, by making it clear that the order in I.A.No.1618 of 2010 recording the compromise/ adjustment no way affects whatever the interest of Amarender Reddy over the property, needless to say further of whatever his interest he already conveyed to M/s. Ashwini Constrictuions and as such that does not entitle the lower Court by the impugned order to set aside the order in I.A.No.1618 of 2010, but for to clarify to the above extent. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

09.03.2018
MVA

