

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWENTY NINTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO**

PRESENT

**THE HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU**

APPEAL SUIT No.1402 of 2018

Appeal Under Section 96 of CPC against the Judgment and Decree dated 27.06.2018 in O.S.No.134 of 2012 on the file of the Court of the V Additional District Judge, Nalgonda District at Bhonagiri.

Between:

1. Yelagapalli Malliah, S/o Y. Ramaiah, aged about 68, Occ-Agriculture,
2. Yelagapalli Mallamma, W/o Y. Mallaiah, aged about 56, Occ-Housewife,
3. Yelagapalli Ganesh, S/o Y. Mallaiah, aged about 46, Occ-Agriculture,
4. Yelagapalli Andalu, W/o Y. Shanker, aged about 42, Occ-Agriculture,
5. Yelagapalli Shankar, S/o Sri Y. Mallalah, aged about 43, Occ-Agriculture,
6. Yelagapalli Ilamma, W/o Y. Shanker, aged about 40, Occ-Agriculture,

All six are residents of Yedullagudem Village, Valigonda Mandal of Nalgonda District.

...APPELLANTS/DEFENDANT No.1 to 6

AND

1. Mr. Manne Mahender Reddy, S/o Sri M. Laxma Reddy, Aged about 40 years, Occ: Business,
2. Mr. K. Raji Reddy, S/o Sri K. Lachi Reddy, Aged about 51 years, Occ: Business,

Both Residents of Plot no.159, Road No.5, Huda Sainagar Colony,
Vanasthalipuram, Hyderabad.

...RESPONDENTS/PLAINTIFFS

Counsel for the Appellants: SRI SURESH SHIV SAGAR

Counsel for the Respondents: SRI PAPAIAH PEDDAKULA

The Court delivered the following: JUDGMENT

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

AND

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

A.S. NO.1402 of 2018

JUDGMENT: *(Per the Hon'ble Sri Justice Sambasiva Rao Naidu)*

The defendants 1 to 6 in O.S.No.134 of 2012, on the file of V Addl. District Judge, Nalgonda, are appellants in this appeal and Respondents were plaintiffs. For convenience, the parties will be referred as they are arrayed in the suit. The plaintiffs have filed the above said suit for specific performance of contract under the agreement of sale, dated 18-08-2012. The suit was decreed by the trial Court, aggrieved by the said Judgment, the defendants filed the present appeal.

2. The plaintiffs have pleaded that the defendants who are absolute owners and possessors of an extent of Ac. 20-10 gts of land in Sy.Nos. 880, 883 to 887 of Yedullagudem, have offered the said land for sale and plaintiffs have agreed to purchase the property @ Rs.6,10,000/- per acre i.e. for a total consideration of

Rs.1,23,52,500/- and received Rs.20,00,000/- towards advance. It was the further case of plaintiffs that all the defendants have executed agreement of sale on 18-08-2012 in favour of the plaintiffs. As per the terms of agreement, the plaintiffs have to pay Rs.10,00,000/- on 15-09-2012 and balance consideration shall be paid in two months and fifteen days subject to the defendants get the property measured with the help of revenue records such as tippan and fix the boundaries. The plaintiffs have further pleaded that they have paid Rs.10,00,000/- on 15-09-2012 and defendants have received the amount and D3, D5 made an endorsement to that effect on the agreement. It was the further case of the plaintiffs that they have approached the defendants with a request to get the land measured and for fixing the boundaries but the defendants postponed the same. The plaintiffs have claimed that they were always ready and willing to pay the balance amount and to obtain the registered sale deed but in view of abnormal increase in the land value at the locality the defendants failed to get the land measured and failed to register the land in favour of the plaintiffs and trying to alienate the property to others. Therefore, they got

issued a legal notice on 12-11-2012 to all the defendants with a request to complete the measurements of the land and execute registered sale deed by receiving the balance sale consideration. But there was no proper response from the defendants thereby, they filed the suit for specific performance of sale agreement.

3. The defendants have appeared before the court below and filed written statement inter alia admitting their title and possession on the suit schedule property, execution of sale agreement on 18-08-2012, receipt of Rs.20,00,000/- at the time of execution of sale agreement and Rs.10,00,000/- on 15-09-2012. They did not dispute the terms of agreement viz., price fixed, extent agreed to be sold etc., The defendants have pleaded that as per the terms of agreement the plaintiffs have to pay balance in two and half months from the date of agreement, but they failed to pay the amount within time. They have approached the plaintiffs several times and made oral requests to pay the balance but the plaintiffs failed to perform their part of contract. As the plaintiffs failed to pay the balance within the stipulated period, the agreement dated 18-08-2012 was cancelled and they are entitled to forfeit the

amount paid by the plaintiffs. Therefore the plaintiffs are not entitled to specific performance and sought for dismissal of the suit.

4. The trial court framed the following issues:

1. Whether the plaintiffs are entitled for specific performance as prayed for ?
2. Whether the Court fee paid is not correct ?
3. Whether the suit is barred by limitation ?
4. To what relief ?

5. In order to prove their claim, the 1st plaintiff has filed his evidence in the form of affidavit on 06-03-2018, copy of chief affidavit was served on the defendants on 25-04-2018, PW.1 was examined in further chief on 02-05-2018, and in the further examination he has marked Exs.A1 to A39. PW.1 was present before the Court on 11-06-2018, 18-06-2018 and on 21-06-2018 but there was no representation for defendants. The trial court treated the cross examination of PW.1 as nil. As per the endorsement on the proceedings sheet, the court below set the defendants *ex parte* on 21-06-2018. The defendants did not adduce any evidence in support of their claim. As there was no representation on behalf of defendants, having heard the

learned counsel for the plaintiffs, the trial Court passed a decree in favour of the plaintiffs. The trial Court accepted the case of plaintiffs and decreed the suit with costs with a direction to the defendants to execute sale deed in favour of the plaintiffs in two months and plaintiffs were directed to deposit the balance consideration.

6. Aggrieved by the said Judgment, the defendants have filed the present appeal mainly on the ground that the plaintiffs were never ready and willing to perform their part of contract, they failed to pay the balance consideration with in time, as per the terms of agreement of sale, thereby the defendants are not liable to execute any sale deed in favour of plaintiffs and they are entitled to forfeit the advance amount received from the plaintiffs. The defendants have further pleaded in the grounds of appeal that the trial court did not give proper opportunity to the defendants to prove their claim, as such they sought for setting aside the Judgment and Decree passed by the trial court.

7. In view of the grounds urged in the present appeal and in view of the arguments advanced by the learned

counsel for the defendants/appellants the following points arose for consideration:

1. Whether the plaintiffs failed to perform their part of contract, thereby they are not entitled to the relief of specific performance?
2. Whether the defendants were not given proper opportunity to contest the suit before the trial court, thereby the Judgment and Decree passed by the trial court are liable to be set aside?

8. As per the pleadings of both parties certain facts are not in dispute. The ownership of defendants over the suit property is admitted. The defendants have admitted the execution of sale agreement dated 18-08-2012, which is marked as Ex.A1 and receipt of Rs.20,00,000/- as advance under Ex.A1, they have also admitted the receipt of Rs.10,00,000/- on 15-09-2012 and making an endorsement vide Ex.A2. The plaintiffs have pleaded that they were always ready and willing to pay the balance consideration and to perform their part of contract, but as per the terms of agreement, the defendants have to get the land surveyed as per the revenue records and fix the boundaries before registration. But the defendants failed to complete the measurements and avoided the same in view of abnormal increase in the land value at that locality. Therefore they got

issued legal notice demanding them to complete the survey and execute the sale deed but there was no response.

On the other hand the defendants have pleaded that the plaintiffs failed to pay the balance consideration and in spite of their oral requests for completion of survey they did not respond, thereby the agreement was cancelled and they are entitled to forfeit the advance amount.

9. The suit is based on Ex.A1 sale agreement. In order to decide whether the plaintiffs are entitled to the relief of specific performance, it is just and necessary to see the undisputed terms of sale agreement. According to the sale agreement the plaintiffs have to pay Rs.10,00,000/- by 15-09-2012 apart from the advance amount which they paid at the time of execution of Ex A1, and as per the notices exchanged between the parties and as per averments of Written Statement filed by the defendants the payment of Rs. 10,00,000/- on 15-09-2012 has been admitted by the defendants. The main dispute between the parties is with regard to payment of balance consideration, the plaintiffs have claimed that the defendants have to complete the survey before the stipulated time and fix the boundaries with

the help of the revenue records, whereas the defendants have pleaded that the plaintiffs shall pay the balance sale consideration within two and half months from the date of agreement and that though they orally requested the plaintiffs to completing the survey they did not respond. In view of this controversy it is just and necessary to see the terms of agreement. Clause 2 of the agreement is relevant in this regard.

10. Clause 2 (ii) of agreement reads as follows:

"The remaining balance sale consideration amount will be paid by the vendee to the vendors subject to the measurements as per the records on or before 2(two) months 15(fifteen) days from the date of this agreement at the time of registration for the said terms of payment both the parties agreed for the same."

This condition shall be read with connected clause i.e. Cl. 10 of the agreement which reads as follows:

"That the vendors shall cause the survey of the schedule properties in consonance with the official Tipton of survey and settlement department and fix the boundaries as per the official survey before the registration with their own costs"

11. Therefore it is very clear that there's an obligation on the defendants to get the property agreed to be sold, measured (surveyed) as per the official records and fix the

boundaries. The said fixation of boundaries shall be completed before the actual registration and the obligation of plaintiffs about payment of balance is subject to the completion of survey. As per the plaint and according to the evidence of PW1 they have paid 2nd installment on 15-09-2012 itself, and requested the defendants to complete the survey, but they have avoided the same in view of the hike in the prices of lands, thereby they got issued legal notice but the defendants did not respond, as such they filed the suit.

12. As per the sale agreement the period fixed for payment of final amount will expire in the first week of November 2012. The plaintiffs got issued legal notice vide Ex.A3 demanding the performance of agreement terms on 12-11-2012. As per postal endorsement on the covers filed before the court, except the notices addressed to D5 and D6 the remaining notices were returned with an endorsement that the addressee was not available in the village and notices of D5 and D6 were returned as "Refused". Therefore the notices addressed to the other defendants must have been returned after waiting for at least 7 days.

13. The plaintiffs have marked the notices got issued by the defendants on 15-11-2012 as Ex.A15. In Ex.A15, the defendants have claimed that they have approached the plaintiffs several times and "orally" intimidated them to do the measurements and pay the balance but the plaintiffs did not heed to their request and failed to perform their part of contract. In fact the notice under Ex.A15 was sent with a specific allegation that the plaintiffs adopted illegal tactics to pressurize the defendants for settlement through S.H.O. Valligonda PS. The plaintiffs have marked another legal notice got issued by the defendants as Ex.A34 and it clearly indicates that the defendants have filed one Writ Petition before the High Court alleging police interference in this transaction and they have filed a Contempt Case also against the police.

14. Therefore it is very clear that though the notice got issued by the plaintiffs vide Ex.A3 was returned with an endorsement that it was not served on the defendants, D5 and D6 have refused the notices and they got issued notice on 15-11-2012 itself as if they don't have any knowledge of Ex.A3 with an allegation that the plaintiffs trying to pressurize

them for settlement. In fact there was no such necessity for the plaintiffs to pressurize the defendants for any settlement, because they have already paid Rs.30,00,000/-, their notice dated 12-11-2012 clearly shows their readiness and willingness to pay the balance and to get sale deed registered, provided the defendants get the land surveyed, and fix the boundaries as per Tippan.

15. In view of the above said specific clause it is for the defendants to complete the survey as per revenue records, and in such case, unless they approach the revenue officials and place a written request for survey, the same cannot be completed. If the defendants were really ready to get the survey, before they made alleged oral request to plaintiffs, they must have filed application for survey and it may not be impossible for them to file the proof about such application before the court. But no such proof has been filed by the defendants. Except the averment in the written statement no proof is available to prove that the defendants were ready to get the land surveyed which is compulsory for receiving the balance from the plaintiffs. The price for the land is more than one crore, therefore it is quite natural for a

vendee to request his vendor to show the land within fixed boundaries as per official records.

16. The contents of Ex.A34 clearly indicates that the defendants having got the notice issued by the plaintiffs returned unserved, they have issued this notice as if they have no knowledge of Ex.A3 notice, but it is not their case either in the notice or in their written statement that they were not staying in the address mentioned in Ex.A3 notices, and the notice vide Ex. A15 obviously issued only to escape their obligation. Therefore it is very clear that the defendants failed to perform their part of contract. The probability of defendants avoiding the survey and fixing the boundaries due to huge hike in the land prices is more than the probability of plaintiffs who have already paid Rs.30,00,000/- in 2012 without any reason, failed to respond to the alleged "oral" request of defendants. The notices exchanged between the parties clearly indicate the value of the property. No prudent person having paid Rs.30,00,000/- and who has issued legal notice within the stipulated period will remain silent to such a request. There is no explanation from the defendants why

they did not issue any legal notice demanding the plaintiffs to come forward for obtaining registered document.

17. The plaintiffs have filed the suit seeking specific performance and filed all the documents in support of their claim about the readiness and willingness to perform their part of contract. The defendants have engaged an Advocate before the trial Court and filed written statement. The plaintiffs have filed chief-affidavit of PW.1 before the Court below and a copy of the said affidavit was served on the defendants. The defendants have got knowledge as to what is the evidence of PW.1 and what documents he has filed in support of their claim, but they did not choose to cross-examine PW.1, they did not choose to produce their own evidence before the trial Court. If the defendants are of the opinion that they are unnecessarily *set ex parte*, it may not be difficult for them to file a petition within time under the relevant provisions for setting aside the said *ex parte* order and to produce their evidence. They did not choose to do so. The suit was disposed of by the trial court on 27-06-2018.

18. As per the endorsement on the certified copies, it shows the defendants have filed application for certified copy of judgment and decree on 27-07-2018; the copies were prepared and delivered to the defendants on the same day. Therefore, it is very clear that the defendants were served with the copy of the judgment within one month from the date of judgment. If the defendants are really serious about what they have claimed in the present appeal, they have got every opportunity to oppose the decree on the ground that they were unnecessarily set *ex parte*. If such an application was filed before the Court, it could have been decided on merits. But the defendant instead of filing an application either for setting *ex parte* order aside or seeking permission to produce their oral and documentary evidence, they filed the present appeal before the Hon'ble High Court on 16-08-2018. Therefore, the defendants consciously did not choose to cross-examine PW.1, did not choose to produce their evidence before the trial Court, did not choose to file an application for setting aside *ex parte* order and filed the present appeal, which clearly shows that their interest was not to contest the suit but only to drag the proceedings.

19. The records placed before the Court clearly indicate that they did not file any application before the Revenue Authorities to get the land surveyed for fixing the boundaries as required under Ex. A1 sale agreement. Having failed to perform their part of contract, they cannot throw blame on the plaintiffs. There was no fault on the part of plaintiffs in performing their part of contract, as such, the defendants cannot say that they have cancelled the contract and they are entitled to forfeit the advance amount received under Exs.A1 and A2 endorsement. The plaintiffs must be able to prove that they were always ready and willing to perform their contract. The evidence placed before the Court would show the plaintiffs were ready and willing to perform their part of contract. The defendants have pleaded that the relief sought for by the plaintiffs is barred by limitation but, they did not produce any evidence in support of the said plea. Even if they did not cross-examine PW.1, they can as well examine any defendant in support of their contention. A simple statement that they orally requested the plaintiffs to get the land measured cannot be accepted, more particularly, in the light of above stated circumstances. Therefore, the

contention of defendants cannot be accepted. The defendants are not entitled to any relief much less the relief of dismissal of the suit. The trial Court rightly passed the relief in favour of the plaintiffs as such, the appeal is not maintainable.

In the result, the appeal is dismissed with costs.

Consequently, Miscellaneous applications if any, are closed.

MEMORANDUM OF COSTS
AS.No.1402 of 2018

	Rs.	Ps.
Stamps for Vakalatnama		
Do. used for the Memo	5-	00
Do. for Judgment of the Lower Court		
Do. for Decree of the Lower Court		
Value of Copy Stamp Paper used for Enclosures		
Advocate's fee on Rupees (as per Rules)		
Batta and Postage		
Translation and Printing charge		
TOTAL	5-	00

(The Appellant is directed to pay a sum of Rs. 5/- towards costs to the respondent)

//TRUE COPY//

SD/-K. SRINIVASA RAO
JOINT REGISTRAR

SECTION OFFICER

To,

1. The V Additional District Judge, Nalgonda District at Bhonagiri. (with record)
2. One CC to Sri Suresh Shiv Sagar, Advocate [OPUC]
3. One CC to Sri Papalah Peddakula, Advocate [OPUC]
4. Two CD Copies
5. One Spare Copy

gbr

HIGH COURT

FILED

DATED: 29/07/2022



JUDGMENT

AS.No.1402 of 2018

DISMISSING THE APPEAL
WITH COSTS

(16) VJW
24/8/22

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWENTY NINTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO**

PRESENT

**THE HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU**

APPEAL SUIT No.1402 of 2018

Between:

1. Yelagapalli Malliah, S/o Y. Ramaiah, aged about 68, Occ-Agriculture,
2. Yelagapalli Mallamma, W/o Y. Mallaiah, aged about 56, Occ-Housewife,
3. Yelagapalli Ganesh, S/o Y. Mallaiah, aged about 46, Occ-Agriculture,
4. Yelagapalli Andalu, W/o Y. Shanker, aged about 42, Occ-Agriculture,
5. Yelagapalli Shankar, S/o Sri Y. Mallaiah, aged about 43, Occ-Agriculture,
6. Yelagapalli Ilamma, W/o Y. Shanker, aged about 40, Occ-Agriculture,

All six are residents of Yedullagudem Village, Valigonda Mandal of Nalgonda District.

...APPELLANTS/DEFENDANT No.1 to 6

AND

1. Mr. Manne Mahender Reddy, S/o Sri M. Laxma Reddy, Aged about 40 years, Occ: Business,
2. Mr. K. Raji Reddy, S/o Sri K. Lachi Reddy, Aged about 51 years, Occ-Business,

Both Residents of Plot no.159, Road No.5, Huda Sainagar Colony, Vanasthalipuram, Hyderabad.

...RESPONDENTS/PLAINTIFFS

Appeal Under Section 96 of CPC against the Judgment and Decree of the Court of the V Additional District Judge, Nalgonda District at Bhonagiri dated 27.06.2018 in O.S.No.134 of 2012.

This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in

the Suit and upon hearing the arguments of Sri Suresh Shiv Sagar, Advocate for the Appellants and of Sri Papaiah Peddakula, Advocate for the Respondents.

This Court doth order and decree that the decree of the Court of the V Additional District Judge, Nalgonda District at Bhongir in O.S.No.134 of 2012 dated 27.06.2018 be and hereby is confirmed and the appeal is dismissed, this court doth further order and decree that the appellant is be and hereby directed to pay a sum of Rs.5/- towards costs to be the respondent.

//TRUE COPY//

SD/-K.SRINIVASA RAO
JOINT REGISTRAR

SECTION OFFICER

To,

1. The V Additional District Judge, Nalgonda District at Bhonagiri
 2. Two CD Copies
 3. One Spare Copy
- gbr

HIGH COURT

DECREE

DATED: 29/07/2022

DECREE

AS.No.1402 of 2018

DISMISSING THE APPEAL
WITH COSTS

(64) VLS
24/8/22