IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI

****

A.S.Nos.527, 530, 623, 646 & 656 of 2013

A.S.No.527 of 2013

Between:

1. THOTA GOPAL, Died by LRs.4 & 5, S/o. Chennaiah, R/o. Thotaveedi, Atmakur Village ampMandal, SPSR Nellore District.

2. Thota Lalithamma @ Lalitha,, W/o. Gopal, R/o. Thotaveedi, Atmakur Village & Mandal, SPSR Nellore District.

3. Thota Sameera,, D/o. Gopal, R/o Thotaveedi, Atmakur Village & Mandal, SPSR Nellore District.

4. Thota Sravanthi, W/o Singarapu Vijaya Chandrudu, Aged about 34 years,Occ Home Maker R/o Thota Street, Atmakur Town, Spsr Nellore District, Andhra Pradesh.

5. Thota Sumar, S/o lat Gopal Gopaiah, Aged about 33 years, Occ Employee, R/o Thota Street, Atmakur Town, SPSR Nellore District, Andhra Pradesh Appellant Nos. 4 and 5 are brought on record as LRs of deceased petitioner No. 1 vide Court order dated 22.11.2024 in I.A.No.4 of 2023 in A.S.No.527 of 2013.

...Appellant/s

AND

1. Pandipati Gopal Reddy, S/o. Ramana Reddy, R/o. Madarajuguduru Village, Nellore Rural Mandal, SPSR Nellore District.

2. Mekala Chandrasekhar Reddy, S/o. Venkatasubba Reddy, R/o. Tekya Street, Atmakur Village & Mandal, SPSR Nellore District.

3. Mekala Venkatasuba Reddy, S/o. Penchala Reddy, R/o. Tekya Street, Atmakur Village & Mandal, SPSR Nellore District.

4. Mekala Siva Prathap Reddy, S/o. Venkatasubba Reddy, R/o. Tekya Street, Atmakur Village & Mandal, SPSR Nellore District.

...Respondents

A.S.No.530 of 2013

Between:

1. Mekala Chandrasekhar Reddy, S/o. M.Venkatasubba Reddy, Private Employee, House No. 13/64, Tekya Street, Atmakoor Village, ATmakoor Mandal, Nellore District.

2. Mekala Venkatasubba Reddy, S/o. P. Menchala Reddy, Agriculture, House No. 13/64, Tekya Street, atmakoor Village, Atmakoor Mandal, Nellore District.

3. Mekala Sivaprathap Reddy,, S/o. M.Venkatasubba Reddy, Private Employee, House No. 13/64, Tekya Street, atmakoor Village, atmakoor Mandal, Nellore District.

... Appellant/s

AND

1. Pandipati Gopal Reddy, S/o. P.Ramana Reddy, AGriculture, R/o. MAdarajugudur Village, Nellore MAndal, Nellore District.

2. Thota Gopal, S/o. T.Chenchaiah, AGriculture, R/o. Thota Veedhi, aTmakoor Village, atmakoor Mandal, Nellore District.

3. Thota Lalithamma Lalitha, W/o. T.Gopal, Household R/o. THota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District.

4. Thota Sameera, D/o. T.Gopal, Household, R/o. Thota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District.

...Respondents

A.S.No.623 of 2013

Between:

1. Mekala Sivaprathap Reddy, S/o M.Venkatasubba Reddy, Occ: Private Employee, R/o House No. 13/64, Tekya Street, Atmakoor Village, Atmakoor Mandal, Nellore District

... Appellant/s

AND

1. Thota Lalithamma @ Lalitha, W/o T.Gopal, Occ: Household, R/o Thota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District

2. Pandipati Gopal Reddy, S/o P.Ramana Reddy, Occ: Agriculture, R/o Madarajugudur Village, Nellore Mandal, Nellore District

...Respondents

A.S.No.646 of 2013

Between:

1. Mekala Venkata Subba Reddy, S/o.P.Menchala Reddy Occ: Agriculture R/o.H.No.13/64, Tekya Street, Atmakoor [V] & [M], Nellore District.

... Appellant/s

AND

1. Thota Gopal, S/o.T.Chenchaiah Occ: Agriculture R/o.Thota Veedhi, Atmakoor [V] & [M], Nellore District.

2. Pandipati Gopal Reddy, S/o.P.Ramana Reddy Occ: Agriculture R/o.Madarajugudur [V], Nellore Mandal and District.

...Respondents

A.S.No.656 of 2013

Between:

1. Mekala Chandrasekhar Reddy,, S/o. M Venkatasubba Reddy, Occ: Private Employee, R/o. H.No. 13/64, Tekya Street, Atmakoor Village, Atmakoor Mandal, Nellore District.

... Appellant/s

AND

1. Thota Gopal Gopalaiah, S/o. T Chenchaiah, Occ: Agriculture, R/o. Thota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District.

2. Pandipati Gopal Reddy, S/o. P. Ramana Reddy, Occ: Agriculture, R/o. Madarajugudur Village, Nellore Mandal, Nellore District.

...Respondents

DATE OF JUDGMENT PRONOUNCED: 16.10.2026

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE D. RAMESH

AND

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes / No
3. Whether His Lordship wish to see the fair copy of the Judgment? Yes / No

_____

JUSTICE D. RAMESH

_____

JUSTICE ALAPATI GIRIDHAR

*** THE HONOURABLE SRI JUSTICE D. RAMESH**

AND

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

+ A.S.Nos.527, 530, 623, 646 & 656 of 2013

% 16.10.2026
A.S.No.527 of 2013

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2. Thota Lalithamma @ Lalitha,, W/o. Gopal, R/o. Thotaveedi, Atmakur Village & Mandal, SPSR Nellore District.

3. Thota Sameera,, D/o. Gopal, R/o Thotaveedi, Atmakur Village & Mandal, SPSR Nellore District.

4. Thota Sravanthi, W/o Singarapu Vijaya Chandrudu, Aged about 34 years,Occ Home Maker R/o Thota Street, Atmakur Town, Spsr Nellore District, Andhra Pradesh.

5. Thota Sumar, S/o lat Gopal Gopaiah, Aged about 33 years, Occ Employee, R/o Thota Street, Atmakur Town, SPSR Nellore District, Andhra Pradesh Appellant Nos. 4 and 5 are brought on record as LRs of deceased petitioner No. 1 vide Court order dated 22.11.2024 in I.A.No.4 of 2023 in A.S.No.527 of 2013.

...Petitioners

AND

1. Pandipati Gopal Reddy, S/o. Ramana Reddy, R/o. Madarajuguduru Village, Nellore Rural Mandal, SPSR Nellore District.

2. Mekala Chandrasekhar Reddy, S/o. Venkatasubba Reddy, R/o. Tekya Street, Atmakur Village & Mandal, SPSR Nellore District.

3. Mekala Venkatasuba Reddy, S/o. Penchala Reddy, R/o. Tekya Street, Atmakur Village & Mandal, SPSR Nellore District.

4. Mekala Siva Prathap Reddy, S/o. Venkatasubba Reddy, R/o. Tekya Street, Atmakur Village & Mandal, SPSR Nellore District.

...Respondents

A.S.No.530 of 2013

Between:

1. Mekala Chandrasekhar Reddy, S/o. M.Venkatasubba Reddy, Private Employee, House No. 13/64, Tekya Street, Atmakoor Village, ATmakoor Mandal, Nellore District.

2. Mekala Venkatasubba Reddy, S/o. P. Menchala Reddy, Agriculture, House No. 13/64, Tekya Street, atmakoor Village, Atmakoor Mandal, Nellore District.

3. Mekala Sivaprathap Reddy,, S/o. M.Venkatasubba Reddy, Private Employee, House No. 13/64, Tekya Street, atmakoor Village, atmakoor Mandal, Nellore District.

...Petitioners

AND

1. Pandipati Gopal Reddy, S/o. P.Ramana Reddy, AGriculture, R/o. MAdarajugudur Village, Nellore MAndal, Nellore District.

2. Thota Gopal, S/o. T.Chenchaiah, AGriculture, R/o. Thota Veedhi, aTmakoor Village, atmakoor Mandal, Nellore District.

3. Thota Lalithamma Lalitha, W/o. T.Gopal, Household R/o. THota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District.

4. Thota Sameera, D/o. T.Gopal, Household, R/o. Thota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District.

...Respondents

A.S.No.623 of 2013

Between:

1. Mekala Sivaprathap Reddy, S/o M.Venkatasubba Reddy, Occ: Private Employee, R/o House No. 13/64, Tekya Street, Atmakoor Village, Atmakoor Mandal, Nellore District

...Petitioner

AND

1. Thota Lalithamma @ Lalitha, W/o T.Gopal, Occ: Household, R/o Thota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District

2. Pandipati Gopal Reddy, S/o P.Ramana Reddy, Occ: Agriculture, R/o Madarajugudur Village, Nellore Mandal, Nellore District

...Respondents

A.S.No.646 of 2013

Between:

1. Mekala Venkata Subba Reddy, S/o.P.Menchala Reddy Occ: Agriculture R/o.H.No.13/64, Tekya Street, Atmakoor [V] & [M], Nellore District.

...Petitioner

AND

1. Thota Gopal, S/o.T.Chenchaiah Occ: Agriculture R/o.Thota Veedhi, Atmakoor [V] & [M], Nellore District.

2. Pandipati Gopal Reddy, S/o.P.Ramana Reddy Occ: Agriculture R/o.Madarajugudur [V], Nellore Mandal and District.

...Respondents

A.S.No.656 of 2013

Between:

1. Mekala Chandrasekhar Reddy,, S/o. M Venkatasubba Reddy, Occ: Private Employee, R/o. H.No. 13/64, Tekya Street, Atmakoor Village, Atmakoor Mandal, Nellore District.

...Petitioner

AND

1. Thota Gopal Gopalaiah, S/o. T Chenchaiah, Occ: Agriculture, R/o. Thota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District.

2. Pandipati Gopal Reddy, S/o. P. Ramana Reddy, Occ: Agriculture, R/o. Madarajugudur Village, Nellore Mandal, Nellore District.

...Respondents

! Counsel for Appellant/s	:	Sri P. Rajasekhar, learned counsel for the Appellants
^ Counsel for Respondent/s	:	Sri O. Manohar Reddy, learned Senior Counsel representing Sri C. Subodh, learned counsel for the Respondents.

< Gist:
> Head Note:
? Cases referred:

1. (2009) 2 SCC 582
2. (1990) 3 SCC 1
3. AIR 2024 SC 3242 & (2024) 7 SCC 515
4. AIR 2006 Mad 242 & (2006) SCC OnLine Mad 406
5. (2006) SCC OnLine AP 34
6. (2005) SCC OnLine AP 289
7. (2020) 3 SCC 280
8. 2010 SCC OnLine AP 931
9. (2023) 11 SCC 775
10. AIR 2005 AP 260 & (2004) SCC OnLine AP 1004
11. AIR 2022 SUPREME COURT 3361 & (2023) 11 SCC 775
12. (1996) 4 SCC 526
13. (1998) 4 SCC 539
14. 1976 AP 243 & (1975) SCC OnLine AP 139
15. (2024) 4 SCC 247
16. (2005) 4 SCC 370
17. (1998) 2 SCC 391
18. (2011) 8 SCC 249
19. (1977) 4 SCC 467
20. (2001) 5 SCC 289
21. (2005) 6 SCC 344
22. 2024 Supreme SC 1187
23. (1994) 1 SCC 1
24. 2025 SCC OnLine SC 1501
25. (2024) 20 SCC 140
26. (2010) 8 SCC 1
27. (2023) 13 SCC 1
28. (2012) 7 SCC 738
29. (2008) 7 SCC 144
30. (2005) 9 SCC 568

31. (2004) 8 SCC 488

Date of reserved for orders : 23.07.2026
Date of pronouncement : 16.10.2026
Date of uploading : 16.10.2026

APHC010576122013

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

FRIDAY, THE 16th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE D RAMESH

AND

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

A.S.Nos.527, 530, 623, 646 & 656 of 2013

A.S.No.527 of 2013

Between:

1. THOTA GOPAL, Died by LRs.4 & 5, S/o. Chennaiah, R/o. Thotaveedi, Atmakur Village ampMandal, SPSR Nellore District.

2. Thota Lalithamma @ Lalitha,, W/o. Gopal, R/o. Thotaveedi, Atmakur Village & Mandal, SPSR Nellore District.

3. Thota Sameera,, D/o. Gopal, R/o Thotaveedi, Atmakur Village & Mandal, SPSR Nellore District.

4. Thota Sravanthi, W/o Singarapu Vijaya Chandrudu, Aged about 34 years,Occ Home Maker R/o Thota Street, Atmakur Town, Spsr Nellore District, Andhra Pradesh.

5. Thota Sumar, S/o lat Gopal Gopaiah, Aged about 33 years, Occ Employee, R/o Thota Street, Atmakur Town, SPSR Nellore District, Andhra Pradesh Appellant Nos. 4 and 5 are brought on record as LRs of deceased petitioner No. 1 vide Court order dated 22.11.2024 in I.A.No.4 of 2023 in A.S.No.527 of 2013.

... Appellant/s

AND

1. Pandipati Gopal Reddy, S/o. Ramana Reddy, R/o. Madarajuguduru Village, Nellore Rural Mandal, SPSR Nellore District.

2. Mekala Chandrasekhar Reddy, S/o. Venkatasubba Reddy, R/o. Tekya Street, Atmakur Village & Mandal, SPSR Nellore District.

3. Mekala Venkatasuba Reddy, S/o. Penchala Reddy, R/o. Tekya Street, Atmakur Village & Mandal, SPSR Nellore District.

4. Mekala Siva Prathap Reddy, S/o. Venkatasubba Reddy, R/o. Tekya Street, Atmakur Village & Mandal, SPSR Nellore District.

...Respondents

Counsel for the Petitioners: P RAJASEKHAR,YADLAPALLI VENKATA KALYANA CHAKRAVARTHI,.

Counsel for the Respondents: C SUBODH

A.S.No.530 of 2013

Between:

1. Mekala Chandrasekhar Reddy, S/o. M.Venkatasubba Reddy, Private Employee, House No. 13/64, Tekya Street, Atmakoor Village, ATmakoor Mandal, Nellore District.

2. Mekala Venkatasubba Reddy, S/o. P. Menchala Reddy, Agriculture, House No. 13/64, Tekya Street, atmakoor Village, Atmakoor Mandal, Nellore District.

3. Mekala Sivaprathap Reddy,, S/o. M.Venkatasubba Reddy, Private Employee, House No. 13/64, Tekya Street, atmakoor Village, atmakoor Mandal, Nellore District.

... Appellant/s

AND

1. Pandipati Gopal Reddy, S/o. P.Ramana Reddy, AGriculture, R/o. MAdarajugudur Village, Nellore MAndal, Nellore District.

2. Thota Gopal, S/o. T.Chenchaiah, AGriculture, R/o. Thota Veedhi, aTmakoor Village, atmakoor Mandal, Nellore District.

3. Thota Lalithamma Lalitha, W/o. T.Gopal, Household R/o. THota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District.

4. Thota Sameera, D/o. T.Gopal, Household, R/o. Thota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District.

...Respondents

Counsel for the Petitioners: SIVAPRASAD REDDY VENATI

Counsel for the Respondents:

A.S.No.623 of 2013

Between:

1. Mekala Sivaprathap Reddy, S/o M.Venkatasubba Reddy, Occ: Private Employee, R/o House No. 13/64, Tekya Street, Atmakoor Village, Atmakoor Mandal, Nellore District

... Appellant/s

AND

1. Thota Lalithamma @ Lalitha, W/o T.Gopal, Occ: Household, R/o Thota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District

2. Pandipati Gopal Reddy, S/o P.Ramana Reddy, Occ: Agriculture, R/o Madarajugudur Village, Nellore Mandal, Nellore District

...Respondents

Counsel for the Petitioner: SIVAPRASAD REDDY VENATI

Counsel for the Respondents:

A.S.No.646 of 2013

Between:

1. Mekala Venkata Subba Reddy, S/o.P.Menchala Reddy Occ: Agriculture R/o.H.No.13/64, Tekya Street, Atmakoor [V] & [M], Nellore District.

... Appellant/s

AND

1. Thota Gopal, S/o.T.Chenchaiah Occ: Agriculture R/o.Thota Veedhi, Atmakoor [V] & [M], Nellore District.

2. Pandipati Gopal Reddy, S/o.P.Ramana Reddy Occ: Agriculture R/o.Madarajugudur [V], Nellore Mandal and District.

...Respondents

Counsel for the Petitioner: SIVAPRASAD REDDY VENATI

Counsel for the Respondents: C SUBODH

A.S.No.656 of 2013

Between:

1. Mekala Chandrasekhar Reddy,, S/o. M Venkatasubba Reddy, Occ: Private Employee, R/o. H.No. 13/64, Tekya Street, Atmakoor Village, Atmakoor Mandal, Nellore District.

... Appellant/s

AND

1. Thota Gopal Gopalaiah, S/o. T Chenchaiah, Occ: Agriculture, R/o. Thota Veedhi, Atmakoor Village, Atmakoor Mandal, Nellore District.

2. Pandipati Gopal Reddy, S/o. P. Ramana Reddy, Occ: Agriculture, R/o. Madarajugudur Village, Nellore Mandal, Nellore District.

...Respondents

Counsel for the Petitioner: SIVAPRASAD REDDY VENATI

Counsel for the Respondents:

THE HONOURABLE SRI JUSTICE D RAMESH

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

A.S.Nos.527, 530, 623, 646 & 656 of 2013

The Court made the following COMMON JUDGMENT:
(per Hon'ble Sri Justice Alapati Giridhar)

1. The Appeals are filed by the Defendants challenging the Common Judgment of the learned Principal District Judge, Nellore, dated 01.03.2013 in O.S.Nos.49, 59, 62 and 78 of 2007, wherein the Suit in O.S.No.49 of 2007 filed for specific performance by Pandipati Gopal Reddy is decreed with costs against the 1st to 3rd Defendants and the other three Suits in O.S.Nos.59, 62 & 78 of 2007 filed for specific performance are dismissed with costs.

2. For brevity, the plaintiff in O.S.No.49 of 2007 is referred to as the Plaintiff. The 1st to 6th Defendants in this Suit are referred to as Defendants. The 4th to 6th Defendants also filed Suits, O.S.Nos.59, 62 & 78 of 2007 for specific performance, they are also referred to as 4th to 6th Defendants respectively.

I. BRIEF CONTENTIONS

3. Heard Sri P. Rajasekhar, learned counsel for Appellant No.2, 4 and 5 in A.S.No.527 of 2013, Sri Siva Prasad Reddy Venati, learned counsel for Appellants in A.S.Nos.530, 623, 646 & 656 of 2013 and Sri O. Manohar Reddy, learned Senior Counsel representing Sri C. Subodh, learned counsel for Respondent in all the Appeals, who is the Plaintiff in O.S.No.49 of 2007.

4. The learned counsel for the 2nd, 4th & 5th Appellants in A.S.No.527 of 2013, contends that the Trial Court erred in decreeing the Suit for specific performance based on the Agreement of Sale though the same is not a valid and enforceable agreement. That the Plaintiff paid a paltry amount of Rs.2,00,000/- only, that even the agreement recitals show that there is a

condition to measure the property and to arrive at the balance of sale consideration for the suit schedule property/Ac.31.28¼ cents @ Rs.2,10,000/- per acre. That the agreement did not contain the boundaries but contains only survey numbers, the Plaintiff issued a paper publication, which also did not contain boundaries but strangely in the plaint he mentioned the boundaries, which casts serious doubt on the case of the Plaintiff. That the evidence of Scribe/PW.4 is not consistent, at one point he stated that the 1st Defendant informed him about the case and asked him not to come to the Court, at the other point, he says that the Court Staff informed him that he was summoned by the Court and he accordingly attended the Court.

5. Sri P. Rajasekhar, learned counsel submits that the O.S.No.49 of 2007 was filed for specific performance against the 1st to 3rd Defendants, though the 1st and 2nd Defendants are the owners of the suit schedule property, the Plaintiff could not prove the Suit agreement of sale and that he wasready and willingness to perform his obligation under the agreement. Further, the case of the 1st and 2nd Defendants is that they executed three agreements in favour of the 4th to 6th Defendants, but the Trial Court failed to appreciate the same and dismissed the Suits/O.S.Nos.59, 62 & 78 of 2007 and prays to allow the Appeals and to decree the Suits.

6. The learned Counsel fairly submits that they are not disputing the agreement of sale/Ex.P.1, but contends that the Plaintiff could not prove that he is ready and willing to perform his part of the contract with the balance sale consideration, but the Trial Court did not appreciate the evidence in this regard and prays to allow the Appeals and dismiss the Suit filed by the Plaintiff in O.S.No.49 of 2007.

7. The learned Counsel fairly submits that in the other three Suits, two stamps contained the agreements of Sale in two Suits were ante dated i.e prior to issuing of the stamps by the Registrar. These Appellants are supporting the three agreements.

8. The learned counsel placed reliance on *i) Veeramareddy Nagabhushana Rao Vs. Jyothula Venkateswara Rao, ii) Mayawanti Vs. Kaushalya Devi, iii) Pydi Ramana Vs. Davarasetty Manmadha Rao, iv) P. Panneerselvan Vs.. A. Baylis, v) Penumatsa Narasimha Raju Vs. Valluri Jaya Prakasa Babu, vi) Kota Rama Rao Vs. Kolli Rajeswaramma vii) U.N. KrishnaMurthy (Since Deceased) through Legal Representatives Vs. A.M. Krishnamurthy, viii) B. Rajamani Vs. Mrs. Azhar Sultana and others, ix) U.N. KrishnaMurthy (Since Deceased) through Legal Representatives Vs. A.M. Krishnamurthy, x) Punjab Urban Planning & Development Authority Vs. Shiv Saraswti Iron & Steel Re-Rolling Mills, xi) Pudi Lazarus Vs. Rev. Johnson Edward and others and HIS Holiness Acharya Swami Ganesh Dassji Vs. Sita Ram Thapar*.

9. Sri Siva Prasad Reddy Venati, learned Counsel for the Appellants in A.S.Nos.530, 623, 646 and 656 of 2013 adopted the arguments of Sri P. Rajasekhar and prayed to allow their Appeals duly setting aside the Common Judgment and Decree and sought to decree the Suits in O.S.Nos.59, 62 and 78 of 2007.

10. Sri O. Manohar Reddy, the learned Senior Counsel, assisted by Sri C. Subodh, learned Counsel for the Respondent (who is Plaintiff in O.S.No.49 of 2007 and the 2nd Defendant in O.S.Nos.59, 62 and 78 of 2007), contends that the Counsel for the 2nd, 4th and 5th Appellants in A.S.No.527 of 2013, did not dispute the agreement/Ex.A1, which is also adopted by the other Appellants, but only disputing the Plaintiff's readiness and willingness with balance sale consideration to perform his part under the agreement. He submits that the 1st and 2nd Defendant are husband and wife and the 3rd Defendant is their daughter, they all agreed to sell the plaint schedule property of Ac.31.28 ¼ cents, per acre @ Rs.2,10,000/-, the Plaintiff paid Rs.2,00,000/- to them on 20.01.2007 as advance and they jointly executed an Agreement of Sale on the same day i.e on 20.01.2007/Ex.A.1 in his favour and agreed to

receive balance sale consideration on or before 15.04.2007, duly measuring the property and execute a registered sale deed. The properties are in a village and that the Defendants are villagers. The Plaintiff is also from the same village, there is no dispute in identity of the property either in the pleadings or throughout the trial though the boundaries are not mentioned in the Agreement of Sale and paper publication, it is not of significance. Thus the contention that non-mentioning of boundaries in the plaint is insignificant in the circumstances of the case. The Plaintiff also filed copies of the bank statements to show the balance sale consideration, the Plaintiff could prove the Agreement and that he has been ready and willing to perform his part under the Agreement with the balance consideration, the Trial Court rightly appreciated the oral and documentary evidence and rightly decreed the Suit, whereas the 1st and 2nd Defendants fabricated the Agreements of Sale in favour of 4th to 6th Defendants after filing the Suit only to evade his Agreement/Ex.A1. The Trial Court rightly recorded the collusion between all the Defendants including the Agreement of sale/Ex's.B.1, B.15 & B.20, two of them are shown executed much prior to their issuance by the Registrar's Office, which clearly shows the collusion and fabrication of the agreements, prayed to dismiss the Appeals.

11. The learned Senior Counsel also contends that this Court order is violated and the Defendants have colluded and alienated the suit schedule property and sought to take action as per law and that he will file a memo with the registered sale deeds, for which the learned Counsel for the Appellant No.2, 4 and 5 fairly submitted that the property is alienated.

12. The learned counsel placed reliance on *C.S. Venkatesh Vs. A.S.C. Murthy (Dead) By Legal Representatives and Others and ii) Thangam and Another Vs. Navamani Ammal.*

13. Initially, A.S.No.527 of 2007 was filed by the 1st to 3rd Appellants/1st to 3rd Defendants by engaging a Counsel, during pendency of the Appeal, the

1st Appellant died, an application was filed and allowed impleading the 4th and 5th Appellants and the present counsel filed the Vakalat.

II. BRIEF PLEADINGS:

14. O.S.No.49 of 2007 was filed by P. Gopal Reddy/Plaintiff who is one of the Respondents in A.S.No.527 of 2013 & A.S.No.530 of 2013. O.S.No.62 of 2007 filed by Mekala Siva Prathap Reddy who is the Appellant in A.S.No.623 of 2013. O.S.No.78 of 2007 was filed by Mekala Venkatasubba Reddy who is the Appellant in A.S.No.646 of 2013. O.S.No.59 of 2007 was filed by Mekala Chandrasekhar Reddy, who is the Appellant in A.S.No.656 of 2013.

i) Plaint in O.S.No.49 of 2007

15. The brief case of the Plaintiff is that 1st to 3rd Defendants (Couple and daughter) are the owners of the suit schedule property/Ac.31.28 ¼ cents and they finally offered to sell the property for Rs.2,10,000/- per acre and he agreed and paid Rs.2,00,000/- as an advance on 20.01.2007 and the 1st to 3rd Defendants executed the Agreement of Sale in his favour agreeing to execute the registered Sale Deed by receiving the balance sale consideration on or before 15.04.2007 by duly measuring the property. That the Plaintiff has been always ready and willing to pay the balance sale consideration of Rs.63,68,525/-, he also filed bank statements. The Plaintiff has been asking them to receive the balance sale consideration and execute the registered sale deed, but they are postponing the same with dishonest intention and failed to perform their part. That the Plaintiff issued a paper publication on 27.01.2007 in Eenadu Daily News Paper as abundant caution. As they were postponing to receive the balance sale consideration and to execute the registered sale deed, so he issued a legal notice to them on 02.04.2007, calling them to receive the balance sale consideration and execute the registered sale deed within 7 days from the date of receipt of the notice, they/1st to 3rd Defendants received the notice but they did not perform their part of contract but the 3rd Defendant issued reply notice stating that she is not the owner of the property and she did

not execute the Agreement of Sale. Hence, the suit is filed for specific performance.

ii) Written Statement dated 07.09.2007

16. The 1st Defendant initially filed the written statement dated 07.09.2007, and the 1st Defendant admitted that 1st and 2nd Defendant are the absolute owners of the property, but denied that 3rd Defendant is owner of the property, also denied offering the property and agreeing for Rs.2,10,000/- per acre, the Plaintiff paying Rs.2,00,000/- as an advance on 20.01.2007 and they jointly executing the Agreement of Sale and its conditions including to register the property on or before 15.04.2007, and also that the Plaintiff is always ready and willing to pay the balance sale consideration of Rs.63,68,525/- and they denied postponing the registration. The 1st Defendant admitted issuing of legal notice and reply by the 3rd Defendant. The 1st Defendant specifically pleaded that at first instance, the Plaintiff approached the 1st and 2nd Defendants and expressed willingness to purchase the property but the negotiations failed regarding the fixation of sale price and other aspects. The Plaintiff is unable to satisfy the 1st and 2nd Defendants to show the capacity to pay such huge amount of the sale consideration, and they refused to sell. The Plaintiff proclaimed that, if the property is not sold to him, he will make false litigation and involve the property in litigation and that nobody will come forward to purchase the property and he threatened. The Plaintiff fabricated the Agreement of Sale and filed the Suit. That the Plaintiff has no capacity to pay such huge amount and that the Agreement of Sale is not binding on the Defendants and there is no need to execute any registered sale deed in favour of the Plaintiff and that the Suit is vexatious and prayed to dismiss the suit with costs.

iii) Adoption Memo by the 2nd and 3rd Defendants

17. A memo is filed by the 2nd and 3rd Defendants adopting the written statement filed by the 1st Defendant.

iv) Additional Written Statement by 1st Defendant dated 26.04.2010

18. The 1st Defendant filed this additional written statement, pleading that on 25.11.2006, he sold an extent of Ac.7.67 Cents under Agreement of Sale in favour of one Mekala Chandra Sekhar Reddy for consideration of Rs.11,50,500/- and received an advance of Rs.50,000/- from him. The said Mekala Chandra Sekhar Reddy failed to pay the balance sale consideration and failed to get the register sale deed, hence he filed the Suit O.S.No.59 of 2007 and the same is pending. That on 06.01.2007 he also sold an extent of Ac.13.55 cents to one Mekala Venkata Subba Reddy under Agreement of Sale for consideration of Rs.23,71,250/- and received an advance of Rs.50,000/- from him. The said Mekala Venkata Subba Reddy failed to pay the balance sale consideration and filed the Suit in O.S.No.78 of 2007 and same is pending.

v) Additional Written Statement by 2nd Defendant dated 26.04.2010

19. The 2nd Defendant filed this additional written statement, pleading that on 29.11.2006 she sold part of the plaint schedule property to one Mekala Siva Pratap Reddy under Agreement of Sale Rs.14,14,400/- and received an advance of Rs.50,000/-. The said Mekala Siva Pratap Reddy failed to pay the balance sale consideration, he filed the Suit O.S.No.62 of 2007 and the same is pending.

vi) Written Statement of the 4th Defendant dated 26.04.2010

20. The 4th Defendant filed the written statement, pleading that the 2nd and 3rd Defendants are wife and daughter and they are the absolute owners of the schedule property. Denied the agreement of sale dated 20.01.2007, agreeing to sell the schedule property for Rs.2,10,000/- per acre in favour of

the Plaintiff/Pandipati Gopal Reddy and receiving advance of Rs.2,00,000/- from him and executing the Agreement of Sale and its terms and conditions, with stipulation on or before 15.04.2007 to receive the balance sale consideration and register the property. Also denied that the Plaintiff is ready and willing to pay the balance sale consideration of Rs.63,68,525/-, the Plaintiff requesting to 1st to 3rd Defendants to receive the balance sale consideration and execute the registered sale deed, but they dishonestly postponing, filing of Copies of the S.B accounts pass books in the name of his family members issued by the Indian Bank. That this Defendant is not aware of the of paper publication in Eenadu Daily News paper dated 27.01.2007. Denied that the Plaintiff got issuing a legal notice to the 1st to 3rd Defendants on 02.07.2007, calling the 1st to 3rd Defendants to receive the balance sale consideration and execute registered sale deed, serving of the legal notice on the 1st to 3rd Defendants and issuing a reply notice by the 3rd Defendant.

21. The 4th Defendant specifically pleaded that on 25.11.2006, he approached 1st Defendant to purchase the part of the plaint schedule property, claiming that 1st Defendant is absolute owner and agreed to sell. After bargain, it was settled and 1st Defendant sold the property for Rs.11,50,500/, as the property valued @ Rs.1,50,000/- per acre, aggregating to Rs.11,50,500/- and 1st Defendant received earnest money of Rs.50,000/-, agreed to pay the balance sale consideration within 3 months i.e., by 24.02.2007, he has to execute registered sale deed, but the 1st Defendant did not come forward to receive the balance sale consideration of Rs.11,00,500/-and execute the registered sale deed. That the 4th Defendant is ready and willing to pay the balance sale consideration but the 1st Defendant did not come forward to perform his part of contract on some pretext or the others, hence he issued legal notice on 17.02.2007 to receive the balance sale consideration of Rs.11,00,500/- and to execute a registered sale deed, he received the notice but did not perform his part of contract, that he came to know that 1st Defendant is going to sell the property to third parties, he gave paper publication in

Prajashakthi Daily News Paper on 13.04.2007 stating that the 1st Defendant executed Agreement of Sale in his favour.

22. That his father/Mekala Venkata Subba Reddy purchased an extent of Ac.13.55 cents from the 1st Defendant under Agreement of Sale dated 06.01.2007 and his brother/Mekala Siva Pratap Reddy purchased an extent of Ac.8.85 ¼ cents from 2nd Defendant under Agreement of Sale dated 29.11.2006, but they did not come forward to execute registered sale deeds by receiving the balance sale consideration, hence he filed O.S.No.59 of 2007, his father filed O.S.No.78/2007 and his brother filed O.S.No.62/2007 for specific performance. That even prior to execution of the alleged agreement of sale in this suit dated 20.01.2007 by the 1st to 3rd Defendants in favour of the Plaintiff, the 1st and 2nd Defendant already sold the property to the 4th Defendant to 6th Defendant under the three agreements and that the agreement dated 20.01.2007 is fabricated.

vii) Written Statement of the 5th Defendant dated 26.04.2010

23. The 5th Defendant also filed his written statement on the same lines of the 4th Defendant as stated supra, denying including the agreement of the Plaintiff dated 20.01.2007 and the Plaintiff is always ready and willing to perform his part under the agreement with the balance sale consideration. Pleading that he and his 2 sons purchased the schedule property from the 1st and 2nd Defendants on 06.01.2007, 25.11.2006, 29.11.2006 under three agreements, issuing of paper publication and legal notice, they are always ready and willing to perform their part under the agreements with balance sale consideration but the 1st and 2nd Defendants did not come forward to receive the balance sale consideration and execute the registered sale deeds and they filed three suits for specific performance, on the same lines as pleaded by the 4th Defendant as stated *supra*.

viii) Written Statement of the 6th Defendant dated 26.04.2010

24. The 6th Defendant also filed his written statement on the same lines of the 4th Defendant as stated supra, denying the agreement of the Plaintiff dated 20.01.2007 and the Plaintiff is always ready and willing to perform his part under the agreement with the balance sale consideration. Pleading that he, his father and his brother purchased the schedule property from the 1st and 2nd Defendants on 06.01.2007, 25.11.2006, 29.11.2006 under three agreements, issuing of paper publication and legal notice, they are always ready and willing to perform their part under the agreements with balance sale consideration but the 1st and 2nd Defendants did not come forward to receive the balance sale consideration and execute the registered sale deeds and they filed three suits for specific performance, on the same lines as pleaded by the 4th Defendant as stated supra.

ix) Plaint and Written Statements in O.S.No.59 of 2007 (filed by the 4th Defendant in OS.49 of 2007)

25. The Plaintiff initially filed the suit against Thota Gopal for specific performance of the agreement of sale dated 25.11.2006, subsequently on 19.04.2010 added Pandipati Gopal Reddy as the 2nd Defendant (who was the Plaintiff in O.S.No.49 of 2007).

x) Plaint and Written Statements in O.S.No.78 of 2007 (filed by the 5thDefendant in OS.49 of 2007)

26. The Plaintiff initially filed the suit against Thota Gopal for specific performance of the agreement of sale dated 06.01.2007, subsequently on 17.06.2010 added Pandipati Gopal Reddy as 2nd Defendant (who was the Plaintiff in O.S.No.49 of 2007).

xi) Plaint and Written Statements in O.S.No.62 of 2007 (filed by the 6th Defendant in OS.49 of 2007)

27. The Plaintiff initially filed the suit against Thota Lalithamma for specific performance of the agreement of sale dated 29.11.2006, subsequently on 17.06.2010 added Pandipati Gopal Reddy as the 2nd Defendant (who was the Plaintiff in O.S.No.49 of 2007).

III. ISSUES:

28. The record reveals that as the case is not settled, the Trial Court has initially framed the following issues;

i. Whether the agreement of sale, dated 20.1.2007 and payment of Rs.2,00,000/- is true?
ii. Whether the plaintiff is ready and willing to perform the contract?
iii. Whether the plaintiff is entitled for specific performance of the contract?
iv. To what relief?

29. It appears, after adding of the 4th to 6th Defendants, filing of their written statements, the Trial Court framed these Additional issues on 17.6.2010 :-

i. Whether the agreement of sale, dated 25.11.2006 alleged to have been executed by the 1st Defendant in favour of 4th Defendant is true, valid and binding on the plaintiff?
ii. Whether the agreement of sale, dated 06.1.2007 alleged to have been executed by the 1st Defendant in favour of 5th Defendant is true, valid and binding on the plaintiff?
iii. Whether the agreement of sale, dated 29.11.2006 alleged to have been executed by the 1st Defendant in favour of 6th Defendant is true, valid and binding on the plaintiff?
iv. To what relief?

On 17.6.2010, Additional Issue No.3, was recasted as follows :

Whether the agreement of sale, dated 29.11.2006 alleged to have been executed by the 2nd Defendant in favour of 6th Defendant is true, valid and binding on the plaintiff ?

30. The material on record reveals that the Trial Court recorded the evidence of PWs.1 to 5 i.e., PW-1/Pandipati Gopal Reddy, PW-2/Mettu Surendra Reddy, PW-3/P.Siva Kumar Reddy, PW-4/Gulam G.K.Nazeer and PW-5/Gattupalli Srinivasa Murali and exhibited A-1 to A-8 on behalf of the Plaintiff and also exhibited X-1, X-2 and Z-1 to Z-5 through PW.5. Recorded the evidence of DWs.1 to 7 i.e., DW-1/Thota Gopal,DW-2/Mekala Venkatasubba Reddy, DW-3/Mekala Sivaprathap Reddy, DW-4/Mekala Chandrasekhar Reddy, DW-5/Challa Srinivaslu, DW-6/Giddaluru Narayana & DW-7/Pasupuleti Vinaya and exhibited B-1 to B-24 on behalf of the Defendants. Ex.X-1 is the certificate given by the Sub Treasury Officer, Kovur, Ex.X-2 is the relevant entry at page No.21, dated 16-12-2006 relating to the stamp issue register of Sub Registrar's Office exhibited through PW-5. Exs.Z-1 to Z-5 are exhibited in the evidence of DW-7 relating to sale of the stamps by the stamp vendor M. Balaji Singh to the Defendants 4, 6 and 5 respectively in respect of the agreements of sales said to have been executed in favour of the Defendants 4 to 6 who are the plaintiffs in O.S.59, 62 and 78 of 2007.

IV. DOCUMENTS EXHIBITED BY THE PLAINTIFF:

31. Ex.A-1/ Sale agreement dt:20-01-2007, Ex.A-2/ Relevant portion of Eenadu daily news paper dt:27-1-07, Ex.A-3/ Office copy of lawyer notice dt:2-4-07 with postal receipts, Ex.A-4/ Postal acknowledgment of 1st Defendant, Ex.A-5/ Postal acknowledgment of 2nd Defendant, Ex.A-6/ Postal acknowledgment of 3rd Defendant, Ex.A-7/ Reply notice dt:9-04-2007, Ex.A-8/ Postal acknowledgment dt:6-6-07. Documents exhibited through PW-5 :Ex.X-1/ In the letter Dt:7-4-2012 issued by STO Office, Kovur, Ex.X-2/ In the relevant entry at page 21 dt:16-12-06 relating to M.Balaji Singh.

V. DOCUMENTS EXHIBITED BY THE DEFENDANTS:

32. Ex.B-1/ Un-registered agreement of sale dated 6-1-2007, Ex.B-2/ Office copy of lawyer notice dated 17-2-2007, Ex.B-3/ Postal receipt dated 17-2-2007, Ex.B-4/ Served acknowledgment card on the 1st Defendant, Ex.B-5/ News item published in the Praja Sakthi daily news paper dt:30-4-2007, Ex.B-6/ Relevant entry in pattadar pass book of Chavate Bhimesvaran, Ex.B-7/ Pattadar pass book of Chavate Bhimesvaran, Ex.B-8/ Relevant entry in pattadar pass book, Ex.B-9/ Memo filed by Defendant in OS.62/07 to refer the matter to Lok-Adalath, Ex.B-10/ Adangal copy relating to Survey No:279-1 issued by Tahasildar Athmakur, Padakandla, Ex.B-11/ Adangal copy issued by Tahasildar A.S.Pet dt:21-1-12 in Survey no:21-2-2 of Kondameda, Ex.B-12/ Adangal Copy in survey no:20-3-1 of Kondameda Kondur Village, Ex.B-13/ Adangal copy http://S.No:21-1-2 of Kondameda Konduru (V), Ex.B-14/ Adangal copy issued by Tahasildar Atmakur in S.No:240-1 of Nuvvurpadu Village, Ex.B-15/ Agreement of sale dated 29-11-2006 in OS.62/07, Ex.B-16/ Office copy of notice dated:17-2-2007, Ex.B-17/ Postal receipt, Ex.B-18/ Served acknowledgment, Ex.B-19/ Publication in Prajasakthi, Ex.B-20/ Agreement of sale dt:25-11-2006, Ex.B-21/ Office copy of notice dt:17-2-2007, Ex.B-22/ Postal receipt of Ex.B.21, Ex.B-23/ Acknowledgment Card & Ex.B-24/ Paper Publication.

33. Documents exhibited through LW-7 : Ex.Z-1/Stamp issuance register of M.Balaji Singh stamps vendor of Kovur for the year 2006, Ex.Z-2/ Stamp issuance register of M.Balaji Singh relating to the Kovur Sub-registrar's office for the year 2007, Ex.Z-3/ Relevant entry dt:25-11-06 in Ex.Z-1, stamp issuance register relating to selling of hundred rupee stamp in the stamp vendor Balaji Singh, Ex.Z-4/ Relevant entry dt:29-11-06 in Ex.Z-1 stamp issuance register evidencing the selling of the hundred rupee stamp number B714594, Ex.Z-5/ Relevant entry dt:6-1-07 in Ex.Z-2 stamp issuance register evidencing the selling of hundred rupee NJ stamp bearing C625169 to Mekala Subbareddy (D-6).

VI. Issues and findings of the Trial Court in the Common Judgment

34. The Trial Court answered Issues Nos.1 to 4 in favour of the Plaintiff in O.S.No.49 of 2007, but all other issues pertaining to O.S.No's.59, 62 and 78 of 2007 are answered against the Plaintiffs in their respective suits and 4th to 6th Defendants in OS.49 of 2007.

35. The Trial Court held that the Plaintiff in O.S.No.49 of 2007 could prove the agreement of sale/Ex.A1 and also that the Plaintiff has been always ready and willing to perform his part of contract with balance sale consideration, decreed the suit for specific performance with costs.

36. The Trial Court held that the 1st to 6th Defendants in collusion with attestors and scribe fabricated the suit agreements with ante-dates and dismissed the suits in O.S.No's.59, 62 and 78 of 2007 with costs, which are filed for specific performance.

VII. Issues framed by this Court:

37. Thus, this Court, in view of the submissions, inclined to frame the following issues for consideration;

i) Whether the Plaintiff in O.S.No.49 of 2007 could prove the agreement of sale/Ex.A.1, if so whether he could prove that he has been always ready and willing to perform his part under the agreement with balance sale consideration? If so to what relief ?

ii) If not, whether the Plaintiffs in O.S.No's.59, 62 and 78 of 2007 could prove the agreements of sale/Ex.B1, B.15 and B.20 for the same schedule property, if so, whether they could prove that they have been always ready and willing to perform their part under the agreements with balance sale consideration? If so, to what relief ?

iii) If not, whether these agreements/Ex.B.1, B.15 and B.20 are fabricated by Plaintiffs in OS.59, 62 and 78 of 2007 in collusion with parties, attestors and scribe of the agreements to defraud the Plaintiff in OS.49 of 2007 ? if so, what is the legal consequence ?

iv) Whether the Defendants sold the schedule property despite undertaking dated 29.04.2022 before this Court, if so, what is the legal consequence ?

VIII. ANALYSIS

38. The material on record reveals that the Plaintiff was resident of Atmakur, the 1st to 6th Defendants are residents of Atmakur, the 3rd Defendant is the daughter of the 1st and 2nd Defendants and the 5th Defendant is the father of the 4th and 6th Defendants, which are not in dispute.

i) On the agreement/Ex.A1 dated 02.04.2007

39. The Trial Court relied on the evidence of PW.1 and PW.2 & 3/Attestors, and PW.4/Scribe, also the agreement/Ex.A1, Paper Publication/Ex.A2, the legal notice/Ex.A.3 and reply notice/Ex.A.7, recorded a finding in favour of the Plaintiff that he could prove the agreement/Ex.A1.

40. The Plaintiff and the Defendants are from the same village. Further, DW.1 in his cross examination admitted that the plaintiff belongs to his village and he did not have any disputes with PW.2 to 4.

41. The Court perused the agreement/Ex.A.1. It contains name of the Plaintiff, 1st to 3rd Defendant signatures in first and second pages, also three attestors signatures and scribe's signature. It contains survey numbers for Ac.31.28 ¼ cents in Peramana village, Atmakur Mandal, mentioning that they have agreed rate @ Rs.2,10,000/- per acre, that the Defendants received advance of Rs.2,00,000/- and the plaintiff has to pay the balance sale consideration and got for register sale deed on or before 15.04.2007.

42. The Court also perused their evidence, which is consistent on the execution of the agreement/Ex.A1, though the Defendants cross examined them at length, they could not elicit any material to discredit their version on the execution of the agreement. Further, the 1st to 3rd Defendants did not specifically deny their signatures on the Agreement/Ex.A.1, so also they did not

prefer to send their signatures on the agreement/Ex.A1 to hand writing expert for examination.

43. The contention of the Appellants is that the evidence of Scribe/PW.4 is not consistent, at one point he stated that the 1st Defendant informed him about the case and asked him not to come to the Court, at another point, he says that the Court Staff informed him that he was summoned by the Court and he accordingly attended before the Court. This is not inconsistent, these two events might have happened. Further, even if this evidence is termed as inconsistent, still the case of the Plaintiff is not effected, as the Appellants admitted about execution of the agreement/Ex.A1. Thus, this evidence is no away effecting the case of the Plaintiff.

44. The learned Counsel for the 2nd, 4th and 5th Appellants in the arguments fairly conceded that they are not disputing the execution of the agreement, but they are disputing on the ready and willingness and other aspects. This argument is also adopted by the other Appellants. Thus, this Court need not dwell more on the execution of the agreement/Ex.A1 in these circumstances. Thus, the Court inclined to hold that the Plaintiff could prove the agreement/Ex.A1.

ii) <u>Non-mentioning of boundaries in the agreement/Ex.A1</u>

45. The case of the 2, 4 and 5th Appellants is that in the agreement, there is no mentioning of the boundaries but contains only survey numbers, also no boundaries were mentioned in the paper publication, but strangely in the plaint the Plaintiff has mentioned the boundaries, which casts serious doubt on the case of the Plaintiff.

46. As per the Plaintiff, the properties are in Atmakur village, all the Defendants are villagers, the Plaintiff is also from the same village, there is no dispute in identity of the schedule property either in the pleadings or throughout the trial or before this Court, though the boundaries are not mentioned in the

Agreement of Sale and paper publication, this is insignificant in the circumstances of the case.

47. The law is well settled that even oral agreement is also enforceable (see ***Aloka Bose v. Parmatma Devi & Others)***[1]. The Court perused the agreement/Ex.A.1. It contains signatures of the 1st to 3rd Defendants. It contains survey numbers for Ac.31.28 ¼ cents in Peramana village, Atmakur Mandal. The Paper publication also contains survey numbers and other particulars, village name.

48. The Defendants did not plead even either remotely disputing the identification of the schedule property, what they disputed is non-mentioning of boundaries in the agreement/Ex.A1, when there is no dispute on identification of the property, then non-mentioning of boundaries will not effect the case of the Plaintiff in any manner in these circumstances.

49. Further, the 1st Defendant in his evidence affidavit stated that he and his wife separately sold the schedule property in favour of 4th to 5th Defendants under three agreements.

50. Further, the 1st, 2nd, 4th to 6th Defendants in their written statements and evidence, specifically stated that the 1st and 2nd Defendants sold, the 3rd to 4th Defendants purchased the parts of the schedule property on different dates under three agreements. Thus, these circumstances are also supporting the case of the Plaintiff that the survey numbers mentioned in the Agreement/Ex.A1 and in the Plaint tally with the schedule property and the same is clearly identifiable by all the parties before the Trial Court and even before this Court. The Trial Court rightly rejected this contention. Thus, this contention of the Defendants is liable to be rejected in these circumstances.

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1 (2009) 2 SCC 582

iii) <u>On non-measuring the land</u>

51. The case of the 2nd, 4th and 5th Appellants is that there is specific mentioning in the agreement/Ex.A1 that the rate is fixed at Rs.2,10,000/- per acre, the land to be measured and the balance is to be arrived as to proceed with the agreement, whereas the Plaintiff disputed this contention on the ground that though there is a clause for measurement, even in the absence of the measurements, the agreement is enforceable.

52. The Court pursued the Agreement/Ex.A1, admittedly there is mentioning of rate @ Rs.2,10,000/- per acre, the land is to be measured, the balance is to be paid. But in the next para, there is schedule, where all the survey numbers, village name and Mandal, total extent of 31.28 ¼ Acres and the motors etc mentioned. The Plaintiff also issued a Paper Publication, a Legal Notice and also mentioned in the Plaint on specific extent of 31.28 ¼ as mentioned in the schedule of the Agreement/Ex.A1, thus the measurement of the land is not mandatory to enforce the agreement in view of specific mentioning of extent in the schedule of the agreement, paper publication and legal notice. Further, the schedule of the agreement is in the conclusion para of the agreement/Ex.A1.

53. The 2nd, 4th and 5th Appellants relied on ***Mayawanti Vs. Kaushalya Devi*** [2]***,*** contending that there was no valid and enforceable contract and no consensus *ad idem*. Wherein the **Hon'ble Supreme Court of India**, dealing with Section 9 of Specific Relief Act, held that Ex.PW-11/A, there are various aspects of uncertainty, render the terms specifically unenforceable. But in this case the Defendants could not show any uncertainty in the agreement/Ex.A.1 to apply the Judgment.

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[2] (1990) 3 SCC 1

54. Also relied on ***Pydi Ramana Vs. Davarasetty Manmadha Rao*** [3], contending that when there is no demand for survey and measure the schedule land, the case for specific performance is not maintainable, wherein the **Hon'ble Supreme Court of India**, while examining Section 16 (c) of The Specific Relief Act, 1963, observed that, where the date is fixed for execution was for one year, but the plaintiff has not taken steps for three years, the suit is filed at the fag end of expiration of limitation and also held that recital in the agreement to survey the land, as such the total consideration was agreed to be settled after survey. But in this case, the facts are distinguishable, further, the Plaintiff sought for specific performance of agreement, wherein it is specifically mentioned the extent as Ac.31.28 ¼ cents, thus, the Defendants cannot avail the Judgments in the circumstances of the case.

55. Also relied on ***P. Panneerselvan Vs. A. Baylis*** [4], contending that agreement cannot be enforced for want of material particulars, wherein the Hon'ble Division Bench of Madras High Court, while dealing with the rate per cent, fixed earlier in draft agreement was struck off and words 'rate mutually agreed upon individual integrity' were substituted, no consensus between the parties on rate per cent and extent of land agreed to be sold. But in this case as stated supra, rate and extent is specifically agreed and mentioned in the schedule of the agreement, thus there is no ambiguity on the rate and extent, thus the Defendants cannot avail the Judgment in these circumstances.

56. Also relied in ***Penumatsa Narasimha Raju Vs. Valluri Jaya Prakasa Babu*** [5], contending that the plaintiff must approach with clean hands, wherein, the erstwhile High Court of A.P, held a party shall come to Court with clean hands, the party who make false allegations and does not come with

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[3] AIR 2024 SC 3242 & (2024) 7 SCC 515

[4] AIR 2006 Mad 242 & (2006) SCC OnLine Mad 406

[5] (2006) SCC OnLine AP 34

clean hands is not entitled to equitable relief. But in this case, the Defendants could not even specifically plead or establish what are the false contents taken by the plaintiff to show that he did not come with clean hands. Thus, the Defendants cannot avail this Judgment.

57. Also relied on ***Kota Rama Rao Vs. Kolli Rajeswaramma*** [6], contending that no responsibility fixed under the agreement for fixation of boundaries. The erstwhile High Court of A.P, while dealing with the agreement, nowhere mentioned it is the responsibility of the Defendants after land demarcated, to inform the plaintiff about the fixation of boundaries and on such fixation, the plaintiff has to pay the amount, the plaintiff did not reply to the notice and suppressed the receipt of Ex.B.1 notice in the Suit. That Ex.A.1/agreement indicates that the plaintiff took a plea that the Defendants fail to get the land measured is to cover up his laches, but in this case no such facts are there including suppression, the facts are distinguishable, hence the Defendants cannot avail the Judgment.

58. *Per contra*, the Plaintiff placed reliance on ***C.S. Venkatesh Vs. A.S.C. Murthy (Dead) By Legal Representatives and Others*** [7], contending that there is no para-wise specific reply by the Defendants pleading that in the absence of measurement, the extent cannot be ascertained. However, in the present case, the agreement/Ex.A1 specifically contains specific extent of Ac.31.28 ¼ cents as stated supra. Further, argued that there is no denial of the bank statements with balance amount in the Bank. A general or evasive denial is not to be treated as sufficient, but the denial must be made in a separate line or a paragraph. The general rule is that the facts admitted need not be proved. In this case also, the learned counsel for the 2nd, 4th and 5th Appellants fairly agreed on the agreement, but disputed the agreement on the

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6 (2005) SCC OnLine AP 289

7 (2020) 3 SCC 280

ground that plaintiff has to prove his case including boundaries, his readiness and willingness.

59. The Court, in view of the pleadings, evidence and the law as stated supra, is inclined to hold that even without measurement of the land, the Plaintiff could enforce the agreement/Ex.A1 as in the agreement there is a specific extent of 31.29 ¼ as mentioned in the schedule of the Agreement/Ex.A1, which is in the conclusion para of the agreement, thus, the measurement of the land is not mandatory to enforce the agreement in view of specific mentioning of the extent and rate per acre in the schedule of the agreement. Further, the Plaintiff also issued the Paper Publication and Legal Notice with specific extent of land and the Plaintiff also mentioned the specific extent of the land in the Plaint in terms of the Agreement. Thus, this contention of the Appellants/Defendants is without merits in these circumstances.

iv. <u>On readiness and willingness of the Plaintiff</u>

60. As per the Plaintiff, he has been always ready and willing to perform his part of under the agreement/Ex.A1 with the balance sale consideration of Rs.63,68,525/-, he also specifically pleaded and filed copies of his and his family members Bank Statements and Pass Books/Document No.3 to 9 along with the Plaint to show his case, which are not even disputed by the Defendants. The Plaintiff further submits that as the Defendants did not dispute these Bank Statements, deemed as admitted, thus, he did not summon the Bank Manager.

61. Whereas the Defendants contend that the Plaintiff only filed copies of Bank Statements with the Plaint, he did not exhibit the bank statements in his evidence and did not summon the Bank Manager to prove that he is ready and willing to perform his part under the agreement with balance sale consideration.

62. The Trial Court relied on the evidence of PW.1 and PW.2 & 3/Attestors, and PW.4/Scribe, also the agreement/Ex.A1, Paper Publication/Ex.A.2 and the legal notice/Ex.A.3 recorded a finding in favour of the Plaintiff that he could prove that he has been always ready and willing to perform his part under the agreement/Ex.A.1 with balance sale consideration.

63. As stated supra, the Plaintiff and the 1st Defendant know each other, they are also from the same village. The 1st Defendant specifically pleaded in his written statement that at first instance, that the Plaintiff approached him and his wife/1st and 2nd Defendants, he has expressed his willingness to purchase the property but the negotiations failed regarding the fixation of sale price and other aspects. Also pleaded that the Plaintiff was unable to satisfy them to show his capacity to pay such huge amount of the sale consideration and they refused to sell.

64. This version of the 1st and 2nd Defendants show that there were negotiations to purchase the schedule property, but the later version of 1st and 2nd Defendants is that the negotiations were failed on sale price and other aspects, also that the Plaintiff has no capacity to pay such huge amount of the sale consideration, so they refused to sell. Thus, as they are known to each other, who are from the same locality, generally after knowing the capacity only, the negotiations will start. The execution of the agreement is also admitted as stated supra.

65. The Plaintiff placed reliance on ***C.S. Venkatesh case*** *supra,* contending that there is no para-wise specific reply by the Defendants on the bank statements on balance amount in the Bank Accounts filed along with the Plaint. A general or evasive denial has not to be treated as sufficient. The denial must be made in a separate line or a paragraph. The general rule is that the facts admitted need not be proved. In this case also the learned counsel for the 2, 4 and 5th Appellants fairly agreed on the agreement as stated *supra*

but disputes the Plaintiff's readiness and willingness with balance sale consideration.

66. The 1st to 3rd Defendants did not specifically deny in the Written Statement on the Bank Statements and the balance amount with the Plaintiff by those Bank Statements, except evasive denial.

67. The evidence of PW.1, PW.2 and PW.3/Attestors, PW.5/Scribe is consistent that the Plaintiff has been ready and willing to perform his part under the agreement with balance sale consideration.

68. The Court perused the cross examination of PW.1 to PW.4, where the Defendants put a general suggestion that he/Plaintiff is not ready and willing to perform his part under the agreement with balance sale consideration, which is denied. The Defendants cross examined them at length but could not elicit any material remotely to discredit their version. The Defendants also did not cross examine PW.1 to PW.4 either on the Bank Statements or on his properties or on his resources to discredit his version either on his capacity or not ready and willing to perform his part with the balance sale consideration..

69. The 2nd, 4th and 5th Appellants **relied on *Veeramareddy Nagabhushana Rao Vs. Jyothula Venkateswara Rao*[8]**, wherein, the Hon'ble Coordinate Bench of this Court, observed that the Defendant in the written statement denied the plaint averments agreeing to sell the schedule property and never executed the agreement and the Defendant has failed to prove the suit agreement of sale and same is fabricated and all other defences taken by him such as readiness and willingness, the suit cannot be refused and it is otherwise legal and justified to do so. It relied on *Sheikh Abdual Satta Vs. Union of India*, it was held that specific denial of the plaint averments will not

[8] 2010 SCC OnLine AP 931

be necessary if the plaint averments are adequately dealt within the additional pleadings.

70. The proposition of law is not applicable to the present facts of the case, as the facts are distinguishable, and in the arguments, the execution of the agreement is admitted, there is no specific denial by the Defendants on the balance amount in the bank statements, which are filed along with the Plaint.

71. Also relied on ***U.N. KrishnaMurthy (Since Deceased) through Legal Representatives Vs. A.M. Krishnamurthy*** [9], contending that plaintiff has to prove sufficient funds or in a position to raise the funds in time to discharge the obligation under the contract. Wherein the Hon'ble Supreme Court of India, observed that the plaintiff has to make specific averments in the plaint and to adduce evidence and to show the availability of funds to make payments in terms of the contract. Further, it is observed that the plaintiff's balance sheet did not have sufficient funds to discharge his part of contract, deposit of balance consideration after lapse of seven years would not establish that he is ready to discharge his part of contract and observed that the plaintiff was possible to buy the time to discharge his part of contract.

72. Also relied on ***B. Rajamani Vs. Mrs. Azhar Sultana and others*** [10], contending that mere mentioning of words readiness and willingness in a mechanical manner would not be sufficient. Wherein, the erstwhile High Court of A.P, held that the discretion is to be exercised in reasonable and inarbitrary manner and further observed that plaintiff choose to issue legal notice on or about completion of three years from the date of agreement. But the Defendant purchased the property under the Ex.B.1 on 31.10.1981 and he is in possession and enjoyment of the property for the last more than 20 years.

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9 (2023) 11 SCC 775

10 AIR 2005 AP 260 & (2004) SCC OnLine AP 1004

73. Also relied on ***U.N. KrishnaMurthy (Since Deceased) through Legal Representatives Vs. A.M. Krishnamurthy*** [11], contending that payment of insignificant advance and readiness and willingness shall be proved by the plaintiff. Wherein, the Hon'ble Supreme Court of India, considered the payment of Rs.10,001 out of sale consideration of Rs.15,10,000/-, depositing the balance sale consideration after seven years. That the Plaintiff's balance sheet showing that he did not have sufficient funds to discharge his part of contract. But the facts are distinguishable. In this case, plaintiff also filed bank statement along with the plaint which are not disputed by the Defendants.

74. Also relied on ***HIS Holiness Acharya Swami Ganesh Dassji Vs. Sita Ram Thapar***[12], contending distinction between readiness and willingness.

75. The proposition of law as cited supra is not applicable to the present facts of the case, as the facts are distinguishable, further, the Plaintiff could prove his case, and further in the arguments, the execution of the agreement is admitted, the Plaintiff's case is consistent on ready and willing to perform his part with balance sale consideration and further there is no specific denial by the Defendants on the balance amount in the bank statements filed along with the Plaint. Further, the Plaintiff immediately issued paper publication and issued the legal notice and filed the suit. All these took place within months from the date of the agreement. So, the facts are entirely different in the present case. Thus the Defendants cannot avail the law stated supra in facts and circumstances of the case.

76. Also relied on ***Punjab Urban Planning & Development Authority Vs. Shiv Saraswti Iron & Steel Re-Rolling Mills***[13], contending that the plaintiff must succeed or fail in his own case, and cannot take advantage of weakness

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11 AIR 2022 SUPREME COURT 3361 & (2023) 11 SCC 775

12 (1996) 4 SCC 526

13 (1998) 4 SCC 539

in the Defendants case to get a decree. The Hon'ble Supreme Court of India while dealing with Section 7 of Specific Relief Act, observed that no effort has been made to explain what according to business terminology was meant by supply of the steel weight to weight.

77. In this case, the Defendants could not demonstrate that the Plaintiff relied on weakness of the case of the Defendants, the facts are distinguishable. Thus, the Defendants cannot avail the said Judgment.

78. Also relied on ***Pudi Lazarus Vs. Rev. Johnson Edward and others*** [14], contending that wrongful repudiation of contract by Defendant and that the plaintiff not absolved from performing conditions precedent. But in this case, no such repudiation taken place, the facts situation is entirely different in the present case.

79. The Respondent relied on ***Thangam and Another Vs. Navamani Ammal*** [15], contending that the words ready and willingness implies that the plaintiff was ready to carry out those parts of contract to their logical end. The Court must take into consideration the conduct of the plaintiff prior and subsequent to filing of the suit along with attending circumstances. From the date of execution of contract till the date of decree, he must prove that he is ready and willing to perform his part of contract.

80. The Court, in view of the pleadings, evidence and the law as stated supra, inclined to hold that the evidence of the Plaintiff as stated supra is consistent, he could prove that he has been always ready and willing to perform his part under the agreement with balance sale consideration. Thus this contention of the Appellants/Defendants is without merit in these circumstances.

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14 AIR 1976 AP 243 & (1975) SCC OnLine AP 139

15 (2024) 4 SCC 247

IX. O.S.Nos.59, 62 and 78 of 2007, suits for Specific Performance

81. The case of the Plaintiffs in these 3 suits (who are the 4th to 6th Defendants in O.S.No.49 of 2007), that they purchased the schedule property by three agreements much prior to the agreement of the Plaintiff in O.S.No.49 of 2007, they are always ready and willing to perform part of their contract with balance sale consideration, they also issued Paper Publication and legal notice to the 1st& 2ndDefendants in the three suits.

82. The case of the 2nd Defendant (who is the Plaintiff in O.S.No.49 of 2007) that after his agreement of the sale/Ex.A.1 with the 1st to 3rd Defendants, the 1st to 6th Defendants, colluded and got fabricated three agreements i.e., the 1st Defendant fabricated two agreements in favour of the 4th and 6th Defendants and the 2nd Defendant fabricated an agreement in favour of the 5th Defendant, as to deprive his rights under the agreement/Ex.A1.

83. The 1st and 2nd Defendants filed Written Statements initially on 07.09.2007 wherein they did not allege even remotely about alienation of the schedule property in favour of the 4th to 6th Defendants.

84. But the 1st and 2nd Defendants in O.S.No.49 of 2007, filed Additional Written Statements dated 26.04.2010, wherein the 1st Defendant, first time stated that on 25.11.2006 he executed an agreement of sale for an extent of Ac.7.67 Cents in favour of one Mekala Chandra Sekhar Reddy for consideration of Rs.11,50,500/- and he received an advance of Rs.50,000/- from him. That the said Mekala Chandra Sekhar Reddy failed to pay the balance sale consideration and failed to get the register sale deed, he also filed the Suit O.S.No.59 of 2007 and the same is pending. The 1st Defendant also pleaded that on 06.01.2007, he executed another agreement of sale for an extent of Ac.13.55 cents in favour of one Mekala Venkata Subba Reddy for consideration of Rs.23,71,250/- and he received an advance of Rs.50,000/- from him. The said Mekala Venkata Subba Reddy failed to pay the balance

sale consideration and he also filed the Suit in O.S.No.78 of 2007 and same is pending.

85. The 2nd Defendant filed the additional written statement on 26.04.2010, wherein the 2ndDefendant, first time pleaded that on 29.11.2006, she executed an agreement of sale for part of the schedule property in favour of one Mekala Siva Pratap Reddy for Rs.14,14,400/- and received an advance of Rs.50,000/-. The said Mekala Siva Pratap Reddy failed to pay the balance sale consideration, he filed the Suit O.S.No.62 of 2007 and the same is pending.

X. <u>On date of execution of the agreements and issuance of Stamps</u>

86. The Plaintiff got examined, PW.5/Gattupalli Srinivasa Murali, the Senior Account, Sub Treasury Office, he deposed that he received summons, he can identify signature of Sub Treasury Officer in Ex.A.1. M. Balaji Singh is the Stamp Vendor of Kovvur. He brought the Issuance Register of 16.12.2006. The Office sold 300 stamps to M. Balaji Singh from C-625001 to C-625300 pertaining to Ex.B.15. Ex.X.2 is the relevant entry in Page No.21 dated 16.12.2006 in the name of M. Balaji Singh. The denomination of stamps issue watch register from pages 1 to 100 is certificated by the Sub Treasury Office, Kovur. The 1st to 3rd defendant cross examined, he deposed that he has not connection with the branch of Sharabu and stamps issuance register. The 4th to 6th Defendants cross examined him and he stated that he brought the petition filed by the Plaintiff under Right to Information Act but he did not bring the indent as it was not summoned.

87. This evidence is very crucial, which is not even denied by the 1st to 6th Defendants. But their version is that agreement is dated 06.01.2007 on stamp paper No.C625169/Ex.B.1, another agreement is dated 29.11.2006 on stamp paper No.C625097/Ex.B.15 and agreement is dated 25.11.2006 on stamp paper No.B714597/Ex.B.20. But as per the evidence of PW.5 and Ex.X.1 and Ex.X.2, Ex.B.15 and B.20 are ante dated 29.11.2006 and

25.11.2006 respectively i.e., prior to issuance of the stamps to the Stamp Vendor on 16.12.2006 in the Registrar's Office.

88. As per Ex.X.1/RTI information, Rs.100 stamps, C625169 & C625097 is issued on 16.12.2006 and B714597 is issued on 14.09.2006, infavour of M Balaji Singh, Stamp Vendor. As per Ex.X.2, relevant entry in the register, on 14.09.2006 stamps from B714001 to B714600, 600 stamps and on 16.12.2006 stamps from C625001 to 625300, 300 stamps, are issued to M Balaji Singh. The Defenants did not seriously dispute issuance of the stamps from the Registrar's Office on the said dates.

89. The Defendants examined DW.7/P. Vinaya Gopal, Senior Assistant, Sub Registrar Office, Nellore District. He was summoned and he was authorized to give evidence on behalf of Sub Registrar. Ex.Z.1 is the stamp issuance of registrar relating to M. Balaji Singh, Stamps Vendor of Kovur for the year 2006. Ex.Z.2 is the stamp issuance register relating to M. Balaji Singh, Stamps Vendor of Kovur for the year 2007. Ex.Z.3 is the relevant entry dated 25.11.2006 in Ex.Z.1, stamp issuance register relating to selling of hundred rupee stamp by the stamp vendor Balaji Singh to Makala Chandra Sekhar Reddy (4th Defendant), contains the signature of 4th Defendant in Ex.Z.3. The said stamp number B 714597 which tallies with Ex.B.20 stamp number. Ex.Z.4 is the relevant entry dated 29.11.2006 in Ex.Z.1 register evidencing the selling of stamp number B 714594 to Mekala Siva Pratap Reddy/5th Defendant. It contains the signature of the 5th defendant. Ex.Z.5 is the relevant entry dated 06.01.2007 in Ex.Z.2, stamp register selling of N.J stamp C 625169 to Mekala Venkata Subba Reddy/6th Defendant. Ex.B.1 number date, name of the purchaser are tallying with Ex.Z.5 entries.

90. In his/DW.7 cross examination, he stated that the above registers are submitted by the M. Balaji Singh, stamp vendor, but Ex.Z.1 and Z.2 Registers did not contain his signature, also no endorsement evidencing receipt of the

registers. Also stated that on Ex.B.1, B.15 & B.20, there is no seal, license number and stamp vendor name.

91. This evidence clearly show that Ex.B.15 and B.20dated 29.11.2006 and 25.11.2006 respectively, they are ante dated i.e., prior to issuing of the stamps in the Registrar's Office on 16.12.2006, which is also fairly conceded by the learned Appellant Nos.2, 4 and 5 in the arguments in A.S.No.527 of 2013, this argument is also adopted by the learned counsel for the Appellants in other 4 appeals.

92. Further, the Defendants summoned DW.7, summoned on the registers said to be submitted by the said M. Balaji Singh, Stamp Vendor, which is self serving and will not have authenticity in view of Ex.X.2 Register, maintained in the Registrar's Office, the same will have authenticity and the same shall be taken into consideration in these circumstanes, further the same is not disputed by the Defendants in their cross examination as stated supra.

93. The 1st Defendant/DW.1 in his cross examination by the Plaintiff, stated that the 4th to 6th Defendants are from his village and they are one family. This showsthat they are all from the same village. Further, DW.1 admitted in his cross examination that the 4th Defendant used to attend the Court along with him and that he and the 4th Defendant/Chandra Sekhar Reddy were present before his/1st Defendant Advocate while preparing his written statement. This shows that the 4th Defendant not only accompanied the 1st Defendant but also he was present before his/DW.1's Advocate while preparation of his/DW.1's written statement. Further DW.1 his evidence stated that the 4th to 6th Defendants also saw the paper publication, which are not even disputed by the 4th to 6th Defendants in their cross examination of DW.1. When the Paper Publication of the Plaintiff was seen by the 4th to 6th Defendants, the question of entering into agreements by them makes the case of the Defendants is highly improbale. Further, this part of evidence of the 1st Defendant show that all the Defendants colluded and conducted the suits.

94. Further, DW.1 in his cross examination stated that the stamp vendor of the three agreements belongs to their village. Also the attestors and scribe of the three agreements in favour of 4th to 6th Defendant are also from same. Further, DW.2 in his cross examination admitted that all the attestors in Ex.B.1 and other two agreements in favour of the 4th and 6th Defendants are the same persons. This circumstance also supporting the case of the Plaintiff.

95. DW.2/Mekala Venakata Subba Reddy/5th defendant filed evidence affidavit, denying the agreement/Ex.A.1 of the plaintiff in O.S.No.49 of 2007, stating that on 06.01.2007, he purchased Ac.13.55 cents under the agreement of sale from Thota Gopal @ Gopalaiah/1st Defendant, for Rs.23,71,250/-, rate per acre at Rs.1,75,000/-, he paid Rs.50,000/- as earnest money, the balance to be paid within three months, he is ready and willing to pay the balance and he also demanded the 1st Defendant, but he did not come forward and he got issued legal notice on 17.02.2007 demanding him to receive the balance of sale consideration and to execute the registered sale deed but he did not respond. He came to know that 1st Defendant was going to sell the property, on 30.04.2007 he issued paper publication in Prajashakthi daily newspaper. His son/Mekala Chandra Sekhar Reddy/4th Defendant also purchased an extent of Ac.7.67 cents from the 1st Defendant by an agreement of sale dated 25.11.2006 and his younger son/Mekala Siva Prathap Reddy/6th Defendant purchased Ac.8.85 ¼ cents from the 2nd Defendant by agreement of sale dated 29.11.2006. They filed three suits for specific performance. That prior to the execution of agreement dated 20.01.2007/Ex.A.1 in favour of the Plaintiff by 1st to 3rd Defendants, the 1st and 2nd Defendants sold the schedule property to him and his two sons. DW.4 and DW.5 also filed evidence affidavits on the same lines.

96. The 1st to 3rd Defendants cross examined DW.2 just with a suggestion, suggesting that he did not have balance sale consideration to go for registration, he denied the same. Thus, this also suggests collusion.

97. The Plaintiff in OS.49 of 2007 cross examined him/DW.2, he stated that Ex.B.1 stamp was purchased on in his name on 06.01.2007 and he purchased the stamps in the name of his son (5th defendant) dated 29.11.2006. He did not know whether the case was registered against Balaji Singh, Stamp Vendor for selling stamps with anti date and the case also covered stamps under their agreements. This version of DW.2 also supporting the case of the Plaintiff.

98. DW.3/6th Defendant, who was doing Engineering Job, in his cross examination stated that he did not know the writings in Ex.B.1, B.15 and agreement/Ex.B20 dated 25.11.2006 are with one pen and executed at the same time. This part of admitting in his cross examination is supporting the case of the Plaintiff in O.S.No.49 of 2007 that on collusion, the three agreements are executed at one point of time.

99. DW.3/6th Defendant in his cross examination admitted that he and 2nd defendant filed compromise memo to refer the matter to Lok Adalath. He denied the suggestion that he, his brother and father colluded with 1st to 3rd defendant and got fabricated Ex.B.1, B.15 and agreement of sale dated 29.11.2006 subsequent to paper publication to defeat the plaintiff rights. This compromise memo also suggests the collusion theory of the Plaintiff in O.S.No.49 of 2007, when all these matters are pending, going for compromise of this suit generally not permissible.

100. DW.3 in his cross examination stated that he was working as Junior Engineer in the Central Public Works Department of Central Government during 2005 to 2008. He is an income tax assessee and he did not show purchase of lands in his I.T returns. Also he did not inform purchase of lands under Ex.B.20 to his employer. Generally, when he was a public servant, he would take permission, the purchase and payment will also reflect in his IT returns. But he did not explain, why he did not show the transaction to his

employeer and in his I.T returns. This part of evidence is also supporting the case of the Plaintiff in OS.49 of 2007 on collusion.

101. DW.3 in his cross examination stated that he was on leave on 25.11.2006 but he cannot produce any evidence to show that he was on leave. This circumstances also suggesting in favour of the Plaintiff on collusion theory.

102. DW.4/4th Defendant in his cross examination stated that he purchased the land at the rate of Rs.1,50,000/- per acre, his brother Siva Prasad Reddy purchased at the rate of Rs.1,60,000/- per acre, his father purchased at the rate of Rs.1,70,000/- per acre. This part of evidence is also supporting the case of the Plaintiff in OS.49 of 2007 as his evidence is that he purchased the land at Rs.2,10,000/- per acre, but under the alleged three agreements, the sale consideration per acre is low, this circumstances is also not explained by the Defendants.

103. DW.5/Challa Sreenivasulu Reddy and DW.6/Giddaluri Narayana Rao, said to be attestor and scribe, they filed evidence affidavit stating that on 25.11.2006, the 1st Defendant executed the agreement in favour of the 4th defendant. That on 29.11.2006, the 2nd defendant sold a part of the schedule property in favour of 6th defendant. That on 06.01.2007, the 1st defendant sold part of the schedule property to the 5th defendant. That during these transactions, they, the Defendants and G Krishna Reddy were present. The evidence on record clearly suggests that these agreements are executed with the same attestors and scribe on the same day with the same pen.

104. Thus, the evidence on record reveals that the agreements under Ex.B15 and B.15 are fabricated with ante-dates of 29.11.2006 and 25.11.2006 respectively by the 1st and 2nd Defendant in the name of 4th and 6th Defendants respectively i.e., much prior to even issuance of the stamps to the Stamp Vendor on 16.12.2006 in the Registrar's Office. The same is also fairly conceded by the learned counsel for Appellants as stated *supra*. Further these three agreements/Ex.B1, B15 and B20 are attested and scribed by the same

persons. The Plaintiff's case is that these three agreements are executed on the same day written with the same pen, as the DW.3/6th Defendant, who was doing a high profile job as stated supra, in his cross examination specifically stated that he did not know the writings in Ex.B.1, B.15, agreement/Ex.B20 dated 25.11.2006 are with one pen and executed at the same point in time. This version also supporting the theory of the Plaintiff.

105. Further, the evidence on record clearly shows as stated supra that the 4th Defendant not only accompanied the 1st Defendant, but also he was present before his/DW.1's Advocate while preparing DW.1's written statement, that the 4th to 6th Defendants also saw the paper publication, these are not even disputed by the 4th to 6th Defendants in their cross examination of DW.1. These show that the Defendants, attestors and scribe are colluded and fabricated the agreements as stated supra.

106. Thus, the suits in OS.Nos.59, 62 and 78 of 2007, suits for Specific Performance are filed with false pleadings and fabricated agreements/Ex.B1, 15 and B20 as stated supra. Thus the suits are liable to be dismissed. The Trial Court, rightly observed all the above circumstances and dismissed the suits.

107. Thus, A.S.Nos.527 of 2013 and A.S.No.623 of 2013 are liable to be dismissed with costs.

108. The Appellants in AS.Nos.530, 646 & 656 of 2013 did not take steps to implead the legal representatives of 1st Defendant/T Gopal, who died during pendency of the Appeal, as impleaded in A.S.No.527 of 2003, thus they are liable to be dismissed as abated in these circumstances.

v. <u>Law on making a false document etc.,</u>

109. Section 464 of the Indian Penal Code, 1860 (Sec.335 of BNS), which provides an illustration, to cover the issue of ante dating of an instrument/document, which is extracted hereunder: -

> "464. Making a false document: A person is said to make a false document or false electronic record…….
>
> (h) *A* sells and conveys an estate to *Z*. *A* afterwards, in order to defraud *Z* of his estate, executes a conveyance of the same estate to *B*, dated six months earlier than the date of the conveyance to *Z*, intending it to be believed that he had conveyed the estate to B before he conveyed it to *Z*. A has committed forgery."

110. Section 467 of IPC, provides imprisonment for life or term which may extend upto 10 years and fine, for forging valuable security (agreement, deed etc), a Will, authority to adopt a son, transfer any valuable security, an acquittance or receipt acknowledging the payment of money or acquittance or receipt for the delivery of any movable property or valuable security etc..

111. The **Hon'ble Constitution Bench of Hon'ble Supreme Court of India** in **Iqbal Singh Marwah & another Vs Meenakshi Marwah** [16], held that if any agreement, sale deed, Will, Valuable Security etc., is out of forgery or forged document, the bar created by Section 195(1)(b)(ii) Cr.P.C would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the Report by Police/Complaint filed by the Respondents.

112. The **Hon'ble Supreme Court of India** in **State of Punjab Vs Raj Singh and Another** [17], while examining powers of Court and Police, under Section 154 and 195 of Criminal Procedure Code, held that statutory power of police to investigate under the Code is not controlled or circumscribed by

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16 (2005) 4 SCC 370

17 (1998) 2 SCC 391

Section 195 Cr.P.C which operates at a stage when a Court intends to take cognizance of offence under section 190(1) Cr.P.C, the Hon'ble Supreme Court accordingly quashed the Order of High Court for quashing F.I.R registered under Sections 419, 420, 467 and 468, I.P.C.

113. Thus, the Plaintiff in O.S.No.49 of 2007 is at liberty to prosecute all the conspirators under Section 467 of IPC for fabricating the agreements/Ex.B.15 and Ex.B.20 with ante dates, by lodging a report with jurisdiction Police.

vi. <u>The law on fling of suits with fabricated agreement and false pleas:</u>

114. The **Hon'ble Supreme Court of India** in **Ramrameshwari Devi & others Vs Nirmala Devi & others**[18], dealing with suits for Partition and Mandatory Injunction & mesne profits, held that the existing system can be drastically changed or improved if the following steps are taken by the Trial Courts while dealing with the civil trials, also held how unscrupulous litigants are harassing the innocent parties, extracted hereunder:

> "This is a classic example which abundantly depicts the picture of how the civil litigation moves in our Courts and how unscrupulous litigants (appellants in this case) can till eternity harass the respondents and their children by abusing the judicial system.
>
> 52. C. Imposition of actual, realistic or proper costs and/or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings."

[18] (2011) 8 SCC 249

115. The **Hon'ble Supreme Court of India** in **T. Arivandandam v. T.V. Satyapal & Anr**[19], while dealing with exercise power under order VII Rule 11 of the CPC, if clever drafting has created the illusion of a cause of action, nip it in the bud, that an activist judge is the answer to irresponsible law suits, that Chapter – XI of IPC (Chapter – XI, of false evidence and offences against public justice, which include Giving or fabricating false evidence. Fraudulent removal, concealment, transfer of property to prevent its seizure as forfeited or in execution. Fraudulent claim to property to prevent its seizure as forfeited or in execution. Fraudulently suffering decree for sum not due. Dishonestly making false claim in Court, and Fraudulently obtaining decree for sum not due etc), is resourceful to meet such men and must be triggered, that a Judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process, which are extracted hereunder: -

> "5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw

[19] (1977) 4 SCC 467

> remarked on the assassination of Mahatma Gandhi: "It is dangerous to be too good."

116. The **Hon'ble three Judge bench** of **Hon'ble Supreme Court of India** in **Re: suo moto proceedings against Mr. R. Karuppan, Advocate** [20]**,** while dealing with an affidavit with false averments in support of Writ Petition. The Hon'ble Court observed the menace of perjury and ordered to file Complaint U/s.193 of IPC, the same is extracted here under: -

> ".....Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be-wrecked if statutory restrictions are hot imposed upon the litigants, who attempt to mislead the court by filing and relying upon the false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth: The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.
>
> In India, law relating to the Offence of perjury is given a statutory definition under Section 191 and Chapter XI of the Indian Penal Code, incorporated to deal with the offences relating to giving false evidence against public justice. The offences incorporated under this Chapter are based upon recognition of the decline of moral values and erosion of sanctity of oath. Unscrupulous litigants are found daily resorting to utter blatant falsehood in the courts which has, to some extent, resulted in polluting the judicial system. It is a fact, though unfortunate, that a general impression is created that most of the witnesses coming in the courts despite taking oath make false statements to suit the interests of the parties

[20](2001) 5 SCC 289

> calling them. Effective and stern action is required to be taken for preventing the evil of perjury, conceitedly let loose by vested interest and professional litigants. The mere existence of the penal provisions to deal with perjury would be a cruel joke with the society unless the courts stop to take an evasive recourse despite proof of the commission of the offence under Chapter XI of the Indian Penal Code. If the system is to survive, effective action is the need of the time..."

117.The **Hon'ble three Judge bench** of **Hon'ble Supreme Court of India** in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India**[21]while dealing with amendments to Code of Civil Procedure, observed on initiation of perjury in appropriate cases, they were extracted here under: -

> "**9. Proceedings for Perjury :**
>
> > If the Trial Judge, while delivering the judgment, is of the view that any of the parties or witnesses have willfully and deliberately uttered blatant falsehoods, he shall consider (at least in some grave cases) whether it is a fit case where prosecution should be initiated for perjury and order prosecution accordingly."

118.Thus, when a Party or witness, who filed a forged or fabricated document and makes a false statement or declaration or gives false evidence or fabricates false evidence, they are liable under Section 193 of IPC (which provides punishment, which may extend to seven years, and shall also be liable to fine) r/w 191 or 192 of IPC as per law depending on the facts of the case.

119.In view of the material and law as stated supra, the Court is opinion, that the 1st, 2nd, 4th to 6th Defendants, DW.5 and DW.6 have fabricated the agreements/Ex.B15 and B20 and submitted false pleas and evidence. Thus, it is expedient in the interest of justice that they are liable for prosecution for committing the Offence for producing the agreements and giving false evidence

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21 (2005) 6 SCC 344

in the Suits and also asserting them in these Appeals. Thus, they are liable for prosecution under Section 193 of IPC. As the 1st Defendant died during the pendency of the Appeal, the prosecution against him is abated.

vii.The Appellants undertaking before this Court

120. The record shows that on 29.04.2022, the learned Senior Counsel for the Appellants has submitted that the person who had executed the mortgage is no more alive. However, it was submitted that till the next date, the appellants shall not encumber the property in any manner.

121. The proceeding sheet dated 10.05.2023 shows that there was undertaking that the property will not be alienated. However, it is admitted in the affidavit that Document Nos.4821 of 2022 and 4800 of 2022 were already executed.

122.The Memo filed by the Plaintiff along with the registered sale deeds show, that the sale deed vide Doc.No.4800 of 2022 dated 12.12.2022 was executed by Thota Lalitha @ Lalithamma and Thota Sravanthi in favour of Paidala Thirupathi Reddy and Paidala Balaram Reddy. Another registered sale deed vide Document No.4821 of 2022 dated 12.12.2022 was executed by Thota Lalitha @ Lalithamma and Thota Sravanthi in favour of Paidala Thirupathi Reddy and Paidala Balaram Reddy.

123. This Memo shows that the 2nd Defendant along with her son and daughter sold the property, which is in violation of the Order. But the proceeding sheet dated 10.05.2023 also shows that the Co-ordinate Bench, observed that the issue of contempt is left out.

124. Still the issue survives in the final adjudication in the Appeal, as the undertaking by the Appellants is that they shall not encumber the property, which is breached as they sold the schedule property during pendency of these Appeals, will be discussed and answered herein after.

viii. <u>Law on fraud on the Court and lis pendency</u>

125.The Hon'ble Supreme Court of India in**CELIR LLP Vs MR. SUMATI PRASAD BAFNA & others**[22], relied on *Sanjay Verma v. Manik Roy*, (2006) 13 SCC 608, while dealing with contempt, observed that the Contempt Petitioner was auction purchaser in SARFAESI proceedings by Union Bank of India, later the Borrower filed Writ and the same is allowed to redeem the mortgage of the secured asset, aggrieved by the Writ order the Auction purchaser filed SLP, the Borrower redeemed the mortgage, created second charge over the secured asset in favour of TATA Motors Financial Solutions Ltd for 15 crore, the Borrower also entered into an Agreement of Assignment of Leasehold Rights with a third-party viz. M/s Greenscape I.T. Park LLP i.e. the Subsequent Transferee herein for the transfer of leasehold rights in the Secured Asset. Held that no party can claim exemption of doctrine of *lis pendens* on the ground of bona fide or good faith. Also relied on *Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited & others*, (2013) 5 SCC 397, transfers not render void, the transfer remains valid subject, of course, to the result of the suit. The *pendente lite* purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court. The Court held in contempt jurisdiction, Court can reverse the transaction or to proceed to pass appropriate directions to the concerned Authorities to ensure the Contemnor or anyone claiming under him does not continue to ensure the advantage. Also held the Assignment Agreement dated 28.08.2023 is hit by *lis pendens* and declared void, directed the Subsequent Transferee to hand over the peaceful physical possession of the Secured Asset along with its original title deeds to the Bank within a period of one week, also directed the Bank shall take assistance of Police in the event of any further hindrance or any obstruction that may be caused by the Borrower or the

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[22] 2024 Supreme SC 1187

Subsequent Transferee while taking over the possession of the property etc. and the Subsequent Transferee is at liberty to recover the amount paid by it towards the Assignment Agreement dated 28.08.2023 and any other amount from the Borrower by availing appropriate legal remedy as may be available under the law, they are extracted hereunder: -

> "180.Thus, although Section 52 of the Act 1882 does not render a transfer pendente lite void yet the court while exercising contempt jurisdiction may be justified to pass directions either for reversal of the transactions in question by declaring the said transactions to be void or proceed to pass appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.
>
> 181.Since in the present case, the Assignment Agreement dated 28.08.2023 whereby the Secured Asset was transferred in favour of Greenscape / the Subsequent Transferee herein was effected by the Borrower on the strength of its right of redemption pursuant to the High Court's impugned order which was ultimately set-aside by this Court in its judgment and order dated 21.09.2023 in the Main Appeals, the same rendered Borrower's right to transfer the Secured Asset non-est and by extension the Assignment Agreement void.
>
> 222.Similarly, a Three-Judge Bench of this Court in the case of State Bank of India & Ors. v. Dr. Vijay Mallya reported in 2022 SCC Online SC 826, in clear terms said that apart from punishing the contemnor for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the Court so that any advantage secured as a result of such contumacious conduct is completely nullified. The approach may require the Court to issue directions either for reversal of the transactions in question by declaring said transactions to be void or passing appropriate directions to the concerned authorities to see that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.
>
> 223. In view of the aforesaid, we pass the following orders and directions:
>
> …….
>
> iv) The Assignment Agreement dated 28.08.2023 is hit by *lis pendens* and hereby declared void. The Subsequent

> Transferee shall hand over the peaceful physical possession of the Secured Asset along with its original title deeds to the Bank within a period of one week from the date of pronouncement of this judgment. In the event of any further hindrance or any obstruction that may be caused by the Borrower or the Subsequent Transferee while taking over the possession of the property then in such circumstances the Bank shall take the assistance of police.
>
> (v) The Subsequent Transferee shall also withdraw the police complaint dated 17.01.2024 lodged by it within a period of one week from the date of pronouncement of this judgment.
>
> (vi) We clarify that the Subsequent Transferee is not entitled to recover the amount paid by it towards redeeming the second charge over the Secured Asset or any other dues or amount paid in respect of the same from the petitioner herein.
>
> (vii) The Bank shall refund the amount of Rs. 129 crore paid by the Borrower towards the redemption of mortgage without any interest only after the aforesaid directions have been complied to the letter and spirit.
>
> (viii) The Subsequent Transferee is at liberty to recover the amount paid by it towards the Assignment Agreement dated 28.08.2023 and any other amount from the Borrower by availing appropriate legal remedy as may be available under the law."

126. **The Hon'ble Supreme Court of Inida** in **S.P. Chengalvaraya Naidu (dead) & others Vs Jagannath (dead) By L.Rs. and another [23],** (1994) 1 SCC 1,while setting aside the preliminary decree in a partition suit, held the decree obtained by fraud on the Court is nullity, has to be treated as a nullity by every court, can be challenged even in a collateral proceeding, withholding a vital document amounts to playing fraud on the Court as well as on the opposite party, observed how the Court process is abused by various fraudsters, they are extracted hereunder: -

> "1. "Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a

[23] (1994) 1 SCC 1

> judgment or decree obtained by playing fraud on the court is a nullity and honest in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.
>
> 7……..We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.
>
> 8……..A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would he guilty of playing fraud on the court as well as on the opposite party."

127. The Hon'ble Full Bench of **Hon'ble Supreme Court of India** in **Vishnu Vardhan @ vishnu Pradhan Vs The State of Uttar Pradesh & others**[24], relied on *Nidhi Kaim Vs. State of Madhya Pradesh* (2017) 4 SCC 1 *and S.P. Chengalvaraya Naidu* case *supra*, observed nothing, obtained by fraud, can be sustained, as fraud unravels everything, the growing trend of abuse of the process of law by dishonest litigants playing fraud on courts, set aside the impugned order of the High Court in Writ as vitiated by the fraud, remanded the matter to High Court, direction to implead the Appellant and another as Respondents and directed to dispose the Writ afresh. Also set aside

[24] 2025 SCC OnLine SC 1501

the judgment and order in Civil Appeal, observing obtained by fraud and recalled in exercise of inherent powers. Also recalled the order in MA in the Civil Appeal in exercise of inherent powers.

128. Thus, in view of the law as stated *supra*, if any party fraudulently alienates the property, violating the injunction order, status quo order, stay order or undertaking etc, the mischievous party, not only liable for prosecution including Section 206 of IPC (243 of BNS), (the scope and ambit of Section 206 of IPC (243 of BNS) is discussed herein after) for the fraudulent alienation, in appropriate cases, the transaction may also be liable to be canceled/reversed as per the law stated supra.

129. It is needless to mention, in the light of the law as referred to supra, the other party has a duty to move an appropriate application through their Counsel to attack the fraudulent transaction, the Counsel has a duty to assist the Court in a comprehensive way to address the issues in the suit including the fraud if any, by placing all relevant factual position/authorities. Even in the absence of the application or assistance by the Counsel, the Court has a duty to address the issues including the fraud if any, to render justice to the victim/opposite party and to curb the recurring of frauds by sending the deterrence of the law, which is seldom invoked, thereby the fraudsters could do with their acts undeterred, which shall be handled with iron hands.

ix. The law on the principle of *Lis pendens* and allied aspects:

Section 52 of the Transfer of Property Act is extracted hereunder: -

> "**52. Transfer of property pending suit relating thereto**.— *During the [pendency] in any Court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [the Central Government] of [any] suit or proceeding [which is not collusive and] in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order*

which may be made therein, except under the authority of the Court and on such terms as it may impose.

[Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]"

130. The **Hon'ble Full Bench of Hon'ble Supreme Court of India** in **M/s Siddamsetty Infra Projects Pvt. Ltd. Vs. Katta Sujatha Reddy & others [25],** relied on **Bellamy Vs. Sabine of Privy Counsel** and on **Jayaram Mudaliar Vs. Ayyaswami**of **Hon'ble Supreme Court of India,** held that Sec.52 bars transfer of property during pendency of litigation, exception is under the authority of the Court on terms, that the alienation defeats the purpose of the suit, which is extracted hereunder: -

"47. In short, the doctrine of lis pendens that Section 52 of the Transfer of Property Act encapsulates, bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the Court and on terms imposed by it…….

49. The purpose of lis pendens is to ensure that the process of the court is not subverted and rendered infructuous. In the absence of the doctrine of lis pendens, a defendant could defeat the purpose of the suit by alienating the suit property……."

131. The **Hon'ble Supreme Court of India** in **Vinod Seth Vs. Devinder Bajaj and another[26]**while dealing with a suit for Specific Performance, referred to Section 52 of the Transfer of Property Act and granted permission to the

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25 (2024) 20 SCC 140

26 (2010) 8 SCC 1

Defendants under Section 52 of TP Act to deal with or dispose of the suit property, which are extracted hereunder: -

> *"21. The principle underlying section 52 of TP Act is based on justice and equity. The operation of the bar under section 52 is however subject to the power of the court to exempt the suit property from the operation of section 52 subject to such conditions it may impose. That means that the court in which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject-matter of the suit without being subjected to the rights of any party to the suit, by imposing such terms as it deems fit. Having regard to the facts and circumstances, we are of the view that this is a fit case where the suit property should be exempted from the operation of Section 52 of the TP Act, subject to a condition relating to reasonable security, so that the defendants will have the liberty to deal with the property in any manner they may deem fit, inspite of the pendency of the suit.....*
>
> *26. In the result, we allow this appeal in part, set aside the order of the Division Bench and Learned Single Judge directing the plaintiff-appellant to file an affidavit undertaking to pay Rs. 25 lakhs to defendants-respondents in the event of failure in the suit. Instead,* ***we permit the defendants-respondents under Section 52 of TP Act, to deal with or dispose of the suit property*** *in the manner they deem fit, in spite of the pendency of the suit by the plaintiff, subject to their furnishing security to an extent of Rs. Three lakhs to the satisfaction of the learned Single Judge."*

132. The **Hon'ble Supreme Court of India** in **Shivshankara & another Vs. H.P. Vedavyasa Char[27],** while dealing with a suit for Permanent Injunction, referred to Section 52 of the Transfer of Property Act and held section 52 of TP Act prohibits, which are extracted hereunder: -

> *"33. …….There can be no doubt with respect to the position that the prohibition by application of the principles of the said doctrine would take its effect with the institution of the suit……"*

[27] (2023) 13 SCC 1

133. The **Hon'ble Supreme Court of India** in **A.Nawab John & another Vs. V.N.Subramaniyam [28],** while referring to **Jayaram Mudaliar case supra,** discussed the object of *lis pendens* and that no alienations *pendente lite be permitted,* they are extracted hereunder: -

> *"..that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendants alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject to be defeated by the same course of proceeding..."*

134.The **Hon'ble Supreme Court of India** in **Usha Sinha Vs. Dina Ram&Others[29]**, while dealing with Section 52 of the Transfer of Property Act and Rule 102 of Order XXI of the Code of Civil Procedure, held the object of Sec.52 of Transfer of Property Act, that prohibits a party from dealing with the property, that a transferee is presumed to be aware of proceedings, that in the absence of the principle, a Judgment Debtor or his transferee will go on transferring the property, new transferee will offer resistance or obstruct execution, to avoid such a situation, the Rule is enacted and also held that he cannot seek benefit of Rule 98 or 100 of Order XXI, they are extracted hereunder: -

> *"[12] Bare reading of the rule makes it clear that it is based on justice, equity and good conscience. A **transferee** from a judgment debtor is **presumed to be aware of the proceedings** before a Court of law. He should be careful before he purchases the property, which is the subject matter of litigation. It recognizes the doctrine of lispendens recognized by Section 52 of the Transfer of Property Act, 1882. Rule 102 of Order XXI of the Code thus takes into account the ground reality and refuses to extend a helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree holder will never be able to realize the fruits of his decree. **Every time***

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28 (2012) 7 SCC 738
29 (2008) 7 SCC 144

the decree holder seeks a direction from a Court to execute the decree, the judgment debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the rule has been enacted.

*[16] Referring to statutory provisions and case law, the Court negatived the contention, stating- If such contention of the learned senior counsel for the appellant is to be accepted, then we are **closing our eyes** regarding the intention of the statute. It is obvious while interpreting the provisions of the statute, the court must give due weight to the intention of the statute in order to give effect to the provisions. If any narrow interpretation is given and thereby the **purpose of the statute is being defeated**, the courts must be careful to avoid such interpretations. If we look at Section 52 of the Transfer of Property Act and Rule 102 of Order 21 C.P.C, it is very clear that the **intention of the Parliament** with which the statute had been enacted is that the **rights of one of the parties** to the proceeding pending before the court **cannot be prejudiced or taken away or adversely affected by the action of the other party** to the same proceeding. In the **absence** of such **restriction** one party to the proceeding, just to prejudice the other party, may dispose of the properties which is the subject matter of the litigation or put any third party in possession and keep away from the court. By such actions of the party to the litigation the other party will be put to more hardship and only to avoid such prejudicial acts by a party to the litigation these provisions are in existence. When in spite of such statutory restrictions, for the transfer of the properties, which are the subject matter of litigation by a party to the proceeding, the courts are duty bound to give effect to the provisions of the statute.*

*[18] It is thus settled law that a **purchaser** of suit property during the pendency of litigation has **no right** to **resist** or obstruct **execution** of decree passed by a competent Court. **The doctrine of 'lispendens' prohibits a party from dealing with the property which is the subject matter of suit. '**Lis pendens' itself is treated as **constructive notice** to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor, **he cannot seek benefit of Rule 98 or 100 of Order XXI.**"*

135. The **Hon'ble Supreme Court of India** in **Periyammal (dead) thorough LR's & others Vs V Rajamani & another**[30], referred to **Hon'ble Full Bench** of **Hon'ble Supreme Court of India** in **Silverline Forum Pvt. Ltd. vs. Rajiv Trust and Anr.** : 1998 (3) SCC 723, held on *lis pendens* and Order XXI Rule 102 of CPC, which is extracted hereunder: -

> *"10. ……...No doubt if the resistance was made by a transferee pendente lite of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act."*

136. The **Hon'ble Supreme Court of India** in **Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass** [31], while dealing with *lis pendens,* held that generally the Court should not permit the nature of the Property being changed, which includes alienation and transfer of property, the same is extracted hereunder: -

> *"Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit,* ***the court should not permit the nature of the property being changed*** *which also* ***includes alienation or transfer of the property*** *which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to*

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30 (2005) 9 SCC 568

31 (2004) 8 SCC 488

change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. ***In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored. The appeal is allowed.****"*

137. Thus, in the light of legal principles, it emerges clearly that the Law prohibits/bars dealing with or alienating the property in any manner, from presentation of a Plaint to final order or discharge or satisfaction of the decree, as to effect the rights of the Parties, except under the Authority of the Court on terms i.e., with the permission of the Court as envisaged under Section 52 of the TP Act and the law as referred supra.

138. As the law prohibits/bars the parties transacting with the property as stated supra while the matter is *sub judice* before the Court under Section 52 of the TP Act, any party seeking to alienate the property out of necessity must approach the Court for permission, the Court may accord permission on such terms or may not accord depending on facts of the case, thus a party cannot keep on alienating the property at his whims while keeping the other party and the Court in dark, which is against the object of Section 52 of the Transfer of Property Act and the law referred supra**.** Furthermore, the parties are duty bound to assist the Court in administration of justice by keeping the property intact for adjudication of the Court, this is least expected from the parties when the Subject matter is *sub judice* before the Court.

x.<u>The Law on prosecution for fraudulent transfer etc., by breaching the principle of *Lis pendens*</u>

139. Where the Law prohibits/bars dealing with the property under Section 52 of the TP Act, the question arises whether a party committing such a prohibited act through a fraudulent transaction incurs any penal consequences. The answer is affirmative, in view of Section 206 of IPC (Section 243 of BNS), which penalizes fraudulent or mischievous act in both civil and criminal proceedings, which is seldom neither agitated nor brought to the notice of the Courts in the Districts by the parties by moving an appropriate application for initiating prosec

140. For ready referenceution for doing a prohibited/barred act by a fraudulent transfer etc.

141. For ready reference, Section 206 of IPC (Section 243 of BNS) is extracted hereunder: -

> "**206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.**
>
> Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

142. It appears the object of Section 206 of IPC (Section 243 of BNS) is to prevent fraudulent removal, concealment, transfer, or delivery of any property, which was or may be subject matter of a Criminal or Civil proceeding, further as per the second limb of Section 206 of IPC (Section 243 of BNS), even if any Person fraudulently transfers or delivers property anticipating that a Decree or Order is likely to be passed by a Court of Justice in a civil suit, such person is liable for imprisonment for a term which may extent to two years, or with fine or with both.

143. Thus, while Section 52 of Transfer of Property Act applies to immovable properties in civil proceedings, Section 206 of IPC (Section 243 of BNS) applies to movable and immovable properties in criminal as well as civil proceedings, further even when Section 52 of TP Act i.e. *lis pendens* is not applicable to a civil case, if there is fraudulent transfer, Section 206 of IPC (Section 243 of BNS) may attract depending on the facts of the case.

144. However, a party cannot launch prosecution under Section 206 of IPC (Section 243 of BNS) as it is the duty of the Court to examine the material on record, record reasons and initiate prosecution under Section 206 of IPC (Section 243 of BNS) for effecting fraudulent transfer while matter is pending before the Trial Court by breaching the principle of *lis pendens* and for harassing the other party in the civil proceeding, either upon an application or otherwise/suo moto in accordance with the procedure prescribed under Section 340 read with Section 195(1)(b)(i) of the Code of Criminal Procedure (Section 379 read with Section 215(1)(b)(i) of BNSS). This is one of the effective measures to address mischievous parties, fraud in civil cases and the multiplicity of proceedings in civil litigation. These are seldom invoked in the Trial Courts, therefore fraud remains unchecked.

145. The principles on *lis pendens* and allied legal aspects stated herein above are illustrative but not exhaustive, and are compelled to refer in the circumstances of the case.

146. It is needless to mention, whether the suit in O.S.No.49 of 2007 survives on the plaintiff's readiness and willingness or not, the prosecution still goes against the Parties for fabrication of agreements and false evidence for the reasons stated supra.

X. RESULT:

147. This Court, on re-appreciating the evidence on record and from the foregoing discussion, inclined to hold that the Plaintiff in OS.No.49 of 2007 could prove the case as stated supra, Issue No.i is answered in favour of the Plaintiff, issue No.ii to iv are answered against the Appellants/Defendants. The Appellants could not demonstrate any material infirmity warranting interference in the Decree and Judgment of the Trial Court.

148. Thus, in view of the material and foregoing discussion, AS.527 of 2013 and AS.623 of 2013 are dismissed with costs. And A.S. Nos. 530, 646 & 656 of 2013 are dismissed as abated.

149. The Plaintiff in O.S. Nos. 49 of 2007 is at liberty to prosecute all the conspirators under Section 467 of IPC by lodging a report with the jurisdictional Police.

150. In view of the material and law stated supra, the 1st, 2nd, 4th to 6th Defendants, DW.5 and DW.6 are liable for prosecution under Section 193 of IPC for producing the fabricated agreements and for giving false evidence before the Trial Court as well as asserting the same before this Court. As the 1st Defendant died during the pendency of the Appeal, the prosecution against him is abated.

151. In view of the material and law stated surpa, the 2nd Defendant is liable for prosecution under Section 206 of IPC for selling the property on 12.12.2022 violating the orders of the Court as stated supra.

152. The Court observed on the prima facie case as stated supra, the Jurisdictional Trial Court shall proceed as per law.

153. The Registrar (Judicial) shall ensure filing of the Complaint under Sections 193 and 206 of IPC before the Jurisdictional Magistrate as per law.

154. The District Registrar, Nellore and Sub-Registrar, Kovur shall ensure cancellation of the registrations dated 12.12.2022 on the schedule

property, also, they shall not permit any other registrations except under this judgment. If any clarification is required, they shall move an application before the Court.

155. The Registrar (Judicial) shall communicate the Judgment to the District Registrar, Nellore and Sub-Registrar, Kovur.

156. This Court is compelled to comply with the law in the circumstances of the case.

As a sequel, the pending Miscellaneous Petitions, if any, shall stand closed.

JUSTICE D. RAMESH, J

JUSTICE ALAPATI GIRIDHAR, J

Dt: 16.10.2026
JKS