



**IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)**

[3397]

MONDAY ,THE SEVENTEENTH DAY OF MARCH  
TWO THOUSAND AND TWENTY FIVE

**PRESENT**

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA  
KRISHNA RAO**

**FIRST APPEAL NO: 2830/2004**

**Between:**

V.surya Rao

**...APPELLANT**

**AND**

C Anji Reddy and Others

**...RESPONDENT(S)**

**Counsel for the Appellant:**

1.VENKAT CHALLA

**Counsel for the Respondent(S):**

1.P SRIDHAR REDDY

**The Court made the following:**

This Appeal, under Section 96 of the Code of Civil Procedure [for short 'the C.P.C.'], is filed by the Appellant challenging the decree and judgment, dated 23.02.2004 in O.S.No.92 of 1993 passed by the Additional Senior Civil Judge, Guntur [for short 'the trial Court'].

2. The appellant herein is the plaintiff and respondents herein are the defendants in O.S.No.92 of 1993.

3. The appellant/plaintiff filed the suit for specific performance of contract of sale, dated 29.11.1989 executed by the defendants in his favour in

respect of the plaint schedule property of Ac.5-00 cents at Rs.1,80,000/- per acre and for costs.

4. Both the parties in the Appeal will be referred to as they are arrayed before the trial Court.

5. The brief averments of the plaint in O.S.No.92 of 1993 are as under:

The 2<sup>nd</sup> defendant is the wife of 1<sup>st</sup> defendant and they are the absolute owners of the plaint schedule property and they offered to sell the same. The plaintiff agreed to purchase the plaint schedule property at Rs.1,80,000/- per acre and paid a sum of Rs.2,50,000/- towards advance. The defendants executed an agreement of sale, dated 29.11.1989 in favour of the plaintiff. As per the terms and conditions of the agreement of sale, dated 29.11.1989, the defendants agreed to handover the possession of the plaint schedule property to the plaintiff on 31.01.1990 so as to enable the plaintiff to divide the same into plots and form the roads in the plaint schedule property. The defendants also agreed to sign on all the papers which are necessary to get layout approved. The defendants have to give possession of the plaint schedule property to the plaintiff on or before 31.01.1990 after removing the existing cotton crop so as to enable the plaintiff to divide the land into plots and form the roads and then to sell the same to others. The plaintiff is always ready and willing to perform his part of contract as per the terms of the agreement by paying the balance consideration and take a regular registered sale deed. The plaintiff several times demanded the defendants to deliver possession of the plaint schedule property with a view to divide the plots and for the purpose of forming roads, but the defendants are postponing the same on one pretext or other. The defendants raised maize in the plaint schedule property in the year 1990-91 instead of delivering possession of the same to the plaintiff. Thus the defendants committed breach of agreement by not giving possession of the property to the plaintiff. The defendants are trying to alienate the property to others for which they are not entitled to.

6. The brief averments in the written statement filed by the defendants are as follows:

The plaintiff has willfully, knowingly and willingly committed default in payment of balance sale consideration with an intention to have wrongful gain and cause wrongful loss to the defendants. The plaintiff is a real estate broker and do business without capital taking advantage of the innocence, helplessness and illiteracy of the land owners without sufficient capital. The plaintiff has no funds to pay the balance sale consideration. As per the terms and conditions of the suit contract of sale, the plaintiff has to pay the balance sale consideration on or before 01.08.1990 without fail. The defendants as per the terms and conditions of the suit contract of sale has removed their cotton crop even much prior to 30.01.1990 as agreed upon and allowed the plaintiff to divide the land and form the roads. The plaintiff has also obtained the signatures of the defendants on several papers on the ground of obtaining layout at his costs. In case of failure of the plaintiff to pay the balance sale consideration due to the defendants on or before the above referred due date, the suit contract of sale will be automatically cancelled to the rest of the property equal to the balance sale consideration and will be forced in respect of land for the value of the amount paid to the defendants towards sale consideration. The plaintiff shall obtain the sale deed from the eastern direction for the sale consideration paid to the defendants on or before the due date. But, the plaintiff has failed to pay the balance sale consideration payable under the suit contract of sale to the defendants as agreed upon as per the terms and conditions of the suit contract of sale. The plaintiff did not form any roads as alleged in the plaint, but earmarked the roads and divided the said land into plots and also entered into several contract of sales like a contract of sale, dated 05.03.1990 in favour of third parties and received huge consideration and invested the same in his money lending business. The defendants have sold away the property for their family necessities and benefits with an intention to purchase some other property, but because of the

hostile attitude of the plaintiff and his failure to pay the balance sale consideration to the defendants, the defendants have sustained a great and deep loss in several ways. The defendants have never deviated from the terms and conditions of the suit contract of sale, but only the plaintiff has deviated from the agreed terms and conditions. So, the plaintiff is not entitled for the discretionary relief of the specific performance of the suit contract of sale.

7. Based on the above pleadings, the trial Court framed the following issues:

- (1) Whether the suit claim is contrary to the terms and conditions of the suit agreement?
- (2) Whether the plaintiff is entitled to specific performance of contract?  
and
- (3) To what relief?

8. During the course of trial in the trial Court, on behalf of the Plaintiff, PW1 to PW3 were examined and Ex.A1 was marked. On behalf of the Defendants, DW1 to DW4 were examined and no documents were marked.

9. After completion of the trial and hearing the arguments of both sides, the trial Court decreed the suit in part vide its judgment, dated 23.02.2004 by granting refund of advance amount of Rs.2,50,000/- with interest, against which the present appeal is preferred by the plaintiff in the suit questioning the Decree and Judgment passed by the trial Court for not granting the primary relief of specific performance of agreement of sale.

10. Heard Sri Venkata Challa, learned counsel for the appellant and heard Sri P. Sridhar Reddy, learned counsel for respondents.

11. Learned counsel for the appellant would contend that the trial Court erred in not granting decree for specific performance of agreement of sale, dated 29.11.1989. He would further contend that the trial Court erred in holding that the appellant/plaintiff was not ready and willing to carry out the

terms of the contract. He would further contend that by came to a wrong conclusion, the trial Court granted alternative relief of refund of advance amount and dismissed the main relief of specific performance of agreement of sale. Leaned counsel for the appellant would further contend that the appeal may be allowed by setting aside the decree and judgment passed by the trial Court.

12. *Per contra*, learned counsel for the respondents would contend that on appreciation of the entire evidence on record, the learned trial Judge rightly rejected the main relief of specific performance of agreement of sale and granted the alternative relief of refund of advance amount and there is no need to interfere with the findings given by the learned trial Judge.

13. Now the points for determination in the appeal are:

- 1) Whether the plaintiff is entitled the main relief of specific performance of agreement of sale, dated 29.11.1989?**
- 2) Whether the trial Court is justified in rejecting the main relief of specific performance of agreement of sale?**

14. **Point Nos.1 and 2:**

- 1) Whether the plaintiff is entitled the main relief of specific performance of agreement of sale, dated 29.11.1989?**
- 2) Whether the trial Court is justified in rejecting the main relief of specific performance of agreement of sale?**

The undisputed facts are both the defendants i.e., husband and wife entered into an agreement of sale with the plaintiff. The defendants pleaded that the plaintiff willfully, knowingly and willingly committed default in payment of balance sale consideration with an intention to have wrongful gain and to cause wrongful loss to the defendants. The defendants pleaded that the plaintiff has no capacity to pay the balance sale consideration and the plaintiff failed to discharge his obligation to pay the balance sale consideration on or

before 01.08.1990. The defendants further pleaded that as per the terms of the suit contract, they removed the cotton crop even much prior to 31.01.1990 as agreed upon and allowed the plaintiff to divide the land and form the roads. They further pleaded the plaintiff has not even obtained a sale deed from the eastern direction for the sale consideration paid to the defendants on or before due date. Even though the defendants insisted the plaintiff, the plaintiff failed to come forward for obtaining registered sale deed.

15. The execution of agreement of sale is not in dispute by the defendants. As per the terms and conditions of sale agreement, the plaintiff has to pay the remaining balance sale consideration of Rs.6,50,000/- on or before 01.08.1990 and the defendants have to remove the cotton crop from out of the land on or before 01.08.1990. The other recitals in Ex.A.1 agreement of sale is that in case of failure to pay the balance sale consideration due to the defendants on or before 01.08.1990, the suit contract of sale will be automatically cancelled to the rest of the property equal to the balance sale consideration and the plaintiff has to obtain a sale deed from the eastern direction for the sale consideration paid to the defendants on or before due date by 30.01.1990. Admittedly, no notice is issued by the plaintiff to show his readiness and willingness to perform his part of contract. As seen from the recitals of Ex.A.1 agreement of sale, the plaintiff not even issued any legal notice with a plea that he is ready to obtain a sale deed from the eastern direction in respect of part of sale consideration of Rs.2,50,000/- paid to the defendants. Admittedly, no notice has been issued prior to 01.08.1990 to the defendants to express his readiness and willingness to perform his part of contract either to pay balance sale consideration of Rs.6,50,000/- or to obtain a registered sale deed from the eastern direction in respect of part of property in respect of amount of Rs.2,50,000/- towards advance sale consideration paid to the defendants. The suit is filed on 12.03.1991 without issuing any legal notice to the defendants.

16. Admittedly, a date has been fixed for performance of contract by both parties. The plaintiff has not issued any legal notice to the defendants to express his readiness and willingness to perform his part of contract. The contention of the plaintiff is that he has demanded the defendants to deliver possession of the plaint schedule property with a view to divide the plots and for the purpose of forming of roads but the defendants postpone the same on one pretext or other and also demanded the defendants to sign the necessary papers so as to get a layout approved, but the defendants failed to do so. To that extent, no evidence is adduced by the plaintiff to show that he had demanded the defendants to deliver possession of the plaint schedule property with a view to divide the plots and for the purpose of forming of roads. There is no evidence to show that when the plaintiff made demands to deliver the possession of the plaint schedule property. In cross examination in his evidence, the plaintiff admits that he does not know the door number and boundaries of his property and he did not issue any notice to any one of the defendants call upon them to comply the terms and conditions of the suit contract of sale and he does not remember the names of the persons, who are present at that time and he does not remember the name of the second attesor of the suit document and he does not know the name of the first attesor and he does not know the name of the scribe of suit contract of sale. He further admits the plaint schedule property is only property purchased by him at Guntur. He further admits as per FMB, they prepared layout and they sold some of the plots as per FMB plan to some of the customers and he does not remember the exact number of their vendees. He further admits he entered into an agreement of sale with his vendees of the plots in the suit schedule property and he did not obtain any permission from the defendants to prepare a plan as per FMB and to sell the plots as per FMB plan of the suit schedule property. He further admits he executed an agreement of sale, dated 12.01.1990 in favour of one Sri D. Lakshmi Ratnam, Guntur in respect of 2000 sq. yards out of Ac.5-00 cents and he did not obtain any permission from the defendants to enter into an agreement of sale with the third parties.

Another admission made by the plaintiff in his evidence in cross examination is that there is a condition that in case of his failure to pay the balance sale consideration to the defendants even though the defendants are ready and willing to perform their part of contract, the agreement of sale will be restricted to the extent of the sale consideration paid by due date from eastern side. The own admissions of the plaintiff clearly goes to show that without obtaining any registered sale deed from the defendants i.e., original owners, the plaintiff entered into an unregistered agreement of sale with third parties in respect of plaint schedule property and without prior permission of the defendants.

17. The law is well settled that for determining the issue whether the plaintiff was ready and willing to perform his part of contract, it is necessary for the Court to consider the conduct of the plaintiff prior and subsequent to filing of suit for specific performance of agreement of sale. It is well settled that the First Appellate Court is a duty bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract.

18. As noticed supra, in the case on hand, the plaintiff did not issue any legal notice to the defendants prior to filing of the suit, though the plaintiff pleaded in the plaint itself that he made oral demand, there is no evidence to show that when the plaintiff made demands, therefore, in the absence of any evidence, it is not just and proper to accept the contention of the plaintiff that he made oral demands but the defendants did not come forward to discharge their obligation.

19. In a case of **Janardan Das and others vs. Durga Prasad Agarwalla and others**<sup>1</sup>, the Apex Court held as follows:

“It is settled law that for relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of

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<sup>1</sup> 2024 INSC 778

the plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.”

The plaintiff relied on the evidence of P.W.2. P.W.2 is not an attesor or scribe of Ex.A.1 agreement of sale. He deposed in his evidence affidavit that he purchased Plot No.20 from the plaintiff under an unregistered agreement of sale and the plaintiff prepared the plan with regard to the suit property by converting the same into plots and he purchased Plot No.20 which is an extent of 311 sq. yards of site from the plaintiff by way of unregistered agreement of sale. In cross examination, he admits that he is not having rough sketch prepared by the plaintiff. He further admits he does not know the boundaries of the plot and he never saw the defendants at any point of time and he returned the said agreement to the plaintiff. Admittedly, the alleged agreement said to have been entered in between plaintiff and P.W.2 is not filed before the Court. Therefore, the evidence of P.W.2 is no way helpful to prove the case of the plaintiff that though the plaintiff is ready and willing to perform his part of contract, the defendants failed to come forward to discharge their obligation.

20. P.W.3 is Advocate-Commissioner who visited the suit schedule property. As per his evidence, he visited the suit schedule property in the month of September, 1993. Whereas the case of the defendants is that as per the terms and conditions of the contract, they have removed the cotton crop much prior to 31.01.1990 from out of the suit schedule property. Hence, the evidence of P.W.3 is no way helpful to prove the plea put forth by the plaintiff in the plaint itself. Furthermore, the evidence of P.W.2 and P.W.3 fails to establish that though the plaintiff is ready and willing to perform his part of contract, the defendants failed to discharge their obligation.

21. In the case of **K.S. Vidyanadam v. Vairavan**<sup>2</sup>, the Apex Court held as follows:

“10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in *Chand Rani v. Kamal Rani* [*Chand Rani v. Kamal Rani*, (1993) 1 SCC 519] : (SCC p. 528, para 25)

‘25. ... it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?):

- (1) from the express terms of the contract;
- (2) from the nature of the property; and
- (3) from the surrounding circumstances, for example, the object of making the contract.”

In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine

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<sup>2</sup> (1997) 3 SCC 1

whether its discretion to grant specific performance should be exercised.

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**22. It is settled law that for the relief of specific performance, the plaintiff has to prove that all along and till final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the plaintiff to prove his readiness by adducing evidence. The crucial facet has to be determined by considering all the circumstances including the availability of funds and mere statement or averment in the plaint of readiness and willingness could not suffice.**

23. The defendants relied on the evidence of D.W.1 to D.W.4. D.W.1 is the 1<sup>st</sup> defendant, D.W.2 and D.W.3 are the attestors in Ex.A.1 agreement of sale and D.W.4 is the northern boundary holder of the suit schedule property. As per the evidence of D.W.4, he is the northern boundary owner of the suit schedule property covered under Ex.A.1 agreement of sale and the defendants put the plaint schedule land for sale for their urgent bonafide necessities and after entering into the agreement of sale, the defendants did not pursue the cultivation activities and as such by the end of December, 1989, the cotton crop was dried up and stems were plucked away by the defendants and put the entire plaint schedule property vacant. He further deposed due to non-payment of balance sale consideration by the plaintiff, the defendants have sustained huge loss and they could not implement their own plans like acquiring wet land. In cross examination when elicited he admits that his land and the land of the defendants are situated side by side. Though he was cross examined by the learned counsel for the plaintiff, nothing was elicited from D.W.4 to discredit the testimony of D.W.4.

24. Learned counsel for the appellant relied on a Civil Appeal No.7818-7819 of 2009 of Apex Court in between **Chennadi Jalapathi Redduy vs. Baddam Pratap Reddy (dead) Through LRs. and another.**

The facts in the aforesaid case law are different to the present case. In the present case, the agreement is not disputed by both the parties. The contention of the defendants from the beginning is that though they are ready and willing to perform their part of contract, the plaintiff is not ready to perform his part of contract. The Constitution Bench of Apex Court in **Chand Rani vs. Kamal Rani**<sup>3</sup>, held “in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?): (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract”.

Section 16(c) of the Specific Relief Act, 1963 mandates that the plaintiffs seeking specific performance of contract must ever and prove that they have performed or have always been ready and willing to perform the essential terms of the contract which are to be performed by them. The said requirement is a condition precedent and must be established by the plaintiffs throughout the proceedings. In the case on hand, the plaintiff failed to prove that though he has been ready and willing to perform his part of contract, the defendants failed to discharge their obligation. Admittedly, without issuing any legal notice, the plaintiff instituted a suit for claiming the relief of specific performance of agreement of sale, though plaintiff pleaded he made oral demands, there is no evidence on record to show that the plaintiff made oral demand.

25. For the aforesaid reasons, the plaintiff is not entitled the main relief of specific performance of agreement of sale, dated 29.11.1989. By giving cogent reasons, the learned trial Judge rightly held that the plaintiff is not entitled main relief of specific performance of agreement of sale and the plaintiff is entitled the alternative relief of refund of advance amount.

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<sup>3</sup> (1993) 1 SCC 519

Therefore, there are no merits in the appeal and the appeal is liable to be dismissed.

26. In the result, the appeal suit is dismissed confirming the decree and judgment, dated 23.02.2004 in O.S.No.92 of 1993 on the file of the Additional Senior Civil Judge, Guntur. Considering the facts and circumstances of the case, each party do bear their own costs in the appeal.

As a sequel, miscellaneous petitions, if any, pending in the Appeal shall stand closed.

Date: 17.03.2025  
PGR

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**V. GOPALA KRISHNA RAO, J**