APHC010623992011

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3397]**
(Special Original Jurisdiction)

MONDAY,THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

SECOND APPEAL NO: 923/2011

Between:

Katamreddy Ramalinga Reddy and Others **...APPELLANT(S)**

AND

Katamreddy Janardhan Reddy **...RESPONDENT**

Counsel for the Appellant(S):

1. P RAJASEKHAR

Counsel for the Respondent:

1. B S REDDY

The Court made the following:

Reserved on 16.04.2026
Pronounced on 15.06.2026
Uploaded on 15.06.2026

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.923 of 2011

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure is filed aggrieved against the judgment and decree, dated 25.10.2007, in A.S.No.13 of 2006, on the file of the III Additional District Judge, Kurnool at Nandyal, reversing the judgment and decree, dated 14.11.2005, in O.S.No.19 of 2002, on the file of the Senior Civil Judge, Allagadda.

2. The plaintiff initiated action in O.S.No.1467 of 2002, on the file of the Senior Civil Judge, Allagadda, with a prayer for specific performance of contract on a sale agreement dated 09.06.2000 executed by defendant No.1 in favour of the plaintiff and to grant alternative relief of refund of an amount of Rs.1,40,000/- from the defendant No.1.

3. The learned Senior Civil Judge, Allagadda, dismissed the suit with costs. Felt aggrieved of the same, the unsuccessful plaintiff in the above said suit filed the aforesaid appeal before the First Appellate Court. The learned III Additional District Judge, Kurnool at Nandyal, allowed the appeal by setting aside the judgment and decree passed by the learned trial Judge. Aggrieved thereby, the defendants in O.S.No.19 of 2002 approached this Court by way of second appeal.

4. The appellants herein are the defendants and the respondent herein is the plaintiff in O.S.No.19 of 2002.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the suit O.S.No.19 of 2002.

6. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.19 of 2002, is as follows:

I. The plaintiff pleaded that on 09.06.2000, the defendant No.1 agreed to sell the suit schedule property to the plaintiff for a total sale consideration of Rs.1,50,000/- and thereafter, the defendant No.1 received an amount of Rs.1,40,000/- towards part sale consideration and executed an agreement of sale in favour of the plaintiff, agreeing to execute a registered sale deed after receipt of the balance sale consideration of Rs.10,000/-. The plaintiff further pleaded that the defendant No.1 also acknowledged receipt of the said amount under the agreement of sale and he has always been ready and willing to perform his part of the contract by paying the balance sale consideration and had requested the defendant No.1 on several occasions to execute the registered sale deed, but, the defendant No.1 postponed the same on one pretext or the other.

II. The plaintiff further pleaded that he got issued a legal notice, dated 19.11.2001, calling upon defendant No.1 to receive the balance sale consideration and execute the registered sale deed on 30.11.2001 before the concerned Sub-Registrar Office. Though defendant No.1 received the said notice, he failed to attend the Sub-Registrar Office and execute the sale deed. Thereafter, the plaintiff came to know that

defendant No.1 had executed sale deeds, dated 26.07.2000, in favour of defendant Nos.2 and 3 in respect of item Nos.1 to 4 and 7 of the suit schedule properties. The plaintiff further pleaded that the defendant Nos.2 and 3 are close relatives of defendant No.1 and the said sale deeds were brought into existence without any valid consideration with an intention to defeat the rights of the plaintiff under the agreement of sale. Hence, the plaintiff filed the present suit seeking a relief of specific performance of the agreement of sale and in the alternative, the plaintiff sought a direction against the defendants for refund of the advance sale consideration amount of Rs.1,40,000/- along with interest thereon.

7. The defendant No.1 filed a written statement and the case of the defendants No.1 as per the written statement filed by the defendant No.1 is as follows:

I. The defendant No.1 pleaded that the suit agreement of sale is devoid of consideration and that no valid agreement of sale was ever executed in favour of the plaintiff and he had borrowed a sum of Rs.95,000/- from the plaintiff and, in connection therewith, the plaintiff obtained four promissory notes in the names of B.Bayyapu Reddy, N.Sreenivasa Reddy, N.Sunki Reddy, and C.Narayanamma, who are the relatives of the plaintiff. The defendant No.1 further pleaded that since he failed to discharge the said debts, the aforesaid four (04) persons filed separate suits against him, which are pending for trial. The defendant No.1 further pleaded that on 13.01.2001 at about 11:00 a.m., while he was at

Nandyal, the plaintiff forcibly took him on a motorcycle to his house, threatened and assaulted him, and obtained his signatures on four promissory notes and three blank Non-Judicial stamp papers. The defendant No.1 further pleaded that despite repeated requests made by him for return of the said promissory notes and stamp papers, the plaintiff failed to return the same.

II. The defendant No.1 further pleaded that he reported the matter to the Superintendent of Police and the District Collector, Kurnool, and the defendant No.1 also denied receipt of the legal notice alleged to have been issued by the plaintiff. The defendant No.1 further pleaded that the alleged agreement of sale is an unregistered document and is not legally enforceable. Therefore, he prayed for dismissal of the suit with costs.

8. The defendant Nos.2 & 3 filed separate written statement and the case of the defendants Nos.2 and 3 as per the written statement filed by them is as follows:

I. The defendant Nos.2 and 3 pleaded that they purchased item Nos.1 to 4 and 7 of the suit schedule properties from the defendant No.1 for valid sale consideration amounts of Rs.50,100/- and Rs.34,100/- respectively. They further pleaded that they had no knowledge whatsoever about the alleged agreement of sale said to have been executed by defendant No.1 in favour of the plaintiff and they are bonafide purchasers for a valuable consideration without notice of the prior agreement of sale

executed by the plaintiff. Therefore, they prayed for dismissal of the suit with costs.

9. On the basis of above pleadings, the learned trial Judge framed the following issues for trial:

1) *Whether the agreement dated 09.06.2000 is true, valid and binding?*
2) *Whether the suit agreement is devoid of consideration?*
3) *Whether the suit agreement is not valid for want of registration?*
4) *Whether the suit is barred by limitation?*
5) *Whether the defendant No.2 and defendant No.3 are bonafide purchasers and the sale deeds in their favour are true, valid and binding on plaintiff?*
6) *Whether the plaintiff is entitled for specific performance of agreement? and*
7) *To what relief?*

10. During the course of trial in the trial Court, on behalf of the plaintiff, P.Ws.1 to 4 were examined and Exs.A-1 to A-9 were marked. On behalf of the defendants, D.Ws.1 to 5 were examined and Exs.B-1 to B-7 were marked.

11. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit with costs. Felt aggrieved thereby, the unsuccessful plaintiff filed the appeal suit in A.S.No.13 of 2006, before the

learned III Additional District Judge, Kurnool at Nandyal, wherein the following point came up for consideration:

1) *Whether the agreement of sale true valid and binding on the defendants if so, whether the plaintiff is entitled for specific performance of agreement?*

12. The learned first appellate Judge after hearing the arguments, answered the point, as above, against the defendants and allowed the appeal by setting aside the judgment and decree passed by the learned trial Judge. Felt aggrieved of the same, the unsuccessful defendants in O.S.No.19 of 2002 filed the present second appeal before this Court.

13. On hearing both sides' counsel at the time of admission of the second appeal on 19.08.2011, the Composite High Court of Andhra Pradesh at Hyderabad, admitted the second appeal and framed the following substantial questions of law:

1) *Whether, in the facts an circumstances, the lower appellate Court is right in law in granting decree of Specific Performance of agreement dated 09.06.2000 in respect of suit schedule items of agricultural lands in the suit presented on 04.06.2002 even after noticing the pleas in the plaint to the effect that items 1 to 4 and 7 in all Ac.06-17 cents has already been conveyed to defendants 2 and 3 under Registered Sale deeds under Ex.B6 dated 24.12.2000 and Ex.B7 dated 26.12.2000?*

2) *Whether the lower appellate Court is right in law in granting the discretionary relief of Specific Performance when the suit was dismissed by trial Court in view of the suspicious characteristics of the suit agreement Ex.A1?*
3) *Whether the lower appellate Court is right in law in reversing the decree of trial Court without recording reasons for non acceptance of the disbelieving the genuineness, validity and enforceability of suit agreement Ex.A1?*
4) *Whether the lower appellate Court is right in law in directing Specific Performance without cancelling the registered sale deeds Exs.B6 & B7 which are long prior to legal notice and date of plaint and no notice has ever been issued to defendant Nos.2 and 3 before institution of suit inspite of knowledge?*

On hearing both sides' counsel on 01.04.2026, this Court framed the following additional substantial question of law:

1) *Whether in view of the order, A9 dated 03.03.2004 passed by the learned Senior Civil Judge, Avanigadda in I.P.No.53 of 2000 declaring the 1st appellant/1st defendant as an 'insolvent', the official receiver is necessary and proper party to the suit, in whose favor the suit schedule property is vested and is in his custody, under Section 28(2) of Provincial Insolvency Act, 1920 r/w proviso to Rule 9 of Order I CPC, 1908*?

14. Heard Sri P.Rajasekhar, learned counsel appearing for the appellants/defendants and Sri O.Manohar Reddy, learned Senior Counsel representing Sri B.S.Reddy, learned counsel for the respondent/plaintiff.

15. The law is well settled that under Section 100 of CPC, High Court cannot interfere with findings of fact arrived at by first appellate Court, which is final Court of facts, except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

In the case of ***Bhagwan Sharma v. Bani Ghosh***[1], the Apex Court held as follows:

> "The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature."

In the case of ***Kondira Dagadu Kadam v. Savitribai Sopan Gujar***[2]**,** the Apex Court held as follows:

> *"The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."*

16. Section 20 of Specific Relief Act, 1963 defines that "*the grant of relief of social performance is discretionary and the said discretion has to be exercised judiciously, but not arbitrarily*. *The plaintiff cannot be punished by refusing the*

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[1] **AIR 1993 SC 398**
[2] **AIR 1999 SC 471**

relief of specific performance, despite the fact that the execution of agreement of sale in his favour has been established and proved and that he is bound to be always ready and willing to perform his part of the contract. Not to grant a decree of social performance despite the execution of agreement of sale is proved and the plaintiff is always ready and willing to perform his part of the contract would encourage dishonesty."

17. The plaintiff produced the original agreement of sale and got it exhibited as Ex.A-1 and examined two (02) attestors and the scribe of Ex.A-1 as P.W.2 to P.W.4. The plaintiff proved Ex.A-1 agreement of sale through P.W.2 to P.W.4. The signature of defendant on Ex.A-1 agreement of sale is not at all disputed by defendant No.1. The contention of defendant No.1 is that on 13.01.2001, when he went to Nandyal to bring the provisions in view of the Sankranthi festival, while he reached in front of the Government Hospital, the plaintiff forcefully took him to his house and obtained his signatures on empty four (04) pronotes and three (03) empty Non-Judicial stamps, but the same is not at all proved by defendant No.1. As stated supra, to discharge the burden, the plaintiff examined the persons connected to Ex.A-1 agreement of sale viz. two (02) attestors and the scribe of Ex.A-1 as P.W.2 to P.W.4. As per the recitals of Ex.A-1, on 09.06.2000 i.e. on the date of agreement, defendant No.1 received an amount of Rs.1,40,000/- towards part of sale consideration and agreed to receive the balance sale consideration of Rs.10,000/- and to execute a regular registered sale deed after receiving the balance sale

consideration and further agreed to convey the suit property to him without any encumbrances.

18. As stated supra, on the date of agreement of sale, defendant No.1 received substantial amount by way of advance, that is, an amount of Rs.1,40,000/- out of Rs.1,50,000/-. It reveals that on the date of agreement of sale, a substantial amount of more than 90% of total sale consideration was paid to defendant No.1 and possession is with defendant No.1. In the plaint and in his evidence, the plaintiff has taken a stand that he got issued a legal notice on 19.11.2001 and defendant No.1 received the said notice on 20.11.2001, but neither gave any reply nor came forward for executing a registered sale deed. The plaintiff constantly has taken a stand that though he demanded defendant No.1 on several occasions to receive the paltry amount of balance sale consideration of Rs.10,000/- and to execute a regular registered sale deed, defendant No.1 did not come forward to discharge his part and that the plaintiff was constrained to file the present suit in the year 2000 i.e. within the period of limitation. The plaintiff produced evidence on record to show that the first received legal notice on 20.11.2001. It is undisputed that no reply notice was given by the defendant No.1 to deny the contents of Ex.A-2 legal notice got issued by the plaintiff.

19. The appellant/defendant No.1 contended in the written statement itself that the suit agreement is devoid of consideration and he borrowed a sum of Rs.95,000/- from the plaintiff, at that time the plaintiff obtained four pronotes in the name of his relations namely B.Bayyapu Reddy, N.Sreenivasa Reddy,

N.Sunki Reddy and C.Narayanamma by saying that being unemployed he should not obtain a promissory note in his favour. The appellant/defendant No.1 further stated that since he failed to discharge the said amount, they filed suit against the defendant. The appellant/defendant No.1 further pleaded that on 13.01.2001, when he went to Nandyal to bring provisions in view of the Sankranthi festival, while he reached in front of the Government Hospital at 11.00 a.m., the plaintiff was forcefully taken away on his motorcycle to his house and threatened him, beat him and obtained his signatures on empty pronotes and empty stamped papers. It is admitted by defendant No.1 in his evidence in cross-examination that the pronote transactions executed by the defendant No.1 in favour of the said above four (04) persons happened in the year 1977 and the said above four (04) persons also filed suits and he has taken a plea of forgery in all the aforesaid suits. Therefore, it is evident that all the aforesaid pronote transactions are nowhere concerned with the present suit transaction.

20. Another defence put forth by the appellant No.1/defendant No.1 in the written statement is that on 13.01.2001, when he went to Nandyal to bring the provisions in view of the Sankranthi festival, while he reached in front of the Government Hospital, at Nandyal, the plaintiff forcibly took him to his house and obtained his signatures on empty four (04) pronotes and three (03) empty Non-Judicial stamps and later he addressed a complaint to the Superintendent of Police, Kurnool. As per the evidence of Defendant No.1/D.W.1, the alleged incident happened in front of the Government

Hospital, Nandyal at about 09.00 a.m. in broad daylight. Admittedly, no complaint was lodged by defendant No.1 at Nandyal Police Station. As per the own admissions of appellant No.1, there was a police outpost at the entrance of Government Hospital at Nandyal, where the alleged incident happened. Admittedly, defendant No.1 did not lodge any complaint either at the police station at Nandyal or at the outpost police station at Government Hospital and he had sent a complaint after ten (10) days of the alleged incident to the Superintendent of Police, Kurnool, moreover, the defendant No.1 admitted that the complaint letter does not contain that it was addressed to the Superintendent of Police. The aforesaid series of events clearly reveals that the defendant No.1 created a story and narrated false contents in the written statement. Therefore, the said defence put forth by defendant No.1 is unbelievable. Moreover, obtaining signatures by force by P.W.1 and also taking away defendant No.1 forcibly by P.W.1 on 13.01.2001 is not at all proved by defendant No.1.

21. The learned counsel for the appellants placed a case law in ***Somakka (Dead) by Lrs. Vs. K.P.Basavaraj (dead) by Lrs.***[3]***,*** wherein the Hon'ble Apex Court held as follows:

> *"**26**. Section 96 of the CPC provides for filing an appeal from original decree. Further Order XLI Rule 31 of the CPC provides for the contents of the judgment of the First Appellate Court. According to it, the judgement of the Appellate Court shall be in writing and would include the points for determination, the decision thereon, the reasons for the decision and where*

[3] **AIR 2022 Supreme Court 2853**

the decree is reversed or varied, the relief to which the appellant is entitled. Section 96 and Order XLI Rule 31 of the CPC are reproduced below:

> *"Section 96 Appeal from original decree.*
>
> *(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.*
>
> *(2) An appeal may lie from an original decree passed ex parte.*
>
> *(3) No appeal shall lie from a decree passed by the Court with the consent of parties.*
>
> *(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed 2 [ten thousand rupees.]"*

Order XLI Rule 31

"Contents, date and signature of Judgment"

The Judgment of the Appellate Court shall be in writing and shall state(a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

22. In a case of ***Nafees Ahmad and Another Vs. Soinudding and Others[4],*** the Hon'ble Apex Court held as follows:

> *"**13**. We must also look into the provisions of Rule 30 of Order 41 for the purpose of fortifying our interpretation of Rule 31. Order 41 Rule 30 CPC reads thus:*
>
> > *"**30**. Judgment when and where pronounced.— (1) The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.*

[4] **2025 SCC OnLine SC 826**

> *(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment in pronounced."*

In the present case, the First Appellate Court framed the points for determination in deciding the first appeal and after appreciation of the entire evidence on record, the First Appellate Court pronounced its judgment by discussing each and every point.

23. The learned counsel for the appellants placed a case law in ***Lakha Singh Vs. Balwinder Singh and Anr.***[5]***,*** wherein the Hon'ble Apex Court held as follows:

> *"**27.** At this stage, a very crucial fact which is noticeable from the disputed agreement needs to be highlighted. It is not in dispute that the stamp papers were not purchased by the appellant- defendant and rather Amarjeet Singh was the person who purchased the same. The document was typed out in Gurmukhi language and the photostat copy thereof is available on record. A visual overview of the disputed agreement would show that it runs into three pages. The signature of the respondent-plaintiff and the thumb impression of the appellant-defendant are marked only on the last page thereof. The first and second pages of the agreement, do not bear the signature of the respondent-plaintiff or the thumb impression of the appellant-defendant. There exist significant blank spaces at the foot of the first two pages below the transcription typed out on these two pages. These observations give rise to a strong inference fortifying the contention of the appellant-defendant's counsel that the thumb impression of the appellant-defendant may have been taken on a blank stamp paper and the disputed agreement was typed thereon subsequently."*

[5] **AIR 2024 Supreme Court 4769**

24. The learned counsel for the appellants placed a case law in ***Pydi Ramana Alias Ramulu Vs. Davarasety Manmadha Rao***[6]***,*** wherein the Hon'ble Apex Court held as follows:

> *"**20.** The long unexplained delay and silence on the part of the plaintiff in this regard while in the witness box would not entitle the plaintiff to a decree of specific performance and it is for this precise reason, the trial court as noticed supra has refused to grant the equitable relief which has been reversed by the appellate court without assigning proper and cogent reason and the one assigned are at tangent or in other words contrary to the facts. The resultant effect of filing the suit for specific performance on the verge of limitation coming to an end came to be examined by this Court in the matter of **Rajesh Kumar Vs. Anand Kumar and Ors.** and held that plaintiff would not be entitled to the equitable relief (vide paragraph Nos.14, 15, 16, 17 and 18)."*

25. In a case of ***U.N. Krishnamurthy (since deceased) through LRs v. A.M. Krishnamurthy***[7] wherein the Apex Court held as follows:

> *"**23**. Section 16 (c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, Explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.*
>
> ***24**. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position*

[6] **(2024) 7 Supreme Court 515**
[7] **(2023) 11 SCC 775**

to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money."

The Apex Court in ***U.N. Krishnamurthy (7 supra)***, further held as follows:

*"**42**. In Saradamani Kandappan [Saradamani Kandappan v. S. Rajalakshmi, (2011) 12 SCC 18 : (2012) 2 SCC (Civ) 104] this Court reiterated that:*

> ***42.1.*** *While exercising discretion in suits for specific performance, the courts should bear in mind that when the parties prescribed a time for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.*
>
> ***42.2.*** *The courts will apply greater scrutiny and strictness when considering whether purchaser was ready and willing to perform his part of the contract.*
>
> ***42.3.*** *Every suit for specific performance need not be decreed merely because it is filed within the period of limitation, by ignoring time limits stipulated in the agreement. The courts will also frown upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain specific performance. The three year period is intended to assist the purchaser in special cases, as for example where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."*

*26. A Bench of three Judges of the Hon'ble Apex Court considered the position in **Nirmala Anand Vs. Advent Corporation (P) Ltd. and Ors**[8]., and held as follows:*

"…..6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance.

[8] **(2002) 8 SCC 146**

Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."

For the aforesaid reasons, the plaintiff proved Ex.A-1 agreement of sale and defendant No.1 failed to prove that the plaintiff forcibly took him from in front of the Government Hospital at Nandyal to his house and obtained his signatures on three (03) empty Non-Judicial stamp papers and one of the Non-Judicial stamp papers was used to prepare the agreement. Defendant No.1/D.W.1 admitted in his evidence in cross-examination itself that the signature on Ex.A-1 agreement of sale belongs to him. As noticed supra, defendant No.1 failed to prove that the plaintiff herein obtained his signatures on a blank Non-Judicial stamp paper.

27. The learned counsel for appellant Nos.2 and 3 would contend that they purchased the schedule property for a valid sale consideration of Rs.50,100/- and Rs.34,100/- respectively for Item Nos.1 to 4 and 7 of the schedule properties and they are unaware of the sale agreement which was executed

by defendant No.1 and that they are bonafide purchasers without notice of the sale agreement. The sale deed said to have been executed by defendant No.1 in favour of defendant No.2 is dated 24.07.2000 and the sale deed said to have been executed by defendant No.1 in favour of defendant No.3 is dated 26.07.2000, whereas, the agreement of sale Ex.A-1 is dated 09.06.2000. But for the reasons best known to defendant No.1, defendant No.1 purposefully did not reveal about the alienation of the schedule properties to defendant Nos.2 and 3 under the registered sale deeds in the written statement.

28. The contention of defendant Nos.2 and 3 is that they are bonafide purchasers without notice of the sale agreement. The contention of the plaintiff is that to defeat the rights of the plaintiff under Ex.A-1 agreement, defendant No.1 brought into existence the said sale deeds in favour of his close relatives i.e. defendant Nos.2 and 3. Defendant No.1/D.W.1 admits that defendant No.2 is the wife of his younger brother and he further admits that he executed a registered sale deed in favour of defendant No.2 in respect of Item Nos.1 to 4 of the plaint schedule property on 24.07.2000, under Ex.A-7. He further admits that he also executed another registered sale deed under Ex.A-8 in favour of defendant No.3 in respect of Item No.11 of the plaint schedule property. Admittedly, defendant No.2 is the wife of the younger brother of defendant No.1 and as per the own admissions of defendant No.3, he is the son-in-law of defendant No.1. Therefore, it is evident that to defeat the rights of the agreement holder, defendant No.1 brought into existence the aforesaid two sale deeds subsequent to the execution of the agreement of sale. Clause (b)

of Section 19 of the Specific Relief Act says that defendant Nos.2 and 3, who are claiming under the said sale deeds executed after the execution of the suit agreement, can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendant Nos.2 and 3, unless they are bonafide purchasers without notice of the original contract. Defendant Nos.2 and 3 failed to prove that they entered into the sale deed in good faith and without notice of the suit agreement and they failed to prove the same. Therefore, the subsequent purchasers have to execute a sale deed along with the original vendor/defendant No.1 and there is no need for cancellation of subsequent sale deeds.

29. Learned counsel for the appellants contended that in view of the order dated 03.03.2004, passed by the learned Senior Civil Judge, Allagadda, in I.P.No.53 of 2000 (Creditor I.P.), declaring respondent No.1 as “insolvent”, therefore, the official receiver is a proper and necessary party to the suit, but, the official receiver was not added as a party to the suit and that the present suit is not maintainable.

30. The learned counsel for the appellants placed a case law of the Hon’be Apex Court in ***Yeswant Deorao Vs. Walchand Ramchand***[9].

The ratio laid down in the aforesaid case law is applicable to the Limitation Act, however, it is not applicable to the present facts of the case.

[9] **AIR 1951 Supreme Court 16**

31. The learned counsel for the appellants placed another case law in ***Paleti Chandrayya and Ors. Vs. Yeruva Chinnappa Reddi and Ors.,***[10] wherein the High Court of Madras held as follows:

> *"**12**. …….The legal consequence of adjudication in bankruptcy is that the ownership of the insolvent in all the property owned, and possessed by him on the date of adjudication is divested from him and vested in the Official Receiver. As observed by **Mellish L. J. in Oriental Indland Steam Co. Ex. parte Scinde Ry. Co. (1874) 9 Ch. A 557 at p. 560**:*
>
> > *In bankruptcy, the whole estate, both legal and beneficial, is taken out of the bankrupt, and is vested in his trustees or his assignees.*
>
> ***13**. So until the property is again revested in the insolvent, the insolvent has no title to the said property. On annulment of the adjudication, Section 37 provides that the property may revest in the insolvent provided the Court does not vest the property in any person whom it appoints. Therefore, if the Court chooses to appoint a person and vests the property in him, the insolvent gets no title to the said property by reason of the said annulment. The effect of such vesting was fully considered in a decision of the Full Bench reported in **Veeraya v. Official Receiver, Guntur ('35) 22 A.I.R. 1935 Mad. 826 at p. 925. King J**. who delivered the judgment on behalf of the Full Bench explained the scope of the said decision in **Chinnapareddi v. Official Receiver, Guntur ('35) 22 A.I.R. 1935 Mad. 835 at page 65** thus:*
>
> > *It was there held that when the property of an insolvent is vested in the Official Receiver or any other appointee under Section 87, it is the insolvency Court which retains control of it and the insolvency Court must direct its disposal in the interests of the general body of creditors."*

32. The learned counsel for the appellants placed another case law in ***The Official-Receiver, East Tanjore, representing the estate of the inslvt and Ors. Vs. Sait Jessasingh Chathurbhujadas and another,***[11] wherein the High Court of Madras held as follows:

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[10] **AIR 1941 Madras 753**
[11] **AIR 1951 Madras 687**

*"**16**. The preponderance of authority is to the effect that even if tbe Official Receiver is bound by the equities, since he should be made a party to the suit, the decree cannot be executed against him. Whether the decree-holder can prove his claim in insolvency or whether a separate suit will lie by making the Official Receiver a defendant, we are not concerned with at this juncture. Weare, therefore decidedly of opinion that by the operation of Sub-section (7) of Section 28 of the Provincial Insolvency Act, the insolvency of Subbarama Nadar related back to the date of the filing of the application and thereafter, since the Official Receiver was not made a party to the suit, the decree obtained would not bo binding against him."*

33. The learned counsel for the appellants placed another case law in ***Gurucharan Singh Vs. Kamala Singh and others,***[12] wherein the Hon'ble Apex Court held as follows:

*"**12**. Before we examine this quintessential aspect presented before us will complex scholarship by Shri S. C. Misra we Had better make. short shrift of certain other questions raised by him. He has desired ` us, by way of preliminary objection, not to give quarter to the plea, founded on s. 6 of the Act, to non-suit his client, since it was a point raised be nova at Letters Patent state. The High Court have thought to this objection but overruled it, if we may say so rightly. The Court narrated the twists and turns of factual and legal circumstances which served lo extenuate the omission to urge the point earlier but hit the nail on the head when it held that it was well-settled that a pure question of law going to the root of the case and based on undisputed or proven facts could be raised even before the Court of last resort, provided the opposite side was not taken by surprise or otherwise unfairly prejudiced. Lord Watson, in Connecticut Fire Insurance Company v. Kavanach,(1) stated the law thus:*

> *"When a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interest of justice to entertain the plea. The expediency of adopting that course may be doubted when the plea*

[12] **AIR 1977 Supreme Court 5**

> *cannot be disposed of without deciding nice questions of fact in considering which the Court of ultimate review is placed in a much less advantageous position than the courts below. But their Lordships have no hesitation in holding that the course ought not any case to be followed unless the Court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts if fully investigated would have supported the new plea."*
>
> *We agree with the High Court that the new plea springs from the common case of the parties, and nothing which may work injustice by allowance of this contention at the late stage of the Letters Patent Appeal has been made out to our satisfaction. Therefore, we proceed to consider the impact and applicability of Section 6 of the Act to the circumstances of the present case."*

In the case on hand, the aforesaid plea was not taken by the appellant either before the trial Court or before the First Appellate Court. The law is well settled that "*no amount of evidence can be looked into upon a plea which was never put forth in the pleadings. A question which did not arise from the pleadings and which was not the subject matter of an issue cannot be decided by the Court*." It is also further well settled that "*a Court cannot make out a case not pleaded, the Court should confine its decision to the question raised in pleadings and a factual issue cannot be raised or considered for the first time in a second appeal."*

34. In a case of ***Ram Sarup Gupta Vs. Bishun Narain Inter College,***[13] the Hon'ble Apex Court held as follows:

> *"**6**. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all*

[13] **(1987) 2 SCC 555**

necessary and mate- rial facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair split- ting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead; the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal."

35. In a case of ***Rama KT Barman (Died) Thr. LRs. Vs. MD Mahim Ali & Ors.,***[14] the Hon'ble Apex Court held as follows:

*"**14**. Apart from the fact that none of the said substantial questions of law formulated by the High Court were either raised before the trial court or the appellate court, none of parties was given any opportunity of leading the evidence on the said issues. It is well-settled principle of law that the Court cannot create any new case at the appellate stage for either of the parties, and the appellate court is supposed to decide the issues involved in the suit based on the pleadings of the parties."*

36. Admittedly, in the case at hand, the aforesaid plea of maintainability of the suit is not at all taken by defendant No.1 in the pleadings, that is, in the written statement itself. There is no whisper in the written statement of

[14] **2024 LawSuit (SC) 783**

defendant No.1 about the alienation of the plaint schedule properties in favour of defendant Nos.2 and 3 before filing of the suit itself. It is brought to the notice of this Court by respondent/plaintiff that the respondent/plaintiff filed a counter affidavit in S.A.M.P.No.2067 of 2011 in the present second appeal stating that he filed E.A.No.134 of 2011 for delivery of the property and the Executing Court delivered the possession of the property to the plaintiff on 02.07.2011 and from the date of delivery of possession he is in continuous possession and enjoyment over the same. A copy of the delivery proceedings of the Executing Court is also enclosed along with the counter-affidavit in S.A.M.P.No.2067 of 2011 in the present second appeal.

37. For the aforesaid reasons, this Court is of the considered view that there is no subsistence in the contention taken by the appellants that in view of the non-joinder of the official receiver as a party, the present suit is not at all maintainable.

38. On appreciation of the entire evidence on record on all the issues decided by the trial Court and after framing the points for consideration as required under Section 96 of C.P.C., the learned first appellate Judge rightly allowed the first appeal. In the light of the material on record and upon earnest consideration now, it is manifest that the substantial questions of law including the additional substantial question of law raised in the course of hearing in the second appeal on behalf of the appellants did not arise or remain for consideration. This Court is satisfied that this second appeal did not involve any substantial question of law for determination.

31. In the result, the second appeal is **dismissed** confirming the judgment and decree passed by the First Appellate Court. Considering the facts and circumstances of the case, each party do bear their own costs in the second appeal.

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

V. GOPALA KRISHNA RAO, J.

Date: 15.06.2026
SRT