APHC010209262022

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: 205/2022

Between:

Smt. Sammeta Venkata Ramana **...APPELLANT**

AND

Sammeta China Venkata Narayana **...RESPONDENT**

Counsel for the Appellant:

1. NARASIMHA RAO GUDISEVA

Counsel for the Respondent:

1. T LAKSHMI PADMAJA

The Court made the following:

Reserved on 06.05.2026
Pronounced on 15.06.2026
Uploaded on 15.06.2026

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

I.A.No.3 of 2026
IN/AND
SECOND APPEAL No.205 of 2022

JUDGMENT:

This second appeal is filed aggrieved against the judgment and decree dated 23.02.2022 in A.S.No.68 of 2016 on the file of the I Additional District Judge, Krishna at Machilipatnam, confirming the judgment and decree dated 01.03.2016 in O.S.No.211 of 2007 on the file of the Principal Senior Civil Judge at Machilipatnam.

2. The appellant herein is the defendant and the respondent herein is the plaintiff in O.S.No.211 of 2007 on the file of the Principal Senior Civil Judge at Machilipatnam.

3. The plaintiff initiated action in O.S.No.211 of 2007 on the file of the Principal Senior Civil Judge at Machilipatnam, with a prayer for the relief of specific performance of the agreement of sale dated 28.08.2006 directing the defendant to execute a registered sale deed in favour of the plaintiff in respect of the suit schedule property within the time fixed by the Court after receiving the balance of sale consideration or for grant of the alternative relief for payment of Rs.35,000/- with interest @ 12% per annum from the date of agreement till the date of realization and for costs of the suit.

4. The learned Principal Senior Civil Judge at Machilipatnam, decreed the suit with costs against the defendant directing him to execute a registered sale

deed in favour of the plaintiff in respect of the schedule property in terms of the agreement of sale dated 28.08.2006, after receipt of the balance of consideration, at his expenses within a period of two months and on her failure the plaintiff is at liberty to get such sale deed executed in the manner known to law and directed the plaintiff to pay the balance of sale consideration of Rs.1,15,000/- within two months. Felt aggrieved of the same, the unsuccessful defendant in the above said suit filed the aforesaid appeal suit before the first appellate Court. The learned I Additional District Judge, Krishna at Machilipatnam, dismissed the first appeal with costs by confirming the judgment and decree passed by the trial Court. Aggrieved thereby, the unsuccessful defendant/appellant approached this Court by way of second appeal.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the original suit.

6. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.211 of 2007, is as follows:

I. The plaintiff pleaded that the defendant is the wife of his elder brother and that she is the absolute owner and possessor of the plaint schedule property comprising Ac.1.24 cents of land, consisting of Ac.0.70 cents in R.S.No.90/1 and Ac.0.54 cents in R.S.No.98/3, situated at Devarapalli Village of Pedana Mandal. The plaintiff further pleaded that the defendant agreed to sell an extent of Ac.1.00 cents out of the plaint

schedule property at the rate of Rs.1,50,000/- per acre and thereafter, on 28.08.2006, the plaintiff and the defendant entered into an agreement of sale and the plaintiff paid an amount of Rs.30,000/- towards advance sale consideration and as per the terms and conditions of the agreement, the plaintiff had to pay the balance sale consideration on or before 27.08.2007. The plaintiff further pleaded that on 31.08.2006, the plaintiff paid an additional amount of Rs.5,000/- towards part sale consideration. Thereafter, since June, 2007, the plaintiff had been requesting the defendant to execute and register the sale deed by expressing his readiness and willingness to pay the balance sale consideration. However, the defendant postponed the execution of the sale deed on one pretext or the other.

II. The plaintiff further pleaded that on 18.06.2007, he got issued a legal notice to the defendant demanding execution of the sale deed and also deposited the balance sale consideration amount in his Savings Bank Account No.01170061470, maintained with State Bank of India, Pedana Branch, to demonstrate his financial readiness. The plaintiff further pleaded that despite receipt of the said notice, the defendant neither issued any reply nor expressed her willingness to execute the sale deed.

Therefore, the plaintiff was constrained to file the present suit seeking for relief of specific performance of agreement of sale dated 28.08.2006 directing the

defendant to execute a registered sale deed in favour of the plaintiff in respect of the suit schedule property within the time fixed by the Court after receiving the balance of sale consideration and also for grant of alternative relief for payment of Rs.35,000/- with interest @ 12% per annum from the date of agreement till the date of realization and for costs of the suit.

7. The defendant filed written statement denying the contents of plaint averments and further contended as follows:

The defendant pleaded that she denied the execution of the agreement of sale, dated 28.08.2006, and also denied receipt of any amount towards sale consideration thereunder. The defendant further pleaded that the plaintiff is in the habit of grabbing lands and that disputes arose between the plaintiff and her husband, when her husband questioned the conduct of the plaintiff. The defendant further pleaded that the plaintiff is a member of the Nandamuru Primary Agricultural Co-operative Society and he informed the defendant that he had obtained a loan in her name by mortgaging the plaint schedule property for the purpose of purchasing she-buffaloes. The defendant further pleaded that the plaintiff obtained her thumb impressions on certain stamp papers and with an evil intention the plaintiff fabricated the suit agreement of sale. The defendant further pleaded that she never intended to sell the plaint schedule property to the plaintiff and as such, she prayed for dismissal of the suit with costs.

8 On the basis of above pleadings, the learned Principal Senior Civil Judge at Machilipatnam, framed the following issues for trial:

1) Whether the agreement of sale dated 28.08.2006, is fabricated by plaintiff as pleaded by defendant?
2) Whether the plaintiff is entitled for specific performance of contract as prayed for?
3) To what relief?

9. During the course of trial in the trial Court, on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A-1 to A-4 were marked. On behalf of the defendant, D.Ws.1 to 3 were examined and Exs.B-1 and B-2 were marked.

10. The learned Principal Senior Civil Judge at Machilipatnam, after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, decreed the suit with costs. Felt aggrieved thereby, the unsuccessful defendant filed the appeal suit in A.S.No.68 of 2016 before the learned I Additional District Judge, Krishna at Machilipatnam, wherein, the following points came up for consideration:

1) Whether the plaintiff before the trial Court has proved that suit agreement of sale dated 28.08.2006 is true, valid and executed by defendant?

2) Whether the plaintiff has proved that he is ready and willing to perform his part of the contract?
3) Whether the plaintiff has proved that he is entitled to seek specific performance of suit agreement of sale or to the alternative relief of refund of advance amount?
4) Whether the findings given by the trial Court are substantial and whether there are any grounds to interfere with the judgment and decree of the trial Court?
5) To what relief?

11. The learned I Additional District Judge, Krishna at Machilipatnam, i.e., the first appellate Judge, after hearing the arguments, answered the point, as above, against the defendant/appellant and in favour of the plaintiff/respondent and dismissed the appeal suit filed by the defendant. Felt aggrieved of the same, the unsuccessful defendant in O.S.No.211 of 2007 filed the present second appeal before this Court.

12. On hearing both side counsels at the time of admission of the second appeal, on 01.04.2026, this Court admitted the second appeal and framed the following substantial questions of law:

1) *Whether the Court below miserably failed in exercising the discretion conferred upon it under Section 20 of the Specific Relief Act judiciously, as the Appellant/Defendant proved that she neither executed nor having intention to sell the Plaint Schedule Property, inspite of that the*

Courts below exercised discretion in favour of the Plaintiff arbitrarily and prejudicial to the interest of Appellant/Defendant?

2) *Whether the Courts below not even invoked Section 16(c) of the Specific Relief Act in order to test the readiness and willingness of the plaintiff who paid a paltry sum of Rs.35,000/- out of Rs.1,50,000/- and the balance amount was neither deposited nor filed any document evidencing his readiness and willingness to perform his part of the contract, even by depositing the amount in a personal account of the Plaintiff in Bank do not serve the legal requirement ?*

3) *Whether the Courts below are justified in decreeing the suit, when the Plaintiff has not chosen to examine the Attestor, even one of the Attestor supported the case of the Defendant, as such in the light of Section 114(g) of the Indian Evidence Act, the adverse inference has to be drawn by the Courts below holding that the execution of Agreement of Sale or passing of consideration under Ex.A-1 is not proved by the Plaintiff?*

13. Heard Sri Narasimha Rao Gudiseva, learned counsel appearing for the appellant and Sri J.Ugranarasimha, learned Counsel representing Smt. T.Lakshmi Padmaja, learned counsel appearing for the respondnet.

14. Dealing with the scope of Section 100 of the Code of Civil Procedure, the Apex Court in the case of ***Kulwant Kaur v. Gurdial Singh Mann (Dead) By Lrs***[1]1 held as follows:

> *"34. … … … Section 100 has introduced a definite restriction on to the exercise of jurisdiction in a second appeal so far as the High Court is concerned. Needless to record that the Code of Civil Procedure (Amendment) Act, 1976 introduced such an embargo for such definite objectives and since we are not required to further probe on that score, we are not detailing out, but the fact remains that while it is true that in a second appeal a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court in our view will be within its jurisdiction to deal with the issue. This is, however, only in the event such a fact is brought to light by the High Court explicitly and the judgment should also be categorical as to the issue of perversity vis-à-vis the concept of justice. Needless to say however, that perversity itself is a substantial question worth adjudication — what is required is a categorical finding on the part of the High Court as to perversity. … … …"*

15. The Apex Court in the case of ***Yadavarao Dajiba Shrawane v. Nanilal Harakchand Shah (Dead) and Ors.***,[2] held as follows:

> *"31. From the discussions in the judgment it is clear that the High Court has based its findings on the documentary evidence placed on record and statements made by some witnesses which can be construed as admissions or conclusions. The position is well settled that when the judgment of the final court of fact is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence the High Court in second appeal is entitled to interfere with the judgment. The position is also well settled that admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by courts. A finding of*

[1] (**2001) 4 SCC 262**
[2] **(2002) 6 SCC 404**

fact ignoring such admissions or concessions is vitiated in law and can be interfered with by the High Court in second appeal. Since the parties have been in litigating terms for several decades, the records are voluminous. The High Court as it appears from the judgment, has discussed the documentary evidence threadbare in the light of law relating to their admissibility and relevance."

16. In the case of ***Hero Vinoth (Minor) v. Seshammal*** [3], the Apex Court held as follows:

"19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where 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 by ignoring material evidence." (emphasis supplied)

17. The learned counsel for appellant would contend that the execution of Ex.A-1 agreement of sale and passing of advance sale consideration are not at all proved by the plaintiff and the plaintiff did not choose to examine the attestors in Ex.A-1 agreement of sale. The defendant herein is disputing the execution of agreement of sale Ex.A-1 and also passing of advance sale consideration under Ex.A-1, therefore, it is for the plaintiff to prove Ex.A-1

[3] **(2006) 5 SCC 545**

agreement of sale. The undisputed facts are that the appellant/defendant is the wife of the elder brother of the plaintiff and she is the absolute owner of the plaint schedule property. The plaintiff entered into the witness box and examined himself as P.W.1 and the original agreement of sale was exhibited as Ex.A-1 through P.W.1. Ex.A-1 reveals that the plaintiff agreed to purchase the plaint schedule property for Rs.1,50,000/- and he received an amount of Rs.30,000/- towards advance sale consideration on the date of agreement of sale and the defendant also affixed her thumb mark on the agreement of sale and the 1st attestor is none other than the husband of the appellant. Ex.A-1 further reveals that on 31.08.2006, the plaintiff paid an amount of Rs.5,000/- towards part of the remaining balance sale consideration and also obtained endorsement under Ex.A-2 and obtained the thumb mark of the defendant and both Ex.A-1 and Ex.A-2 were prepared by the scribe of Ex.A-1. The plaintiff narrated in the plaint and also in his evidence about the financial capacity of himself and the deposit of balance sale consideration in the bank account of the plaintiff at State Bank of India, Pedana Branch, to prove his readiness and willingness to perform his part of the contract. The plaintiff also furnished his Bank Account Number in the plaint as well as in his evidence. It is not at all the case of the appellant that the said account does not belong to the plaintiff.

18. To prove Ex.A-1 agreement of sale, the plaintiff also examined the scribe of Ex.A-1 agreement as P.W.2. P.W.2 narrated in his evidence about the preparation of Ex.A-1 agreement and his evidence proved the execution of Ex.A-1 agreement of sale and passing of advance sale consideration of an

amount of Rs.30,000/- on the date of Ex.A-1 agreement of sale and also payment of another amount of Rs.5,000/- on 31.08.2006 under Ex.A-2 endorsement and he is the scribe of Ex.A-1 and Ex.A-2. It is not the case of the appellant that she has enmity with the scribe and the plaintiff and that they deposed falsehood against her. The defendant admits that she has no disputes with the plaintiff. The evidence of P.W.2 is convincing to prove Ex.A-1 agreement of sale transaction. Moreover, one of the attestors in Ex.A-1 agreement of sale is none other than the husband of the defendant. The defendant simply pleaded ignorance about the signature of her husband in Ex.A-1 agreement of sale.

19. The appellant/defendant was examined as D.W.1 and the defendant admitted in her evidence in cross-examination that she does not know whether she filed any written statement in the suit or not and she does not know whether the agreement of sale contained the signature of her husband or not and so also she does not know how her husband signs. Another admission made by the defendant in her evidence in cross-examination is that she affixed her thumb impression on blank Non-Judicial stamp paper of Rs.100/- and she further admits that she cannot make enquiry about the attestors of Ex.A-1 and Ex.A-2 and her husband and she never made any efforts to know about the attestors of Ex.A-1 and Ex.A-2 and the plaintiff is her brother-in-law, except on a blank Non-Judicial stamp paper of Rs.100/-, she did not affix her thumb impression on any other paper. She further admits that the thumb impression shown to her on the Vakalath and on the written

statement does not belong to her and she further admits that she has no disputes with the plaintiff. The defendant denied her own thumb impressions on the Vakalath and on the written statement. Therefore, it is evident that the appellant is suppressing the truth.

20. The defence put forth by the defendant in the written statement is that the plaintiff is a member in Nandamuru Primary Agriculture Cooperative Society and the plaintiff himself has stated that he took loan in the name of the defendant by pledging the plaint schedule property in the Agricultural Cooperative Society for purchasing she-buffaloes and the plaintiff obtained thumb impression of the defendant on blank stamped papers in the absence of her husband. Whereas in her evidence as D.W.1, she admits that she does not know in which Agricultural Cooperative Society the plaintiff is a member and the proof of such membership. Ex.A-3 reveals that prior to filing of the suit, the plaintiff got issued a legal notice to the defendant and the defendant also received the same. D.W.2, who is another witness of the defendant, admits that he came to the Court to give evidence at the request of the husband of the defendant and he came to know the suit facts through the husband of the defendant and he pleaded ignorance about the filing of the suit for specific performance of agreement of sale by the plaintiff in respect of the plaint schedule property. The aforesaid own admissions of D.W.2 reveal that he is not having any personal knowledge about the suit facts.

21. D.W.3 is none other than the husband of the defendant, he stated in his evidence in chief-examination that he never signed an agreement and the def is his wife and Ex.A-1 does not contain his signature. He admits in his evidence in cross-examination that he does not know who filed the suit against his wife and also the purpose of the suit and his wife informed him that his brother filed a suit against his wife and he knew that it was filed about 7 or 8 years back and he did not make any efforts to know the suit details as it was filed against his wife. He further admits that he is attending the court regularly and he is looking after the suit affairs. The aforesaid own admissions of D.W.3 reveal that he is also suppressing the truth before the Court. The learned counsel for appellant would contend that both the Courts below have not invoked Section 16(c) of the Specific Relief Act in order to test the readiness and willingness of the plaintiff who paid a paltry sum of Rs.35,000/- out of Rs.1,50,000/- and the balance amount was neither deposited nor was any document evidencing his readiness and willingness to perform his part of the contract. The plaintiff produced a valid agreement of sale between him and the defendant and the same was exhibited as Ex.A-1. As per Ex.A-1, the plaintiff had to pay the remaining balance sale consideration of Rs.1,20,000/- by 27.08.2007 and an advance amount of Rs.30,000/- was received by the plaintiff on the date of agreement of sale and Ex.A-2 reveals that on 31.08.2006, the defendant received an amount of Rs.5,000/- under Ex.A-2 endorsement and Ex.A-1. To prove his readiness and willingness, the plaintiff issued a legal notice dated 18.06.2007, and Ex.A-3 Postal Acknowledgment

Card reveals that the defendant received the said notice. The plaintiff also furnished his bank account details and also the deposit of balance sale consideration in his savings bank account in the plaint as well as in his evidence, to show his financial capacity to discharge his part of the contract and the fact remains that the plaintiff filed suit on 27.08.2007, i.e., on the last date of performance of the contract of both the parties. To disprove the same, nothing was produced by the appellant/defendant and she did not even admit her own thumb impression on the Vakalath and on the written statement. As stated *supra*, this Court came to the conclusion by narrating the reasons that the defendant and her husband suppressed the truth and the defendant approached the Court with unclean hands.

22. The plaintiff, to prove Ex.A-1 agreement of sale, relied on the evidence of P.W.2 and his evidence is trustworthy. Moreover, the defendant herself admits that she has no disputes with the plaintiff. To show his readiness and willingness, the plaintiff got issued a legal notice before the date of performance of contract and the defendant having received the said notice kept quiet and did not issue any reply notice and remained silent. To show his readiness and willingness the plaintiff also furnished his bank account details and also the deposit of balance sale consideration in his bank account in the plaint as well as in his evidence. Therefore, the plaintiff proved Ex.A-1 agreement of sale.

23. In a case of ***U.N. Krishnamurthy (since deceased) through LRs v. A.M. Krishnamurthy***[4] 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 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:*

[4] **(2023) 11 SCC 775**

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."*

24. A Bench of three Judges of the Hon'ble Apex Court considered the position in ***Nirmala Anand Vs. Advent Corporation (P) Ltd. and Ors***[5]*., 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. 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

[5] **(2002) 8 SCC 146**

may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."

In the present case, both the courts having seen the conduct of the appellant in suppressing the material facts and on appreciation of the entire evidence on record produced by both the parties, both the courts below granted the main relief of specific performance of agreement of sale.

25. For the aforesaid reasons, the plaintiff is entitled to the main relief of specific performance of agreement of sale. Both the Courts below on appreciation of the entire evidence on record, came to a conclusion that the plaintiff in the suit is entitled to the main relief of specific performance of agreement of sale. The findings of fact recorded by both the Courts below were based on proper appreciation of evidence and the material on record and there was neither illegality nor irregularity in those findings and therefore, the said findings do not require to be upset. Therefore, the conclusions drawn by both the Courts below are found correct. There is no need to interfere with the concurrent finding arrived at by both the Courts below. In the light of the material on record and upon earnest consideration now, it is manifest that the substantial questions of law raised in the course of hearing in the second appeal on behalf of the appellant did not arise or remain for consideration. This Court is satisfied that the second appeal did not involve any substantial question of law for the determination.

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26. The case of the petitioner/plaintiff in brief is as follows:

I. The petitioner pleaded that the respondent, who is no other than the elder brother of her husband, filed O.S.No.211 of 2007 on the file of the the Principal Senior Civil Judge, Machilipatnam, seeking specific performance of the agreement of sale, dated 28.08.2006. The petitioner further pleaded that she had purchased the plaint schedule property on 28.08.2006 itself under a registered sale deed vide Document No.1650 of 2006 on the file of the Office of the Sub-Registrar, Pedana, in respect of an extent of Ac.1.24 cents within the specified boundaries as per the schedule in the said document and the entire land consisting of a single plot. The petitioner further pleaded that the respondent/plaintiff is claiming to have obtained an agreement of sale, dated 28.08.2006, in respect of an extent of Ac.1.00 cent. The petitioner further pleaded that she never had any intention to sell the plaint schedule property to the respondent/plaintiff at any point of time and neither she nor her family members ever proposed to alienate the said property.

II. The petitioner further pleaded that the original registered sale deed, dated 28.08.2006, was not in her physical possession, as she had earlier availed an agricultural loan for cultivation purposes and, as a condition thereof, the petitioner was asked to deposit the original title deed with the Bank. Thereafter, she applied for and obtained a certified copy of the said sale deed from the Office of the Sub-Registrar, Pedana. The petitioner further pleaded that the said registered sale deed is a

public document and the failure of production of the original document earlier was neither wilful nor deliberate, but was due to the aforesaid circumstances and due to lack of legal and technical knowledge.

27. The learned counsel for petitioner would contend that the petitioner purchased the plaint schedule property on the very same day i.e. on 28.08.2006, and the respondent claims that she executed an agreement of sale in his favour on 28.08.2006 he further contended that it is a matter of common sense and prudent human conduct that no person would sell the land purchased on the same day having just completed the purchase of land in between 02.00 p.m. and 03.00 p.m. in the Registrar Office. The contention of the petitioner herein is that she purchased an extent of Ac.1.24 cents of land under a Registered Sale Deed on 28.08.2006. Whereas, the contention of the plaintiff is that on 28.08.2006, the defendant agreed to sell the property of Ac.1.00 cents of land from out of Ac.1.24 cents for an amount of Rs.1,50,000/- and the defendant received advance sale consideration of Rs.30,000/- out of Rs.1,50,000/- and the plaintiff has to pay the remaining balance sale consideration on or before 27.08.2007, on which date the plaintiff filed the suit. The purchase of the plaint schedule property along with Ac.0.24 cents of the property under a registered sale deed on 28.08.2006 was not at all pleaded by the defendant in the written statement. For the first time before the Second Appellate Court, the defendant has taken the said plea in the affidavit attached to the petition, that too after submitting arguments of both sides in the second appeal, and the petitioner/appellant came up with the present application to

receive the registration extract of the sale deed dated 28.08.2006 and the encumbrance certificate enclosed to the petition.

28. Order XLI Rule 27 of Civil Procedure Code reads as under:

> **Production of additional evidence in Appellate Court**.-
>
> *(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—*
>
> > *(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*
> >
> > *(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*
> >
> > *(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.*
>
> (*2) Whenever additional evidence is allowed to the produced, by an Appellate Court, the court shall record the reason for its admission.*

The general principle is that the appellate Court should not travel outside the record of the trial Court and cannot take any evidence in appeal. However, as an exception under Order 41 Rule 27 of Civil Procedure Code, enable the appellate Court to take evidence in exceptional circumstances only. The proviso under Order 41 Rule 27 C.P.C. permits the party to produce additional evidence before the appellate Court provided it has to be come under the ambit of order 41 Rule 27 of Civil Procedure Code.

29. The documents to be received as additional evidence are the registration extract of the sale deed dated 28.08.2006 and the encumbrance

certificate. The purchase of the suit schedule property by the petitioner/appellant along with other Ac.0.24 cents under a registered sale deed dated 28.08.2006 is neither pleaded in her written statement nor in her evidence. For the first time, the defendant, who is the appellant herein, came up with a petition that too after hearing the arguments in the main second appeal.

30. In a case of ***Union of India Vs. Ibrahim Uddin & Anr.***, *vide* ***Civil Appeal No.1374 of 2008,*** the Hon'ble Apex Court held as follows:

> *"**37**. To sum up on the issue, it may be held that application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite condition incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage."*

31. The procedural framework under Order XLI of the Code of Civil Procedure, 1908, makes it abundantly clear that an appeal is ordinarily to be decided on the evidence adduced before the trial Court. The Appellate Court is not expected to embark upon fresh fact, finding exercise or permit

production of additional evidence as a matter of routine. Where the Appellate Court is satisfied that the material already available on record is sufficient to enable it to pronounce judgment, it is well within its jurisdiction to confine its consideration to the evidence forming part of the record of the Courts below. Furthermore, once the trial Court had concluded and the decree was under challenge in appeal, the appellant could not be permitted to fill the gaps in her case, that too in a second appeal, by seeking to adduce further material to fortify a claim that was fundamentally flawed.

32. As noticed *supra*, the defendant, who is the appellant before the Second Appellate Court, neither pleaded nor deposed in her evidence about the purchase of the plaint schedule property along with other Ac.0.24 cents under a registered sale deed dated 28.08.2006. For the first time, that too after hearing arguments of both sides in second appeal, the appellant came up with a petition along with the registration extract of the said sale deed and also the encumbrance certificate. It is well settled that "*in the absence of pleading, evidence, if any, produced by the parties cannot be considered*." It is also equally well settled that *"no party should be permitted to travel beyond its pleadings and that all necessary and material facts shall be pleaded by a party in support of the case set up by the defendant*." For the aforesaid reasons, I do not find any ground to allow the present Interlocutory Application. Hence, the present Interlocutory Application vide I.A.No.3 of 2026 is dismissed.

33. In the result, the Interlocutory Application vide I.A.No.3 of 2026 in S.A.No.205 of 2022 and S.A.No.205 of 2022 are dismissed confirming the judgment and decree dated 23.02.2022 in A.S.No.68 of 2016, passed by the learned I Additional District Judge, Krishna at Machilipatnam. Considering the facts and circumstances of the case, each party shall 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