APHC010624632011

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

WEDNESDAY,THE FIFTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

SECOND APPEAL NO: 1250/2011

Between:

Sri Raja Velugoti Madana Gopala Krishna Yachendra (died) and Others **...APPELLANT(S)**

AND

Padidam Jayasree and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):

1. M RAVINDRA

Counsel for the Respondent(S):

1. P SRI RAM

The Court made the following:

Reserved on 31.03.2026
Pronounced on 15.04.2026
Uploaded on 15.04.2026

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.1250 of 2011

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure (for short, 'C.P.C.') is filed aggrieved against the decree and judgment dated 07.06.2011 in A.S.No.08 of 2005 on the file of the Court of learned III Additional District Judge (FTC) Nellore, (for short, 'the first appellate Court'), in reversing the decree and judgment dated 17.11.2004 in O.S.No.50 of 1994 on the file of the Court of learned Senior Civil Judge, Gudur, (for short, 'the trial Court').

2. The appellant herein is the defendant and the respondents herein are the plaintiffs before the trial Court. The sole-appellant died during the pendency of the second appeal and the appellant No.2 is added as the Legal Representative of the deceased sole-appellant.

3. The plaintiffs initiated action in O.S.No.50 of 1994, on the file of the trial Court with a prayer for specific performance directing the defendant to execute a regular sale deed in favour of the plaintiffs basing on the agreement of sale dated 31.08.1991.

4. The trial Court dismissed the suit. Felt aggrieved of the same, the unsuccessful plaintiffs in the above said suit filed A.S.No.08 of 2005 on the file of the first appellate Court. By decree and judgment dated 07.06.2011 in A.S.No.08 of 2005, the first appellate Court allowed the appeal suit by setting aside the decree and judgment passed by the trial Court.

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

6. Case of the plaintiffs, in brief, as set out in the plaint averments in O.S.No.50 of 1994, is as follows:

The defendant borrowed a sum of Rs.1,70,000/- from the plaintiffs on 31.08.1991 and executed a stamped agreement of sale in favour of the plaintiffs agreeing to repay the said amount on or before 30.08.1993, failing which the defendant will execute a registered sale deed in respect of the plaint schedule property in favour of the plaintiffs and also deliver the possession of the same. In spite of demands made by the plaintiffs, the defendant failed to repay the amount. The plaintiffs pleaded that they got issued a legal notice to the defendant on 26.02.1994 for which the defendant issued a reply notice on 05.03.1994 with false allegations. Hence, the present suit.

7. The defendant filed written statement before the trial Court. The brief averments in the written statement filed by the defendant are as follows:

The defendant pleaded that the alleged agreement of sale is a concocted and fabricated document and brought into existence for unlawful gain. The defendant pleaded that the market value of the plaint schedule property is about Rs.4,00,000/- and he never agreed to sell the same for paltry amount. The defendant further pleaded that the possession said to have been delivered amounts to a conveyance deed and the plaintiffs are also aware that the plaint schedule property affected by the land ceiling Act and pending the proceedings

under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act under the agreement of sale is null and void as per Section 17 of the A.P. Land Reforms Act and as such the agreement of sale cannot be executed under Section 23 of the Indian Contract Act. The defendant further pleaded that the Government was in possession of the land covered under Sy.No.158 of Periyavarama Village in pursuance of the Land Reforms Tribunal order dated 28.11.1982 and also took actual possession by the Government on 24.01.1984 and continued to be in possession till 1993. The defendant pleaded that the agreement of sale is not valid and as per Section 52 of the Transfer of Property Act, the suit is liable to be dismissed and as such, he requested for the dismissal of the suit.

8. On the basis of above pleadings, the trial Court framed the following issues for trial:

1. Whether the agreement of sale dated 31.08.1991 is true, valid and binding on the defendant?
2. Whether the wife of the defendant is having any right in the suit property?
3. To what relief the plaintiffs are entitled to?

On 23.11.2000, the trial Court framed the following additional substantial question of law:

1. Whether the suit is maintainable on the agreement of sale dated 31.08.1991 which is subsequent to the passing of A.P. Land Reforms (Ceiling on agricultural holdings) Act of 1973 and by virtue of Section 17 of the said Act?

9. During the course of trial in the trial Court, on behalf of the plaintiffs, P.W.1 to P.W.3 were examined and Ex.A-1 to Ex.A-32 were marked. On behalf of the defendant, D.W.1 and D.W.2 were examined and Ex.B-1 to Ex.B-4 and Ex.X-1 to Ex.X-11 were marked.

10. 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. Felt aggrieved thereby, the unsuccessful plaintiffs filed the appeal suit in A.S.No.08 of 2005, wherein the following points came up for consideration:

1) Whether the agreement of sale dated 31.08.1991 is true, valid and binding on the defendant?
2) Whether the wife of the defendant has right in the suit schedule property?
3) Whether the agreement of sale Ex.A-21 is null and void in view of Section 17 of the Andhra Pradesh Land Reforms (ceiling on agricultural holding) Act?
4) Whether this appeal is liable to be allowed if so on what ground? and
5) To what relief?

11. The learned first appellate Judge after hearing the arguments, answered the points, as above, against the defendant and allowed the appeal by setting aside the judgment and decree passed by the learned trial Judge. Felt aggrieved of the same, the unsuccessful defendant in O.S.No.50 of 1994 filed the present second appeal before this Court.

12. On hearing both sides, at the time of admission of the second appeal on 23.07.2012, the Composite High Court of Andhra Pradesh, at Hyderabad, framed the following substantial questions of law:

1. *Whether the decree of the appellate Court granting specific performance is erroneous and ignoring the settled principles of granting of the discretionary relief when part of the claim of the plaintiffs with regard to the possession of the property is not believed?*
2. *Whether the decree of the specific performance is equitable in the interest of the parties and the circumstances?*

On hearing learned counsel appearing for both sides, this Court on 27.11.2025 framed the following additional substantial question of law:

1. *Whether the First Appellate Court has not considered the presumption under Section 114 of the Indian Evidence Act which contemplates that when the parties failed to appear into the witness box to submit for cross examination, a presumption can be drawn that the case set up by them is false?*
2. *Whether the Appellate Court has erred in reversing finding of the trial Court that Ex.A-21 is not valid as per Section 17 of the Andhra Pradesh Land Ceiling Act?*

13. Heard Sri M.Ravindra, learned counsel appearing for the appellant/defendant, and Sri Pathanjali Pamidigattam, learned counsel, representing Sri P.Sri Ram, learned counsel for the respondents/plaintiffs.

14. Law is well settled that under Section 100 of C.P.C., the High Court cannot interfere with the findings of fact arrived at by the first appellate Court which is the 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.

15. Learned counsel for the appellant would contend that both the Courts below came to the wrong conclusion that the suit document is an agreement of sale. He would further contend that though the said document is named as an agreement, it is not at all an agreement in between both the parties to the suit and it can be considered as usufructuary mortgage.

16. The suit document dated 31.08.1991 is marked as Ex.A-21 before the trial Court. As seen from Ex.A-21, it goes to show that the defendant borrowed a sum of Rs.1,70,000/- from the plaintiffs on 31.08.1991 and agreed to repay the same within a period of two (02) years, failing which he agreed to execute a registered document in respect of the plaint schedule property in favour of the plaintiffs. Therefore, the first contract entered into by the defendant with the plaintiffs is nothing but to repay the borrowed money to the plaintiffs. If the defendant is able to repay the amount borrowed within a period of two (02) years, the second condition will not come into operation. Therefore, the very recitals in the suit document Ex.A-21 indicate that the defendant has no intention to sell the plaint schedule property to the plaintiffs and the plaintiffs have no intention to purchase the property as on the date of Ex.A-21. Even as

per the recitals of Ex.A-21 but only as a default clause it was agreed to execute a registered sale deed by the defendant in favour of the plaintiffs. Therefore, the relationship between both the parties is only as a creditor and debtor, but not as a vendor and vendee.

17. The golden rule of construction; it has been said, is to ascertain the intention of the parties to the instrument after considering all the words in their ordinary, natural sense. To ascertain this intention, the Court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. In the case at hand, the intention of the defendant as per Ex.A-21 suit document is that he will repay the borrowed amount of Rs.1,70,000/- within a period of two (02) years. There is no recital in Ex.A-21 itself that the defendant offered to sell the plaint schedule property to the plaintiffs and the plaintiffs also agreed to the same.

18. As stated supra, in the case at hand the suit document itself reflects that there is no mutual agreement between both the parties. The agreement must create mutual rights and obligations between both the parties. The plaint averments itself go to show that Ex.A-21 is said to have been executed by the defendant in favour of the plaintiffs about borrowing of money of Rs.1,70,000/- by the defendant. Ex.A-21 is not a contract to sell under Section 2 (g) of the Indian Contract Act. The recitals in Ex.A-21 go to show that it is not a contract to sell the property. Both the Courts below concurrently held that the possession is not delivered to the plaintiffs through Ex.A-21, though there is a specific recital in Ex.A-21 that the possession was delivered to the plaintiffs. In

the plaint and in Ex.A-22 legal notice the plaintiffs asserted that the defendant borrowed money of Rs.1,70,000/- on 31.12.1991 with a promise to repay the same within a period of two (02) years, failing which he will execute a registered document in respect of the plaint schedule property. Both the Courts below without considering the nature of the document, the recitals of the document came to a wrong conclusion that the suit document is an agreement.

19. The learned counsel for the appellant would contend that in view of the bar under Section 17 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the alleged Ex.A-21 agreement transaction is void and Ex.A-21 is not at all a valid document.

20. Section 17 of the Andhra Pradesh Land Reforms (Ceiling on agricultural holdings) Act, 1973, defines as follows:

> **17. Prohibition of alienation of holding –**
>
> (1) No person whose holding, and no member of a family unit, the holding of all the members of which in the aggregate, is in excess of the ceiling area as on the 24th January, 1971 or at any time thereafter, shall on or after the notified date, alienate his holding or any part thereof by way of sale, lease, gift, exchange, settlement, surrender, usnfructuary mortgage or otherwise, or effect a partition thereof, or create a trust or convert an agricultural land into non-agricultural land, until he or the family unit, as the case may be, has furnished a declaration under section 8, and the extent of land, if any, to be surrendered in respect of his holding or that of his family unit has been determined by the Tribunal and an order has been passed by the Revenue Divisional Officer under this Act taking possession of the land in excess of the ceiling area and a notification is published under section 16; and any alienation made or partition effected or trust created in contravention of this section shall be null and void and any conversion so made shall be disregarded.

(2) For the purposes of determining whether any transaction of the nature referred to in sub-section (1) in relation to a land situated in this State, took place on or after the notified date, the date on which the document relating to such transaction was registered shall, notwithstanding anything in section 47 of the Registration Act, 1908 (Central Act 16 of 1908), be deemed to be the date on which the transaction took place, whether such document was registered within or outside the State.

(3) The provisions of sub-section (1) shall apply to any transaction of the nature referred to therein in execution of a decree or order of a civil court or of any award or order of any other authority.

21. As noticed supra, the very suit document itself goes to show that the defendant has no intention to sell away the plaint schedule property to the plaintiffs, but only as a default clause, he agreed to sell the plaint schedule property. The very recitals of the suit document itself reveal that for borrowing money only Ex.A-21 document was executed and there is no relationship of vendor and vendee between both the parties. The relationship between both the parties is creditor and debtor only. Moreover, as noticed supra, there is no vendor and vendee relationship between both the parties and their relationship is only creditor and debtor. Therefore, if the suit document is proved in accordance with law, the plaintiffs are entitled to a money decree from the defendant.

22. Learned counsel for the appellants would contend that the First Appellate Court has not considered the presumption under Section 114 of the Indian Evidence Act, which contemplates that the parties failed to appear into the witness box to submit for cross-examination, the presumption can be drawn and the case set up by him is false. He would further contend that the plaintiffs did not enter into the witness box. In the present case, the husband of the

plaintiff No.1 is examined as P.W.2. Section 120 of the Indian Evidence Act empowers P.W.2, being the husband of the plaintiff No.1, to give evidence on behalf of his wife. The relationship between the plaintiffs and P.W.2 is not at all disputed by the defendant. P.W.2 asserted that he is having personal knowledge about the suit transaction. Therefore, P.W.2 is a competent witness to depose on behalf of the plaintiffs.

23. In order to prove the suit document Ex.A-21, the plaintiffs relied on the evidence of P.W.2 and P.W.3. P.W.2 is none other than the husband of the plaintiff No.1. P.W.3 is one of the attestors to the suit document. The material on record reveals that the suit document was sent to the handwriting expert for comparison of the signature of the defendant and also for report on an application filed by the plaintiffs before the trial Court. The said handwriting expert is examined as P.W.1. The evidence of P.W.1 goes to show that Ex.A-21 is said to have been executed by the defendant and the signature on Ex.A-21 is that of the defendant. The evidence of P.W.3 clinchingly establishes that the suit document was executed by the defendant and the signature on Ex.A-21 belongs to the defendant. In cross-examination, the evidence of P.W.3 is not at all disturbed on the material aspects of the case. The evidence of P.W.2 also clearly supports the case of the plaintiffs about the execution of the suit document. The evidence of P.W.1 to P.W.3 clinchingly establish about the execution of suit document by the defendant in favour of the plaintiffs. The factum of lending of an amount of Rs.1,70,000/- by the plaintiffs to the defendant under Ex.A-21 is proved through the evidence of P.W.1 to P.W.3.

Admittedly, the suit is filed within three (03) years from the date Ex.A-21 suit document. Both the Courts below came to a conclusion that Ex.A-21 suit document is true and proved in accordance with law. I do not find any illegality in the said concurrent finding arrived at by the trial Court as well as the learned First Appellate Court.

24. It was represented by the learned counsel for the appellant that the suit document Ex.A-21 is specifically denied by the defendant, but without appreciating the entire evidence on record in a proper manner both the Courts below came to a wrong conclusion that Ex.A-21 is true and proved by the plaintiffs. As noticed supra, to prove Ex.A-21 suit document, the plaintiffs relied on the evidence of P.W.1. P.W.1 is the expert who examined the document by comparing the admitted signatures of the defendant with the signatures on the suit document. The expert/P.W.1 asserts that the signatures on the suit document are that of the defendant. The evidence of P.W.1 is well corroborated by the evidence of P.W.3, who is the attestor to the suit document. In the instant case, the evidence of the expert/P.W.1 is well corroborated by the evidence of P.W.2 and P.W.3.

25. The learned counsel for the respondents placed a case law in ***Magan Bihari Lal Vs. State of Punjab***[1] and also placed another case law in ***Murari Lal S/o Ram Singh Vs. State of Madhya Pradesh***[2], wherein the Hon'ble Apex Court held as follows:

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[1] **(1977) 2 SCC 210**
[2] **1980 SCR (2) 249**

"It is well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert"

26. In the present case, the evidence of expert/P.W.1 is well corroborated by the evidence of P.W.2 and P.W.3. After carefully analyzing the evidence of P.W.1 and P.W.3 together with P.W.2, both the Courts arrived at a concurrent finding that the suit document Ex.A-21 is proved and executed by the defendant. Therefore, there is no subsistence in the contention of the learned counsel for the appellant that the suit document is not proved in accordance with law.

27. Learned counsel for the respondents would contend that Section 16(c) and Section 20 of the Act govern readiness/willingness and equitable discretion to grant the relief of specific performance of an agreement of sale. The learned counsel for the respondents placed a case law in ***R.Kandaswamy (since dead) Ors., Vs. T.R.K Sarawathy & Anr.,***[3]**,** wherein the Hon'ble Apex Court held as follows:

"**36.** Moving further, a perusal of the buyer's cross-examination reveals her admission of not having enough fund in either of her bank accounts to pay the balance sale price. This, in our opinion, is sufficient proof of her financial incapacity to perform her part of the contract. The husband of the buyer could be a wealthy man having sufficient balance in his bank account but having perused the credit and debit entries, we have significant doubts in respect thereof which we need not dilate here in the absence of him being a party to the proceedings. Suffice is to observe, the transactions evident from the bank accounts of the buyer's husband do little to impress us that the buyer had demonstrated her financial capacity to make payment of the balance sale price and close the deal.

37. Imperative and interesting it is to note, the buyer sought to return the demand draft to the sellers on the last day of its validity. As discussed above, along with letter dated 23rd February 2006 of the sellers cancelling the Agreement, they returned the advance amount received from the buyer vide demand draft dated 11th February 2006. This draft

[3] **2024 INSC 884**

was retained by the buyer and returned as late as 10th August, 2006 vide letter of even date (and not along with any of her previous letters). However, the demand draft dated 11th February, 2006 being valid only for a period of 6 (six) months, i.e., 10th August 2006, it has intrigued us as to why the buyer would hold on to the demand draft and not return it earlier if she was genuinely interested in purchasing the property."

28. The learned counsel for the respondents placed a case law in ***Parswanath Saha Vs. Bandhana Modak (Das)[4].*** The learned counsel for the respondents also placed another case law in ***Janardan Das Vs. Durga Prasad Agrawalla,[5],*** wherein the Hon'ble Apex Court held as follows:

"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."

The Hon'ble Apex Court in the aforesaid said case law had further held as follows:

"The relief of specific performance under the Specific Relief Act, 1963, is discretionary in nature. Section 20 of the Act (applicable to this case as it predates the 2018 amendment) explicitly stated that the court is not bound to grant such relief merely because it is lawful to do so. The discretion must be exercised judiciously and based on sound principles, ensuring that granting specific performance is just and equitable in the circumstances of the case."

29. The learned counsel for the respondents also placed another case law in ***P.Ravindranathi & Anr. Vs. Sasikala & Ors.[6]*** The learned counsel for the respondents also placed another case law in ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr.,*** in ***Civil Appeal No.5909 of 2022***.

[4] **2024 INSC 1022**
[5] **2024 INSC 778**
[6] **2024 INSC 533**

In the case at hand between both the parties to the suit there are no mutually agreed terms and there is no buyer and seller relationship between both the parties. As noticed supra, in the present case, there is no intention to the defendant to alienate the schedule property to the plaintiffs. The very recitals of Ex.A-21 reveal that for borrowing money only the said document was executed. Therefore, the aforesaid case laws relied on by the learned counsel for the respondents are in no way applicable to the subject matter of the present suit, since there is no vendor and vendee relationship between both the parties to the suit.

30. The learned counsel for the respondents placed another case law in ***Nazir Mohamed Vs. J.Kamala and Ors.***[7]

The aforesaid case law relates to declaration of title of the parties. Therefore the facts in the said case law are not at all applicable to the present case.

31. The learned counsel for the respondents placed another case law in ***State of Rajasthan Vs. Shiv Dayal***[8]***.*** The learned counsel for the respondents also placed another case law in ***C.Doddanarayana Reddy (D) By Lrs. Vs. C.Jayarama Reddy (Dead By Lr.***[9]***.***

In the present case also both the Courts concurrently held that Ex.A-21 was proved, but both the Courts came to a wrong conclusion that Ex.A-21 is an agreement. The very nature of Ex.A-21 goes to show that it was executed for

[7] **AIR 2020 Supreme Court 4321**
[8] **AIR Online 2019 SC 849**
[9] **AIR 2020 Supreme Court 4321**

the purpose of borrowing money only by the defendant, but the defendant is not having any intention to alienate the schedule property to the plaintiffs and there is no mutual understanding between both the parties to the suit.

32. The learned counsel for the respondents placed a case law in ***Hasmat Ali Vs. Amina Bibi & Ors.***[10] In the present case both the Courts came to a wrong conclusion that the suit document is an agreement. As noticed *supra,* the very recitals Ex.A-21 reveals that for the purpose of borrowing money only the defendant executed Ex.A-21 document.

33. Learned counsel for the respondents contends that Section 23 of the Indian Contract Act is attracted only where an agreement is intrinsically opposed to public policy or forbidden by law. In the present case, the said Section 23 of the Indian Contract Act is not at all applicable.

34. The learned counsel for the appellants placed a case law in ***Lourdu Mari David and Others Vs. Louis Chinnaya Arogiaswamy and Others***[11]***.*** The learned counsel for the appellants placed another case law in ***Vidhyadhar Vs. Manikrao and Another***[12]***.*** The learned counsel for the appellants also placed another case law in ***Pawan Kumar Dutt & Anr. Vs. Shakuntala Devi & Ors.***[13] The learned counsel for the appellants also placed another case law in ***Jayakantham and Others Vs. Abaykumar.***[14]

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[10] **[2021] 11 S.C.R. 42**
[11] **(1996) 5 Supreme Court Cases 589**
[12] **(1999) 3 Supreme Court Cases 573**
[13] **2003 LawSuit (SC) 1565**
[14] **AIR 2020 Supreme Court 4321**

34. The ratio laid down in the aforesaid case laws is applicable to the suit for specific performance of agreement of sale. As noticed supra, Ex.A-21 suit document reflects that there is no mutual agreement between both the parties and there are no mutual rights and liabilities between both the parties to the suit. Therefore, Ex.A-21 cannot be treated as an agreement of sale. The very nature of Ex.A-21 suit document goes to show that it was executed by the defendant for the purpose of borrowing money only and the defendant has no intention to alienate the property to the plaintiffs.

35. For the aforesaid reasons, this Court is of the considered view that both the Courts below failed to ascertain the intention of the parties to Ex.A-21 and have not considered the contents of the document in a proper manner and came to a wrong conclusion that the suit document is an agreement. In fact, Ex.A-21 was executed for the purpose of borrowing money only by the defendant and there is no vendor and vendee relationship between both the parties. The very suit document itself reflects that there is no interest clause, in case the defendant fails to repay the said amount within a period of two (02) years as recited in the agreement. Therefore, the plaintiffs are entitled to a simple money decree in the present case and the plaintiffs are not entitled to the relief of specific performance of agreement of sale as granted by the First Appellate Court.

36. In the result, the second appeal in S.A.No.1250 of 2011 is partly allowed by modifying the decree and judgment dated 07.06.2011 passed by the First Appellate Court in A.S.No.08 of 2005, as the suit in O.S.No.50 of 1994 on the

file of the Senior Civil Judge, Gudur, is partly decreed directing appellant No.2 i.e the legal representative of the deceased appellant No.1 (defendant), to pay a sum of Rs.1,70,000/- to the plaintiffs with interest @ 12% per annum on Rs.1,70,000/- from 31.08.1991 till the date of decree and at the subsequent rate of interest @ 6% per annum from the date of decree till the date of realization from out of the estate of the deceased appellant No.1 (defendant) which are in the hands of appellant No.2. In view of the facts and circumstances of the case, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand disposed of in consequence.

V. GOPALA KRISHNA RAO, J.

Date: 15.04.2026

SRT