

IN THE COURT OF THE I ADDL. SENIOR CIVIL JUDGE,
RANGA REDDY DISTRICT, AT L.B.NAGAR

Present : D. Ravindra Sharma
I Addl. Senior Civil Judge,
Ranga Reddy District,
at L. B. Nagar

Dated, this the 21st day of June, 2018

O.S. NO.723/2003

Between:

1. Sri P. Vengal Rao, S/o Subbaiah,
aged 58 years, Occ: Business,
 2. Smt. P. Achamma, W/o P.Vengal Rao,
aged 51 years, Occ: Household,
 3. P.Srinivas, S/o P. Vengal Rao,
aged 32 years, Occ: Business,
 4. P. Sridhar, S/o P. Vengal Rao,
aged 29 years, Occ: Business,
 5. P.Subba Rao, S/o P. Vengal Rao,
aged 27 years, Occ: Business,
 6. P. Naga Lakshmi, W/o P. Srinivas,
aged 28 years, Occ: household,
- All are R/o H. No. 16-2-836/3, Madhav Nagar,
Saidabad, Hyderabad

...Plaintiffs

AND

1. Sri Kasturi Krishna, S/o K. Shankaraiah,
aged about 42 years, Occ: Agriculture,
r/o Puppalaguda village,
Rajendranagar Revenue Mandal, R.R.District
2. Smt. Savitramma, W/o A. Mallesh,
aged about 37 years, Occ: household,
R/o Nacharam Village, Rajendranagar
Revenue Mandal, R.R.District
3. Smt. Neelavati, W/o G. Yadagri,
aged about 35 years, Occ: Household,
R/o Narsingi Village, Rajendranagar
Revenue Mandal, R.R.District
4. Smt. Bhagyamma, W/o Ch. Chander,
aged about 32 years, Occ: Household,
R/o Hydershah Kote, Rajendrajnagar Revenue
Mandal, R.R.District
5. Smt. Renuka, W/o Durgaiah,
aged about 30 years, Occ: Household,
R/o Ramachandrapuram, Medak District

.. Defendants

This suit is coming up for final hearing before me in the presence of M/s Nagaraju Naguru, Counsel for the Plaintiffs and of M/s B.Dayakar Reddy, counsel for the Defendants and the matter having stood over for consideration till date, this Court made the following:

J U D G M E N T

1. This suit is filed for specific performance of agreement of sale dt 02.06.1996 to direct the defendant Nos. 1 to 5 to execute registered sale deed in favour of the plaintiffs or their nominees in respect of suit schedule property i.e., Ac 6-36 gts., in Sy. No. 447, situated at Puppalaguda village, Rajendranagar Revenue Mandal, Ranga Reddy District, by receiving balance sale consideration. Further, the court may be pleased to execute the registered sale deed, in case the defendants fails to execute the registered sale deed in favour of the plaintiffs, and for costs of the suit.

2. **The brief averments of the plaint are that:**

That on 02.06.1996, the plaintiffs entered into an agreement of sale with the defendants for purchase of the suit schedule property Ac.6-36gts @ Rs.95,000/- per acre totaling to Rs.6,55,500/-. The plaintiffs paid Rs.1,40,000/- on 02.06.1996, Rs. 40,000/- on 08.11.1998 and on 10.10.1996 Rs.20,000/- towards advance sale consideration totaling to Rs. 2,05,000/-. Though the plaintiffs are ready to perform their part of contract the defendants did not evince any interest and came forward to execute registered sale deed by receiving balance sale consideration and dodging the matter on one or the other pretext. On 20.02.2003 when the plaintiff approached the defendants and requested to execute the registered sale deed in respect of suit schedule property, the defendants demanded Rs.40,000/- more per acre in addition to the agreed amount. Therefore the plaintiffs got issued a legal notice dt 22.02.2003 which was returned unserved. Therefore the plaintiffs have no other go except to file this suit.

3. The defendant Nos. 1 to 5 filed their written statement denying the averments of the plaint by stating that they never entered into any agreement of sale for the suit schedule property with the plaintiff. That the suit schedule property is their ancestral property and a suit for partition is pending before the Court. That the plaintiffs never paid any advance sale consideration to them.

The defendants denied that the plaintiffs approached them on 20.02.2003 as alleged in the plaint. That plaintiffs never issued any legal notice to them. That the suit is undervalued and the Court fee paid is insufficient for all these reasons they prayed for dismissal of the suit with exemplary costs.

4. Basing on the pleadings of both parties, the following issues are framed for trial:-

- (i) Whether the plaintiffs are entitled to specific performance as prayed for?
- (ii) To what relief?

5. **Issue No. 1:** Whether the plaintiffs are entitled to specific performance as prayed for?

The plaintiffs to prove their case have examined the plaintiff No. 5 as PW1 who reiterated all the plaint averments and got marked Exs A1 to A10. Ex A1 is the Agreement of Sale dt 02.06.1996. Exs A2 to A5 are receipts dt 02.06.1996, 10.10.1996, 08.11.1998 and 01.12.1997. Ex A6 is office copy of legal notice dt 22.02.2003. Ex A7 is postal receipts (5 Nos.), Ex A8 is returned postal covers (4 Nos.), Exs A9 & A10 are the CCs of Judgment and decree in OS No.82/1998 on the file of the Hon'ble II Addl. District Judge, Ranga Reddy District. The plaintiff as PW1 deposed that on 02.06.1996, they entered into an agreement of sale with the defendants for purchase of the suit schedule property Ac.6-36gts @ Rs.95,000/- per acre totaling to Rs.6,55,500/-. The plaintiffs paid Rs.1,40,000/- on 02.06.1996, Rs.40,000/- on 08.11.1998 and on 10.10.1996 Rs.20,000/- towards advance sale consideration totaling to Rs. 2,05,000/-. Though the plaintiffs have been ready and willing to perform their part of contract, the defendants did not evince any interest and come forward to execute registered sale deed by receiving the balance sale consideration and dodged the matter on one or the other pretext. On 20.02.2003 when the plaintiffs approached the defendants and requested them to execute the registered sale deed in respect of suit schedule property, the defendants demanded Rs.40,000/- per acre in

addition to the agreed amount. Therefore the plaintiffs got issued a legal notice dt 22.02.2003 which was returned unserved. Therefore the plaintiffs are forced to file this suit.

6. The plaintiffs got examined one K. Sai Prasad, who worked as an accountant with plaintiff No.1 as PW2. He deposed that he knows about the transaction taken place in respect of suit schedule property between the plaintiffs and defendants. He further deposed that the plaintiffs paid Rs. 2,05,000/- to the defendants on various dates as advance sale consideration. Though the defendants received the said advance amount from the plaintiffs, they did not come forward for execution of registered sale deed in respect of the suit schedule property. In spite of availing enough opportunity, the defendants failed to cross-examine PWs 1 & 2 resulting their right of cross examination was forfeited. Hence the evidence of PW1 and PW2 remained unshaken in the cross examination and remained unchallenged. The defendants further failed to produce their evidence though they availed enough opportunity, hence the evidence of plaintiffs remained unrebutted. Thus there is no evidence on behalf of the defendants since they did not enter into the witness box to put forth their case and to deny the case of the plaintiffs.

7. The Hon'ble Supreme Court in Vidhyadhar Vs. Manik Rao and another reported in (1999) 3 SCC 573 it was pleased to hold in paragraph no. 17 that "Where a party to the suit does not appear in the witness – box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Court and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh Vs. Gurdial Singh. A presumption has to be drawn under Sec. 114 of Evidence Act, 1872 against a party who did not enter the witness – box". Similarly in this case, in the

circumstances explained a presumption has to be drawn against the defendants since they failed to enter into witness box.

8. When the unchallenged and un-rebutted evidence of PWs 1 & 2 together with Exs A1 to A10 is considered it proves the case of the plaintiffs that they have entered into Ex A1 Agreement of Sale dt.02.06.1996 with the defendants for purchase of suit schedule property for Rs. 6,55,500/- and paid advance of Rs.2,05,000/- to the defendants on various dates under Ex A2 to A5 receipts. Further even after partition of suit properties, the defendants were not ready to perform their part of contract, therefore, the plaintiffs got issued Ex A6 legal notice to the defendants calling upon them to perform their part of contract, which was returned unserved. Exs.A7 & A8 are the postal receipts and returned postal covers. When the unchallenged evidence of PWs 1 & 2 together with Exs.A1 to A10 are considered it goes to show that the plaintiff is ready and willing to perform his part of contract and the defendants have not come forward to execute the sale deed registered in favour of plaintiffs, thus they are not willing to perform their part of contract. Therefore the issue no.1 is answered in favour of plaintiffs by holding that the plaintiffs are entitled for specific performance of agreement of sale dt 02.06.1996 in respect of suit schedule property.

9. **Issue No.2** : to what relief ?

In the result, the suit is decreed with costs. The defendants shall execute registered sale deed in respect of the suit lands in favour of the plaintiffs within in two months by receiving balance sale consideration from the plaintiffs which is to be paid within one month from the date of decree.

(Typed to my dictation by Stenographer, corrected and pronounced by me in open Court, on this the 21st day of June, 2018).

I Addl. Senior Civil Judge,
Ranga Reddy District.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PLAINTIFF

1. Pw1 : P.Subba Rao
2. PW2 : K.Sai Prasad

FOR DEFENDANTS

None

EXHIBITS MARKED

FOR PLAINTIFF:

FOR DEFENDANTS

- | | | | |
|----|------|----|--------------------------------------|
| 1 | Ex A | 1 | : Agreement of Sale dt 02.06.1996 |
| 2 | Ex A | 2 | : Receipt dt 02.06.1996 |
| 3 | Ex A | 3 | : Receipt dt 10.10.1996, |
| 4 | Ex A | 4 | : Receipt dt 08.11.1998 |
| 5 | Ex A | 5 | : Receipt dt 01.12.1997 |
| 6 | Ex A | 6 | : Copy of legal notice dt 22.02.2003 |
| 7 | Ex A | 7 | : Postal receipts (5 Nos.), |
| 8 | Ex A | 8 | : Returned postal covers (4 Nos.) |
| 9 | Ex A | 9 | : CC of Judgment in OS No. 82/1998 |
| 10 | Ex A | 10 | : CC of decree in OS No. 82/1998 |

Nil

I Addl. Senior Civil Judge,
Ranga Reddy District.