

IN THE COURT OF IV-ADDITIONAL DISTRICT JUDGE, NIZAMABAD

Present: Smt.Harisha,
IV Additional District Judge,
Nizamabad.

Monday, on this the 18th day of August, 2025

A.S.No. 34 of 2022

Between:

Azmeer Ravi @ Dharma S/o Topiya, aged about 38 years, Occu: Tailor
R/o Nadpalli thanda, Dichpally mandal, Dist.Nizamabad.

...Appellant

AND

1. Tarsim Singh S/o Charanjeet Singh, aged 25 years, Occu:
Pvt.Service R/o H.No.6-73-13, Opp:Bus Stand, Dichpalli station,
Dichpalli mandal, Dist.Nizamabad.
2. Charanjeet Singh S/o not known to the Plaintiff, aged 55 years,
Occu: Hotel business R/o H.No.6-73-13, Opp: Bus Stand, Dichpally
station, Dichpally mandal, Dist.Nizamabad.
3. The Sub.Registrar, Registration Office, Nizamabad.

...Respondents.

**ON APPEAL AGAINST THE JUDGMENT AND DECREE DATED
04-06-2018 PASSED BY THE SENIOR CIVIL JUDGE, NIZAMABAD**

IN

O.S.No. 141 of 2008

Azmeer Ravi @ Dharma S/o Topiya, aged about 38 years, Occu: Tailor
R/o Nadpalli thanda, Dichpally mandal, Dist.Nizamabad.

...Plaintiff

IV ADJ

AND

1. Tarsim Singh S/o Charanjeet Singh, aged 25 years, Occu: Pvt.Service R/o H.No.6-73-13, Opp:Bus Stand, Dichpalli station, Dichpalli mandal, Dist.Nizamabad.
2. Charanjeet Singh S/o not known to the Plaintiff, aged 55 years, Occu: Hotel business R/o H.No.6-73-13, Opp: Bus Stand, Dichpally station, Dichpally mandal, Dist.Nizamabad.
3. The Sub.Registrar, Registration Office, Nizamabad.

...Defendants

This Appeal Suit is coming on before me for final hearing on 22-07-2025 in the presence of Sri Yerram Sadanandam, Advocate for Appellant, Sri B.Krishnand, Advocate for the Respondent Nos.1 and 2 and Respondent No.3 having been set exparte on and on hearing the matter having stood over for consideration till this day, this Court made the following:

J U D G M E N T

1. This is an Appeal filed by the plaintiff in OS.No. 141 of 2008 on the file of Senior Civil Judge's Court, Nizamabad against the judgment and decree passed by the said Court on 04-06-2018.
2. The Appellant herein is the plaintiff while the Respondent Nos.1 to 3 herein are the Defendant Nos.1 to 3 in OS No. 141 of 2008 on the file of Senior Civil Judge's Court, Nizamabad.
3. The averments of plaint before the trial court in brief, are as follows :

The defendant Nos.1 and 2 are the owners of the house bearing No.6-73-13 situated at Dichpally village and they agreed to sell the suit schedule property to the Plaintiff for a consideration of Rs.3,08,000/-. Accordingly, the Plaintiff agreed to purchase and an agreement of sale was entered and was executed by the defendants on a non-judicial stamp paper worth of Rs.20/- and on the date of execution of the Agreement, the Plaintiff has paid Rs.50,000/- to the defendants in the presence of the witnesses and as per the terms and conditions, the Plaintiff has to pay Rs.1,08,000/- within one month from the date of agreement and the balance consideration has to be paid after nine months and the Plaintiff has subsequently paid Rs.1,00,000/- to the defendants on 02-02-2006 in the presence of witnesses under a receipt and subsequently the plaintiff also paid the balance consideration of Rs.1,08,000/- to the defendants on 04-07-2006 in the presence of witnesses under a separate receipt and the plaintiff requested the defendants to execute a registered sale deed as the entire amount is paid, but the defendants postponed the same on one ground or the other and as the Telangana University was inaugurated, the prices of

the properties hiked up and inspite of numerous requests the defendants failed to register the property. Hence, the suit.

4. The defendants filed their written statement contending that the suit on a unregistered document is not maintainable and admitted that they have agreed to sell the suit schedule property for a total consideration of Rs.3,08,000/- and time of nine months was fixed and the Plaintiff has paid Rs.50,000/- and agreed to pay an amount of Rs.1,08,000/- within a period of three months and that the balance of Rs.1,50,000/- was payable at the time of registration. The Plaintiff has paid Rs.1,00,000/- on 02-02-2006 within the agreed time of three months and did not pay the balance amount and the document dated 04-07-2006 is forged and fabricated. Hence, prayed to dismiss the suit.

5. **Basing on the pleadings in the plaint and written statement, the following Issues were framed by the trial court :**

- i. Whether the defendants sold the suit house under agreement of sale to the plaintiff for Rs.3,08,000/- ?
- ii. Whether the plaintiff paid Rs.50,000/- as advance on the date of agreement of sale ?
- iii. Whether the plaintiff paid Rs.1,00,000/- to the defendants on 02-02-2006 under acknowledgment of defendants ?

- iv. Whether the plaintiff paid Rs.1,58,000/- to the defendants on 04-07-2006 ?
- v. Whether plaintiff is entitled for specific performance of contract by defendants ?
- vi. To what relief ?

6. During the trial before the trial court, the Plaintiff himself got examined as PW1, he got marked Exs.A1 to A3. The plaintiff also got examined PWs2 and 4 on his behalf. The evidence of PW3 was eschewed. On behalf of the defendants, the defendant no.1 himself got examined as DW1. The defendant No 2 was examined as DW2, they got examined DW3 to support their version. No documents were marked on behalf of the defendants.

7. On considering the oral and documentary evidences on record, the learned Trial court decreed the suit with costs by granting alternative relief of refund of the amount of Rs.1,58,000/-. Aggrieved by the same the plaintiff filed this Appeal Suit :

GROUND OF APPEAL:-

- (i) That the suit is filed for specific performance of contract between the plaintiff and defendants and it is an admitted fact that

plaintiff has entered into agreement of sale for purchase of suit schedule property on 24-10-2005, during the course of trial the defendant No.1 denied the execution of Ex.A3 and on FSL report, it was very clear that it was signed by the defendant No.1, which was ignored by the Lower Court and Issues No.1 to 3 are answered in favour of the Appellant herein.

(ii) That the opinion given by the Expert that Q-2, S-1 and S-3 are written by one and the same person, but no adverse opinion was given regarding Q-1 due to failure to stroke impressions and writing on the revenue stamp and signature marked as S-4 and S-5 show simplification which is not available for comparison with S-6 due to time gap. So, the reasons are very clear wherein the similarities are significant and are sufficient in nature, as far as signature of Charanjeeth Singh is concerned, no adverse opinion is given. But the trial Court has not taken into consideration all these admissions and simply misinterpreted Section 105 of Evidence Act and came to a wrong conclusion about providing of receiving of Rs.1,58,000/- and dismissed the suit, and in the result, the defendants were directed to refund the

sale consideration of Rs.1,58,000/- and even this condition was not complied with and due to ill-health of the appellant, as he was admitted in hospital in August, 2018 and was almost nursing his wounds upto July, 2020. This wrong conclusion of the Court resulted in grave miscarriage of justice and the opinion of the Expert in xerox copy filed with the Appeal shows as to the gravity of injustice done to the Appellant.

8. **No additional evidence either oral or documentary is adduced by both parties in this Appeal suit.**

9. **The parties are referred as Plaintiff and Defendants as they were referred before the trial court.**

10. Now the points that arise for consideration in this appeal are :

- i) **Whether there are any grounds to interfere with the judgment dated 04-06-2018 passed by the learned Senior Civil Judge, Nizamabad in OS.No. 141 of 2008 on its file ?**
- ii) **To what relief ?**

11. **POINT NO. i :-**The learned Counsel for the Appellant/Plaintiff filed written arguments and argued that the present appeal is filed by the Plaintiff as the Trial Court passed the judgment on 04-06-2018, the Trial Court has not passed the judgment properly, as the suit is filed for

the relief of specific performance of Agreement of sale dated 24-10-2005, the Trial Court ignored that Ex.A3 was sent to the FSL, but the report of FSL shows that it was signed by defendant No.1, which was ignored by the Trial Court. It is contended that the defendant No.1 denied the execution of Ex.A3 and on FSL report, it was very clear that it was signed by the defendant No.1, which was ignored by the trial Court and Issues No.1 to 3 were answered in favour of the plaintiff in the suit. The opinion given by the Expert that Q-2, S-1 and S-3 are written by one and the same person, but no adverse opinion was given regarding Q-1 due to failure to stroke impressions and writing on the revenue stamp and signature marked as S-4 and S-5 show simplification which is not available for comparison with S-6 due to time gap. The Trial Court has given an erroneous judgment and has committed error in delivering the judgment, hence the present Appeal is filed to set aside the judgment of the Trial Court. [It is mentioned in written Arguments that suit was dismissed by trial Court].

He prayed the Court to allow the Appeal.

12. On the other-hand, the learned counsel for the Respondents/ Defendant Nos.1 and 2 argued that the Trial Court has not committed any error in delivering the judgment, there is no need to interfere in the judgment of the Trial Court, he prayed the Court to dismiss the Appeal Suit.

The learned counsel for the Respondents relied upon the following citation:

Hon'ble Supreme Court of India, in the case between Pydi Ramana Alias Ramulu Vs. Davarasety Manmadha Rao in CivilAppeal No.434 of 2013 dated 10-07-2024 reported in AIR 2024 SUPREME COURT 3242, wherein it is held that :

(A) Specific Relief Act (47 of 1963), S.16(c) – Suit for specific performance – Readiness and Willingness – Failure to prove – Continuous readiness and willingness is a condition precedent for grant of relief of specific performance – Date fixed for execution of sale deed was one year from date of measurement of suit property – No steps were taken by the plaintiff for 3 years – Suit was filed at the fag end of expiration of limitation – Plaintiff failed to show any steps taken by him during the period from the date of agreement till the date of filing of suit – Trial Court had rightly recorded finding that plaintiff was not entitled to the equitable relief – Judgment of High Court and first Appellate Court which held to the contrary, as set aside.

(B) - Specific Relief Act (47 OF 1963), S.16(c) – Specific performance of contract – ‘Readiness’ and willingness – Distinction between – Readiness is the capacity of the plaintiff to perform the contract which includes his financial position to pay the sale consideration – ‘Willingness’ is the conduct of the party.

It is prayed to dismiss the Appeal.

13. It is seen from the record that OS No. 141 of 2008 was filed by the Plaintiff against the defendant Nos.1 to 3 for the relief of specific performance of Agreement of sale dated 24-10-2005. It is the contention of the Plaintiff that the Defendant Nos.1 and 2 are father and son, they offered to sell their house bearing No.6-73-13 situated at opposite bus stand, Dichpally, Nizamabad for an amount of Rs.3,08,000/-, accordingly an Agreement of sale was executed by defendant Nos.1 and 2 in favour of Plaintiff on 24-10-2005, which was executed on Rs.20/- non-judicial stamp paper. At the time of Agreement, Rs.50,000/- was paid by the Plaintiff to the defendant Nos.1 and 2, both have acknowledged the receipt of the same. Subsequently the Plaintiff has paid Rs.1,00,000/- to the defendant Nos.1 and 2 in the presence of the witnesses. The version of the plaintiff further shows that the balance of sale consideration of

Rs.1,58,000/- was paid to defendant Nos.1 and 2 on 04-07-2006, inspite of paying total sale consideration, the defendant Nos.1 and 2 failed to execute registered sale deed in favour of the plaintiff. In spite of repeated demands they failed to execute registered sale deed, even both the defendant Nos.1 and 2 tried to alienate the suit schedule property to the third party. With no option, the Plaintiff filed the suit for specific performance of Agreement of sale before the Trial Court.

14. On the other-hand, the defendants admitted the payment of Rs.50,000/- as on the date of execution of Agreement of sale and also further payment of Rs.1,00,000/- to the defendant Nos.1 and 2 on 02-02-2006. It is pertinent to note that defendants have denied the alleged payment of Rs.1,58,000/- by the plaintiff on 04-07-2006.

15. Before the Trial Court, the Plaintiff got examined himself as PW1, to prove his version, PW2 and PW4 were examined. The record shows that the evidence of PW3 was eschewed before the Trial Court. On the other-hand, the defendant No.1 is examined as DW1, his father who is defendant No.2 is examined as DW2, one independent witness is examined as DW3.

16. On behalf of the Plaintiff Exs.A1 to A3 were marked before the Trial Court, wherein Ex.A1 is the Agreement of sale dated 24-10-2005 (It is pertinent to note that title of the document is mentioned as "**Vikrayanama**"), the contents of Ex.A1 is very clear that the suit schedule property was agreed to be sold for Rs.3,08,000/- and Rs.50,000/- cash was paid to the defendant Nos.1 and 2 on that day and remaining amount was agreed to be paid in future dates. Ex.A2 shows that it is the receipt, it contains the date, the contents of Ex.A2 shows that Rs.1,00,000/- was paid by the plaintiff under Ex.A2. Finally Ex.A3 is another receipt dated 04-07-2006, wherein it is mentioned that the plaintiff has paid Rs.1,58,000/- amount to the defendant Nos.1 and 2.

17. During the course of trial, the Trial Court has framed total six Issues. Issue Nos.1 to 3 were answered in favour of the Plaintiff, because as per the record the defendant Nos.1 and 2 did not deny the payment of Rs.50,000/- on 24-10-2005, payment of another amount of Rs.1,00,000/- on subsequent occasion, even the execution of Ex.A1 was also not denied by the Plaintiff. The only contention of the

defendants was that they did not receive Rs. 1,58,000/- under Ex.A3 as contended by the plaintiff. At the time of agreement of sale it was agreed to pay Rs.1,08,000/- within three months and Rs.1,50,000/- to be paid at the time of registration. The defendants contends that Ex.A3 which is dated 04-07-2006 is a forged document.

18. During the course of trial, PW1 totally reiterated the contents of his pleadings in the suit in the chief examination, it is pertinent to note that he has admitted in the cross examination that Rs.1,58,000/- was taken by first defendant alone, the defendant No.2 was not present at the relevant time, even that defendant No.2 also did not sign on Ex.A3. The remaining suggestions were denied by him during the cross examination.

19. It was argued by the counsel for the plaintiff, even that in the grounds of appeal there is mentioning of FSL report, no such Forensic science report is filed or marked before the Trial Court, even no such document is filed before this court along with any petition for receiving of any additional documents in this Appeal. It was orally argued by the counsel for the plaintiff that Exs.A2 and A3 were sent to

FSL, but no such record is placed before the Court. Even no document is marked before the Trial Court on behalf of plaintiff to show that Exs.A2 and A3 were sent for Hand Writing Expert(Either to State Forensic Lab or any Private Lab). With out bringing any document on record either in the suit or in this Appeal the arguments of the counsel for the plaintiff can not be considered. During the cross examination, the Plaintiff further deposed that he did not take any legal action against the defendants till filing of the suit.

20. During the chief examination PW2 supported the contention of PW1, but during the cross examination he admitted that payment of Rs.1,00,000/- was made to defendant Nos.1 and 2 and that the defendant nos. 1 and 2 did not sign. He admitted that on the date of payment of Rs.1,58,000/-, no document was executed in his presence. The other witness i.e., PW4, as evidence of PW3 was eschewed on 30-08-2017. PW4 (but it is referred in his chief examination as PW3) during his evidence supported the contention of PW1, but during the cross examination he admitted that defendant Nos.1 and 2 did not sign on Ex.A3 in his presence.

21. DW1 is defendant No.1, during the cross examination he admitted that total he was given Rs.1,50,000/- out of Rs.3,08,000/-, he was not paid Rs.1,58,000/- on 04-07-2006. Rs.1,50,000/- is with him since 10 years. The evidence of DW2 supported the evidence of DW1. During the cross examination, he denied the suggestions put to him.

22. The evidence of DW3 shows that he supported the contention of DWs 1 and 2. During the cross examination he deposed that he do not know before whom Rs.1,58,000/- was paid under Ex.A3, but it was not occurred before him.

23. On considering the evidences on record, the Trial Court found issue Nos.1 to 3 were in favour of Plaintiff. The Trial Court decided Issue No.4 in favour of defendants. So far as Issue No.5 is concerned, the Trial Court concluded that Plaintiff is entitled for the Alternative relief of refund of sale consideration of Rs.1,58,000/- from the plaintiff.

24. On considering the total evidences on record, this Court feels that admittedly execution of Ex.A1 and Ex.A2 are not denied by the defendant Nos.1 and 2. Defendant Nos.1 and 2 admitted the payment of Rs.50,000/- as well as Rs.1,00,000/- by the plaintiff. So far Ex.A3 is

concerned as per the evidences discussed above, the Plaintiff has failed to prove the payment of Rs.1,58,000/- to the defendant Nos.1 and 2 as discussed by the trial court in issue no4. In the cross examination of PW1, he himself admitted that defendant No.2 was not present at the time of execution of Ex.A3. But the Plaintiff in his pleadings and evidence is contending that Rs.1,58,000/- was paid to defendants on 04-07-2006. There is no evidence before the Court that defendant No.2 was present as on the date of execution of Ex.A3. But the alleged signatures of both defendants are present on Ex.A3 which was denied by the defendants. Admittedly none of the witnesses produced by the Plaintiff before the Court i.e., Pws 2 and 4 deposed properly in regard to payment of Rs.1,58,000/- to the defendant Nos.1 and 2. This Court also feels that Ex.A3 is not proved before the Court. The Plaintiff utterly failed to prove the execution of Ex.A3 and also payment of Rs.1,58,000/- to the defendants on 04-07-2006.

25. The Trial Court discussed all the Issues in detail, it was decided by the Trial Court that the Plaintiff is entitled for refund of amount from the defendant Nos. 1 and 2, which was paid by the plaintiff.

Admittedly the amounts as per evidences on record are Rs.50,000/- as well as Rs.1,00,000/-, total Rs.1,50,000/-, but the Trial Court has committed error in deciding the said amount, the Trial Court has mentioned that the Plaintiff is also pleading for alternative relief of refund of sale consideration, hence alternative relief was granted. This court finds that as per the cross examination of DWs 1 and 2, they still possesses Rs.1,50,000/- paid by the plaintiff which is lying with the defendants since 12 years as on the date of their evidences. As such it can be said that Plaintiff is entitled for the repayment of earnest money of Rs.1,50,000/- from the defendants. The trial Court in Issue No.6 mentioned that defendant Nos.1 and 2 are directed to refund the sale consideration of Rs.1,58,000/- to the plaintiff along with interest from the date of suit till the date of realization. It is pertinent to note that in the cause title of the suit, it is shown as defendant Nos.1 to 3, in which defendant No.3 is shown as Sub. Registrar, Nizamabad. As per the prayer in the suit no relief is sought against defendant No.3, but in the result portion of the suit it is mentioned that the defendants are

directed to refund the sale consideration of Rs.1,58,000/- so also in the judgment also.

26. Hence there is need to interfere in the judgment of the Trial Court in respect of the quantum of amount and also the relief portion. This point is answered accordingly.

27. **POINT No. ii:** In view of the above said discussion, this Court is inclined to interfere in the judgment of the Trial Court, by modifying the same.

In the result, this Appeal Suit is allowed by modifying the judgment of the Trial Court that the defendant Nos.1 and 2 are directed to refund the sale consideration of Rs.1,50,000/- to the plaintiff which was paid as earnest money along with interest from the date of suit till the date of realization @ 6% per annum. There is no order as to costs.

Dictated to the stenographer and after correction pronounced by me in open court on this the 18th day of August, 2025.

IV Additional District Judge,
Nizamabad

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR APPELLANT

-NONE-

FOR RESPONDENTS

-NONE-

EXHIBITS MARKED

FOR APPELLANT

-NIL-

FOR RESPONDENTS

-NIL-

IV Additional District Judge,
Nizamabad

IV ADJ