

IN THE COURT OF THE V ADDITIONAL DISTRICT JUDGE, GUNTUR.**PRESENT: R. SREELATHA**

V ADDITIONAL DISTRICT JUDGE, GUNTUR.

Tuesday, the 19th day of APRIL, 2022**APPEAL SUIT No.294/2015**

Between:

Smt Shaik Mahaboob Bi,
W/o Masthan Vali, Muslim,
aged about 63 yrs, R/o Shroff Bazaar,
Ponnuru, Guntur District.

...Appellant/Plaintiff

- And -

1. Sri Bandi Brahmanandam,
S/o Narayana, Hindu, aged 60 yrs,
Police Constable, R/o Surya Nagar,
Ramulavari Street, Near Ramalayam,
Plot No.75, Old Guntur, Guntur-1.2. Sri Badveti Subba Rao,
S/o Subbaiah, Hindu, aged 65 yrs,
R/o Kunkalagunta village, Nakarikallu
Mandal, Guntur District.(The 2nd defendant was added in the suit as per the orders dt.6.9.2012 in
CRP.16.9.2010 on the file of Hon'ble High Court of Andhra Pradesh at
Hyderabad)

...Respondents/Defendants

On Appeal against the decree and Judgment dt.29.9.2015 made in
OS.No.688/2009 on the file of Prl. Junior Civil Judge, Guntur.

Between:

Smt Shaik Mahaboob Bi

...Plaintiff

- And -

1. Sri Bandi Brahmanandam
2. Sri Badveti Subba Rao

...Defendants

This appeal is coming up before me on 14.3.2022 for final hearing in the presence of Sri P. Vijay Kiran, Advocate for the Appellant/Plaintiff and of Sri M.D. Prasad, Advocate for the 1st Respondent, Sri P. Srinivasa Rao, Advocate for the 2nd Respondent and after perusing the material available on record and having stood over till this day for consideration, this Court delivered the following: -

JUDGMENT

The appellant who is the unsuccessful plaintiff in her plaint has put forth that the defendant No.1 is the member of Guntur Police Co-operative House Construction Society Ltd., Guntur and the society has purchased the land, divided it into plots for the benefit of its members. There was delay in registering the plots in favour of members in view of some litigations in respect of the vendors. The defendant No.1 was allotted the plot shown in the schedule and he has entered into an agreement of sale with the plaintiff agreeing to sell that schedule mentioned plot for Rs.10,000/- to the plaintiff and soon after the allotment of the plot, the defendant agreed to execute a regular sale deed in favour of the plaintiff or her nominee. The defendant was allotted plot No.75 in the draw conducted by the society, extent is 200 Sq. yards and it was registered by the society under the registered sale deed dt.4.10.2008 for Rs.5,137-50 ps. Since it was agreed that a registered sale deed would be executed in favour of the plaintiff soon after the allotment of plot to the defendant No.1 by the society, the time for the performance of the contract is only after the execution of sale deed by the society in favour of the defendant. Having come to know of the allotment in favour of the defendant No.1, the plaintiff got issued a registered legal notice dt.18.10.2008 for the execution of registered sale deed in pursuance of agreement of sale for which no reply was given. While contemplating to file the suit, the plaintiff and her husband

were going to Guntur from Ponnur and boarded an auto. On the way, they lost the original agreement of sale and having searched for the same, the police report was given. This suit is filed basing on the xerox copy of the agreement of sale which was handed over to the Advocate at the time of issuance of the legal notice. As the defendant is not cooperating in executing the sale deed in pursuance of the agreement of sale, this suit is filed for the specific performance of agreement of sale dt.14.6.1994.

1(a). Initially, the suit was filed against the 1st defendant alone, but the 2nd defendant was impleaded as per the orders of the Hon'ble High Court dt.6.9.2012 in CRP.No.1619/2010. During the pendency of the suit, the 1st defendant has executed bogus sale deed bearing No.5611/2009 for the plaint schedule property in favour of the 2nd defendant and it is hit by lis pendence. It is prayed to decree the suit as against the 2nd defendant also.

2. The written statement of the 1st defendant is to the effect that the defendant No.1 has never intended nor entered into any type of agreement or transaction with anybody much less with the plaintiff in respect of the plaint schedule plot. It is putforth that this defendant No.1 did not possess any right, title or possession of the plaint schedule plot in the year 1994 and so, no person would choose to purchase any immovable property by entering into an agreement of sale for which the vendor has no right in presenti over the same. So the alleged suit agreement is

forged, fabricated, concocted and its execution is denied. After the receipt of the legal notice, the defendant has sent a letter under certificate of posting to the plaintiff to furnish the alleged copy of agreement of sale for issuing proper reply along with a sum of Rs.50/- by money order towards the costs of the alleged copy of agreement of sale. But the money order was refused and the copy was not sent. Only in September, 2008, the defendant was allotted the plaint schedule plot by the society and he sold away the same to the 2nd defendant for a valid sale consideration of Rs.3,04,000/- and delivered the possession. The 1st defendant has got nothing to do with the said plot now. It is putforth that this 1st defendant does not even know the face of the plaintiff at any point of time, that there is no cause of action and that no relief can be claimed against the 1st defendant. In fact, the suit is barred by limitation and the alleged inadmissible agreement of sale cannot be looked into for any purpose. It is prayed to dismiss the suit.

3. The 2nd defendant in his written statement admits about the 1st defendant being a member of Guntur Police Co-operative House Construction Society Ltd., Guntur and about the division of the land into plots for the benefit of members and the 1st defendant being allotted the plaint schedule plot. There is denial regarding the alleged agreement of sale dt.14.6.1994. The 2nd defendant further contends that he purchased the property under a registered sale deed from the 1st defendant and the possession was delivered to him. As such, the 2nd defendant has got absolute

rights over the suit schedule property and he is a bonafide purchaser. Further, the alleged agreement of sale is absolutely false, fabricated and it is a forged document. The suit itself is not maintainable for non filing of the original agreement of sale. In view of the real estate fluctuations, the plaintiff in collusion with the 1st defendant brought into existence the alleged agreement of sale and the agreement of sale was not brought to his notice by neither the plaintiff nor the 1st defendant. There is no prayer by the plaintiff for the cancellation of sale deed and this defendant has reserved his right to file additional written statement with the permission of the court. It is prayed to dismiss the suit.

4. Basing on these pleadings, the following issues and the Additional issue were framed by the learned trial court:-

1. Whether the sale agreement dt.14.6.1994 is a forged and fabricated?
2. Whether the sale agreement is valid and binding on the defendant?
3. Whether the defendant is having any title and right over the suit schedule property by the date of alleged execution of the sale agreement, dt.14.6.1994?
4. Whether the sale agreement dt.14.6.1994 is admissible in the eye of law?
5. Whether the suit is time barred?
6. Whether the plaintiff is entitled for the relief of specific performance as prayed for?
7. To what relief?

Additional Issue No.1:

1. Whether the second defendant is a bonafide purchaser of schedule property?

5. During the course of trial, on behalf of the plaintiff, P.Ws.1 to 4 are examined and Exs.A1 to A7 are marked. On behalf of the defendants, D.Ws.1 to 4 are examined and Exs.B1 to B3 are marked.

5(a). The trial court has dismissed the suit of the plaintiff. Aggrieved by the same, the plaintiff has preferred the present appeal on the following grounds:-

The trial court has erroneously come to the conclusion that Ex.A1 lacks information about the place of the existence of property, it's extent, measurements, boundaries of the property and that the property was not in existence as on the date of the agreement and the said observations deserve to be set aside. The decisions relied upon by the trial court are erroneous. The findings that as on the date of Ex.A1, no plot was allotted to the 1st defendant and that Ex.A1 is not binding on the 1st defendant deserves to be set aside. The trial court has failed to take into consideration Section 13 of the Specific Relief Act. The Judgment and Decree of the trial court is contrary to law and the agreement of sale is true and valid. The subsequent acquisition of title is sufficient and the contract of transfer subsists. It is prayed to set aside the Judgment and decree of the trial Court and to allow the

appeal with costs.

6. The learned counsel for the appellant/plaintiff submits that the original of the Ex.A1 is lost and the said factum is sufficiently established and the trial court has also considered the said aspect and found that secondary evidence can be led pertaining to Ex.A1. The execution of Ex.A1 is proved and the findings of the trial court that the transferee had no transferable interest on the property to be sold by the date of Ex.A1 cannot be accepted. He relies upon Section 13 of the Specific Relief Act and contends that in the light of the defendant No.1 getting a valid sale deed from the society pertaining to the disputed plot, he has to execute the registered sale deed in pursuance of Ex.A1. He has reiterated during the arguments that Ex.A1 is proved by examining the attestor and others and contended that the citations relied upon by the defendant No.1 which are referred in the Judgment of the trial court are not relevant. According to him, the 2nd defendant is a relative of the 1st defendant and in support of his several contentions, he relied on the Judgments of Hon'ble High Courts and the Hon'ble Apex Court and prayed to allow the appeal.

Per contra, the learned counsel for the defendant No.1 has specifically putforth that the secondary evidence should not have been permitted to be led pertaining to Ex.A1 and for the alleged legal notice given by the plaintiff, the defendant No.1 has asked for the copy of the agreement of sale by sending sufficient amount i.e, Rs.50,-/- for furnishing the copy. He has also sought

this court to examine Paras 13 and 16 of the Judgment of the trial court and contends that Section 13 of the Specific Relief Act is not applicable for the reason that here, the defendant No.1 has never contacted to sell the disputed plot and the defendant No.1 is denying his signatures in Ex.A1. The alleged version of the original document being misplaced cannot be believed and has relied on citations in his written submissions.

6(a). No arguments are adduced on behalf of the defendant No.2 and it is represented to treat the arguments of the defendant No.1 as the arguments of defendant No.2 also.

7. Now the points formulated for deciding the present appeal are:

1. *Whether the impugned sale agreement dt.14.6.1994 is valid and binding on the defendants?*
2. *Whether the suit is in time?*
3. *Whether the plaintiff is entitled for the relief of specific performance as prayed for?*
4. *Whether the Judgment passed by the trial Court is factually and legally sustainable?*
5. *To what relief?*

Point No.1:-

8. The point No.1 is inclusive of issues 1 to 4 framed by the trial court and this point has to be first examined for deciding

the present appeal.

9. The plaintiff filed this suit by contending that the original of Ex.A1 agreement dt.14.6.1994 was lost by her while she along with her husband were proceeding in an auto to file the suit after issuance of Ex.A2 legal notice. The Ex.A2 was issued much prior to that i.e., on 18.10.2008. Nearly after 9 months, i.e., on 18.7.2009, the plaintiff lost this document and immediately on the same day, she gave Ex.A4 representation to police and filed suit in August, 2009. In this case, as the plaintiff claims to have lost the original document, she has led the secondary evidence and no permission is obtained specifically from the court prior to leading secondary evidence as seen from the records. Of-course, this Ex.A1 is marked subject to objection regarding the admissibility of the Xerox copy. According to Section 65 (c) of the Indian Evidence Act when the original is lost, not due to own default and neglect and if the original cannot be produced within reasonable time, then the permission can be accorded to lead the secondary evidence.

10. If the oral evidence on record regarding the original of Ex.A1 being lost is perused, the chief-examination affidavit of the plaintiff as P.W.1 is the replica of the plaint and regarding Ex.A1 at Para No.4, it is putforth that while contemplating to file a suit, herself and her husband wanted to go to Guntur from Ponnur and boarded an auto and on the way, the agreement was lost. She

searched for the agreement and gave police report. The Xerox copy of the same is already with the advocate which was given at the time of issuing the registered notice. When P.W.1 was cross-examined on this aspect, she has stated that she cannot say whether the Photostat copy of the copy of the original of Ex.A1 was given to her counsel or the Photostat copy of the original of Ex.A1 was given to her counsel as her husband looks after the litigation. She categorically states that she lost the original of Ex.A1 on 18.7.2009 while proceeding to Advocate office. Whether that Advocate office is at Guntur or at Ponnur is not known. Furthermore, her husband himself i.e., P.W.2 belongs to Police department and so, Ex.A5 certificate issued by police dt.24.7.2009 regarding the original agreement of sale not being traced out cannot be solely relied upon to believe the alleged misplacement. The same does not even disclose as to when exactly the police received the report from the plaintiff, but Ex.A5 is to the effect that while the plaintiff was going to bus stand by an auto on 18.7.2009, she has lost the original of the agreement of sale as represented in the report and enquiries are made by the police, but the agreement papers could not be traced out. Therefore, this Ex.A5 only discloses about the report being given by the plaintiff and that the original agreement could not be traced out. So, within 5 days from the date of the alleged missing of the document, this certificate is given by the police. In this context, further, if the oral evidence of P.Ws.1 and 2 is perused, P.W.2 who is the husband of P.W.1 and who actually is looking after the litigation as can be

understood from the evidence of P.W.1 states that he does not even remember about giving of copy of Ex.A1 to the police along with their complaint. Without the same being furnished, the police searching out for the original of Ex.A1 and giving this Ex.A5 certificate creates further doubts. In fact, none are examined to prove this Ex.A5. Above all, if any original document is lost, upon which the valuable rights of a party depends, not even the paper publication being given creates further doubts. That too, when 9 months prior to that, the legal notice was issued calling upon the plaintiff to execute the registered sale deed in pursuance of Ex.A1 sale deed and when there was inaction on the part of the defendant No.1.

10(a). On the other hand, the defendant No.1 contends that he got issued a letter of communication under Ex.B2 calling for the copy of agreement and the specific stand of defendant No.1 is that he has not executed Ex.A1. The money order of Rs.50/- was also sent as seen from Ex.B1 which was also returned. Of-course, the defendant No.1 also remained silent thereafter without further steps being initiated by him even when there was no response for his certificate of posting i.e., relating to Exs.B1 and B2. As the original of the Ex.A1 is not before this court, the defendant No.1 who is denying the execution of Ex.A1 agreement of sale definitely lost an opportunity to send the same to the expert opinion to get his signatures examined through concerned expert or for getting his signatures on Ex.A1 compared with his admitted signatures.

During the course of the cross-examination by the counsel for the defendant No.2, P.W.2 categorically has admitted that no paper publication was issued when they lost the original of Ex.A1 and this conduct is definitely suspicious.

11. To prove the execution of the original of Ex.A1, apart from P.Ws.1 and 2 whose evidence is discussed supra, the plaintiff has examined P.W.3 who is the attestor of the original of Ex.A1. The scribe is no more as seen from the evidence of P.W.3 and P.W.3 states that the defendant No.1 has received the entire sale consideration amount of Rs.10,000/- on 14.6.1994. The plot was allotted to the 1st defendant on 4.10.2008 as seen from the registered sale deed in favour of the 1st defendant i.e., nearly after 14 years of the alleged agreement of sale. In no time, after the plot was registered in favour of the defendant No.1, the legal notice was issued under Ex.A3 and even though there was no reply by the defendant No.1 as per the case of the plaintiff, she remained quiet for another 9 months and after the lapse of 9 months, while she was going with her husband by an auto to file suit, they lost the original of Ex.A1. Already having suffered for such a long time i.e., for more than 14 years inspite of paying the entire sale consideration, waiting for another 9 months even after giving legal notice without filing the suit definitely is an unfavourable circumstance in favour of the plaintiff.

11(a). Now adverting back to the further evidence of P.W.3,

he has deposed about the defendant No.1 receiving the entire sale consideration of Rs.10,000/- from the plaintiff and putting his signatures in Ex.A1. When he claims that he has acted as a mediator, his admission that by the date of Ex.A1, the plot was not allotted to the defendant No.1 and that he cannot say, the particulars of the plot creates doubt. When the place of existence of the property i.e., the location, plot extent, the approximate value of the land per square feet, boundaries etc., were not known by then (since not recited in Ex.A1), the fixing of sale consideration of Rs.10,000/- and payment of entire consideration by the plaintiff and inspite of it, remaining quite for 14 years till the allotment and registration of plot in favour of defendant No.1 and for more than 9 months even after the issuance of legal notice inspite of there being inaction on the part of the defendant No.1 definitely is suspicious and not a probable conduct expected from a prudent person. All this goes to show that the Ex.A1 is not a genuine document. In fact, there is no mention in Ex.A1 that it was executed at Ponnur as stated by P.W.3. P.W.3 admits during his cross examination that he is a friend of the husband of the plaintiff, but claims that he is also the friend of the defendant No.1. P.W.2 is a money lender as seen from the evidence of P.W.3. The evidence of P.W.4 goes to show that there is signature of one Matukumalli Sri Ram Jagan Mohan Rao on Ex.A1 as scribe. In the light of the death of this document writer, his signature on Ex.A1 alone is identified by P.W.4, who worked under the scribe of original of Ex.A1. But his testimony is not of significance since he cannot

speaking about the execution of Ex.A1.

11(b). The defendant No.1 as D.W.1 before this court has reiterated that the alleged agreement of sale is a forged and concocted document and that the claim of the plaintiff is an imaginary one. He denies the execution of agreement of sale. Regarding Exs.B1 and B2, it is seen that during the cross of D.W.1, the plaintiff does not even contend that it was not addressed to her properly and only puts forth the suggestion of the alleged management of the postal authorities in returning Ex.B2. It is not in dispute that subsequently under Ex.A6, plot No.75 was allotted by way of plots to the 1st defendant and registered on 4.10.2008 itself. Ex.A7 is marked through this D.W.1 by way of confrontation which is the sale deed in favour of the 2nd defendant executed by defendant No.1. D.W.1 has denied his signatures in Ex.A1 and as already observed, the version of missing of the original of Ex.A1 itself appears to be improbable and the probable steps expected from a prudent person are not taken in this case as observed like giving of paper publication etc. If really there are any receipts dt.25.5.1985 and 10.10.1984 issued by the defendant No.1 for the sale consideration paid under two instalments as suggested to D.W.1 by the plaintiff, why those receipts are suppressed and not filled before this court by the plaintiff remains unexplained and it is not her case that these original receipts are also lost along with original of Ex.A1.

Since no relief is sought against the defendant No.2, as

rightly observed by the trial court also, the further discussion whether the defendant No.2 is a bonafide purchaser or not need not be taken up. The fact remains that the sale deed in favour of the defendant No.2 by the defendant No.1 was executed only on 8.9.2009 i.e., subsequent to the filing of this suit, so the doctrine of lis pendens comes into play and the rights of the purchaser are subject to the rights of his vendor and the fate of Ex.A7 in favour the 2nd defendant depends on the title of the defendant No.1 for the disputed property and on the decision relating to Ex.A1. Of course, the defendant No.2 also contends that there is no such agreement and having sold away the property to him, plaintiff and defendant No.1 might have subsequently introduced this Ex.A1 to defeat his rights. The evidence of D.W.2 i.e., defendant No.2 does not require much discussion and so also, the evidence of D.W.3 who is the 2nd attestor of the registered sale deed in favour of the defendant No.2. The sale deed is not a compulsorily attestable document and also, the evidence of D.W.4 who is the scribe of Ex.A7 is not of any importance. The contention of plaintiff is only that this Ex.A7 is a nominal document brought into existence by way of collusion to defeat his rights.

12. In the light of there being suspicious circumstances regarding the original of Ex.A1 agreement being lost, this court further intends to examine if this Ex.A1 can be acted upon and if it is a valid document or not? The perusal of Ex.A1 and the testimonies of P.Ws.1 and 2 goes to show that this agreement is

executed on 14.6.1994 on Rs.10/- + Rs.10/- stamp papers (2) by the defendant No.1 in favour of the plaintiff. According to Ex.A1, there is a plot sanctioned in favour of the defendant No.1 who is a member of Guntur Police Co-operative House Construction Society with No.368 and the defendant No.1 has received the entire sale consideration of Rs.10,000/-. After the plot being allotted in favour of the defendant No.1 by the society, he would execute the document for which the registration expenses etc., to be borne by the plaintiff. In case, the plot is not allotted, the entire amount would be returned back. Further, in pursuance of the rules and conditions of the society, **the possession of the plot was not given to the plaintiff as seen from the specific recital therein.** This conveys as if by then, the defendant No.1 knew about his plot details. It is putforth that as soon as he gets possession, the defendant No.1 would hand over the possession to the plaintiff.

How this sale consideration amount of Rs.10,000/- could be arrived at by the parties to the agreement is not known without even knowing the extent of the plot, the value per square feet, location of the plot etc. and there are no required details relating to the plot in Ex.A1. So, the description of the subject matter of the sale is not definite and the agreement of sale appears to be an uncertain document, not capable of being performed. It is a vague document which cannot be acted upon.

12(a). As far as the contention of the learned counsel for the

plaintiff is concerned relating to Section 13 of the Specific Relief Act, **Section 13 of the Specific Relief Act** reads as follows:

13. Rights of purchaser or lessee against person with no title or imperfect title.—

(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:—

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

Section 13 which is extracted as above deals with the rights

of purchaser against person with no title or imperfect title. Here, this is not the dispute concerning the title of the defendant No.1 which is alleged to have been sold under agreement of sale i.e., Ex.A1. No doubt, if the seller who had no title or had imperfect title at the time of sale subsequently acquires interest in the property, the purchaser can definitely compel to make good the contract out of such interest. But for the reason that the very property which is sought to be sold is not described in Ex.A1 with clarity, the specific performance of such a vague property cannot be ordered. That too, basing on Ex.A1 which is a xerox copy of document and in the light of the version of the original of Ex.A1 being lost while coming to Guntur as putforth by the plaintiff itself not being believable. Furthermore, in the context of the plaintiff remaining quite for nearly 9 months even after issuing legal notice for which there was no response from the defendant No.1 who is alleged to have executed this agreement of sale somewhere about 14 years back by then. The conduct of the plaintiff during all these years and particularly, she remaining silent for 9 months after issuing legal notice has not been explained satisfactorily. So, this court doubts the very execution of Ex.A1. As far as the stamp duty and penalty are concerned, the same cannot be collected on the xerox copy of document and since, the document is marked , this objection cannot be looked into at this stage.

13. Adverting to the citations relied upon by the plaintiff, in the citation between ***Goparaju Venkata Bharata Rao and***

another Vs. Nagula Ramakotayya and others reported in AIR 2001 Andhra Pradesh 425, the plaintiff therein could prove that the agreement of sale was a genuine document. Further, the facts of that case are entirely different and the plaintiff was originally put in possession of the plaint schedule property, but after the death of the original owner, her legatees under the Will dispossessed the plaintiff and postponed the execution of sale deed which was a genuine document as proved by the plaintiff. Also, there is also discussion regarding the Article 54 of the Limitation Act in this citation. In ***Ramakrishna Constructions and another Vs. Singareni Collieries Co., Ltd., reported in (2015) CLT Page 122 (AP)***, the Judgment was passed by the Hon'ble High Court relating to the order of the trial court rejecting the photo copies of the letters as secondary evidence. In this case on hand, the xerox copies was marked subject to objection and no permission petition is filed to adduce the secondary evidence i.e., to receive the xerox copy of the original agreement of sale. However, mere admission of the secondary evidence does not relieve the plaintiff in this case on hand from proving the contents of document which aspect is discussed in the citation also. As discussed above, this court is of the opinion that the plaintiff has failed to prove the contents and the genuineness of the document i.e., Ex.A1 and the very description of the property is not seen in Ex.A1 and without knowing the extent, location etc., of the property, fixing the sale consideration and paying the same itself is not believable as already discussed. Also, there is

inconsistent recital in Ex.A1 regarding the possession not being delivered in view of some rules and regulations of the society which impliedly goes to show that the transferer knew about the property by then. But only the rules and regulations of the society prevented him from delivering the possession and this further suggests as if the vendor was in possession of the property by then. The citation in ***Agricultural Produce Marketing Committee Vs. Bannama (D) by LRs reported in 2014 (6) ALD 1 (SC)*** relates to doctrine of feeding the grant by estoppel under Section 43 of the Transfer of Property Act. When a person by fraudulent or erroneous representation transfers certain immovable property claiming himself to be the owner of such property, then such transfer will operate on the interest that may be acquired by the transferor. In this case on hand, it is not the stand of the plaintiff that there was any fraudulent or erroneous representation by the defendant No.1 regarding the property and on the other hand, the defendant No.1 is denying the very execution of Ex.A1. In the light of the version of "original being lost" put forth by the plaintiff, the defendant No.1 lost the opportunity of getting his alleged signatures on agreement of sale examined by an expert. So, this citation is not helpful to the plaintiff at all. In ***Muthabathula Arjaya Vs. RambalaVenkata Surya Gopala Krishnamurthy and another reported in (1974) AIR (AP) 240***, there is detailed discussion of Section 18 of the Specific Relief Act (Section 13 of the Specific Relief Act, 1963) and as this court has already observed, Section 13 of the Specific

Relief Act is not applicable to the impugned agreement of sale for the reason that the very description of the property is not there in Ex.A1 and this is not the case of the vendor having no title or having imperfect title by the date of Ex.A1 which was subsequently acquired by the vendor.

14. Now adverting to the citations relied upon by the defendant No.1 between ***Bachu Laxmipathi Vs. Bachu Kistaiah and others reported in 2015 (5) ALT 795***, between ***Nurukurthi Solman Raju Vs. Nurukurthi Veera Lakshmi, reported in 2017 (5) ALT 178*** and between ***Dangu @ Kadamenda Yellaiah and others Vs. Ch. Sridhar Reddy and another in Civil Revision Petition No.122/2012, dt.13.9.2012***, there is discussion regarding the leading of the secondary evidence. There is observation in Bachu Lakshmipathi's case (referred supra) that when the original document is not available, the question of impounding the copy of document does not arise. In this case on hand also as observed, though Section 65 of the Evidence Act permits secondary evidence under certain circumstances, there is no specific permission obtained for leading secondary evidence by the plaintiff. However, the allowing of the marking of Ex.A1 by the trial court subject to objections may have to be considered as permission to adduce the secondary evidence. Since the document in question is not a public document and as already, the document was received subject to objection, it cannot be straight away held that the Photostat copy cannot be received

as secondary evidence.

Infact, in the citation of the Division Bench of our Hon'ble High Court relied upon by the plaintiff reported in **2018 (4) ALT Page 555 (D.B.) between Krishna Patnam Port Company Ltd., Represented by it's Managing Director Vs. Cargill India Pvt., Ltd., represented by it's authorized signatory Sri Ravi Goel, New Delhi and another** also, it was only observed that the xerox copies of the documents of which the originals are shown to have been lost can be received in evidence. But the nature of the documents and the probative value of the documents and the possibilities of tampering the documents have to be taken into consideration before permitting the xerox copies into evidence.

The respondent can always take objection as to the proof of the contents of the documents and their probative value as observed in **Rama Krishna Constructions case** referred supra.

Furthermore, the party seeking to produce the secondary evidence must establish for the non production of primary evidence and unless it is established that the original document is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot be accepted. In this case on hand, this court already has referred to the suspicious circumstances regarding the version of plaintiff that the original of Ex.A1 is lost and hence, this court has hesitation to believe the same.

15. For the discussion made supra and particularly, as the extent, measurements and the location etc., of the plot are not described in Ex.A1, the very document pertaining to which the specific performance is sought is an incomplete and vague document. Hence, this court cannot permit to enforce the same. Also, for the discussion made above, it is clear that the original of Ex.A1 being lost by the plaintiff is also not convincingly established by her. The specific performance of contract being an equitable relief, for the laches on the part of the plaintiff discussed above in remaining quite for 9 months even after issuing the legal notice in the peculiar facts and circumstances of this case, this court feels that this discretionary relief cannot be extended in favour of the plaintiff. Therefore, this point is held against the plaintiff.

Point No.2:-

16. As far as the limitation aspect is concerned, in the light of section 54 of the Indian Limitation act, the period of limitation is 3 years from the date of knowledge and after the plaintiff has gained the knowledge of the registered sale deed being executed by the society in favour of the defendant No.1 in October, 2009 (under Ex.A6), this suit is filed in time. But why the plaintiff remained quite for such a long time and whether she was making any enquiries in between or if she had personal knowledge of the execution of the sale deeds by the society is not putforth. Leaving all this apart, even after the execution of Ex.A6 by the society and

inspite of the defendant No.1 not acting upon the alleged agreement of sale, even then waiting for 9 more months after issuance of the legal notice by the plaintiff is definitely a suspicious circumstance. As the plaintiff is denying the receipt of Exs.B1 and B2, it has to be taken that the plaintiff received no communication from the defendant No.1 for Ex.A2 legal notice and inspite of it, she waited for 9 months without initiating any further proceedings. All this creates doubt in the plaintiff's stand.

Point No.3:

17. For the discussion made supra, particularly for Point No.1, the plaintiff is not entitled for the relief of the specific performance of the agreement of sale dt.14.6.1994 and she has not sought for any other alternative relief.

Point No.4:

18. The Judgment and findings of the learned trial Court does not suffer from any infirmities and the trial court has appreciated the oral and documentary evidence in right perspective except the findings regarding the original of Ex.A1 being lost by the plaintiff. Hence, the appeal is liable to be dismissed and accordingly, dismissed.

Point No.5:

19. In the result, the Appeal is dismissed with costs by confirming the decree and Judgment in Original Suit No.688/2009

dt.29.9.2015 on the file of learned Prl. Junior Civil Judge's Court,
Guntur.

Dictated to the Stenographer Grade-III of V ADJ Court, transcribed by
her, corrected and pronounced by me in open court on this the 19th day of
APRIL, 2022.

Sd/- R. Sreelatha,
V Addl. District Judge,
Guntur.

APPENDIX OF EVIDENCE

-Nil-

No oral or documentary evidence is adduced on either side.

Sd/- R. Sreelatha,
V Addl. District Judge,
Guntur.

Copy to:
The learned Prl. Junior Civil Judge, Guntur.