

IN THE COURT OF THE SENIOR CIVIL JUDGE AT WANAPARTHY.**Monday the 23rd day of October, 2017.****PRESENT:-SRI M.YESURATNAM,
SENIOR CIVIL JUDGE, WANAPARTHY.****O.S.No.22 of 2009**

Between:-

M.Balraju, S/o Balaswamy, 35 Yrs, Occ: RMP Doctor,
R/o: Pangal Village and Mandal, Mahabubnagar District.

...Plaintiff

and

1. Pothula Krishna Reddy, S/o Narayana Reddy, 53 Yrs, Occ: Agriculture, R/o: Chakalipalli Village of Gopalpet Mandal.
 2. Pothula Shyamsunder Reddy, S/o Narayana Reddy, 46 Yrs, Occ: Teacher, R/o: Chakalaipally Village of Gopalpet Mandal.
 3. Dodla Balakistamma, W/o Rami Reddy, 55 Yrs, Occ: Agrl., R/o: Yedutla Village of Gopalpet Mandal.
 4. Dorreddy Rameshwaramma, W/o Venkat Reddy, 52 Yrs, Occ: Agriculture, R/o: Kodair Village and Mandal.
 5. Smt.Padma, W/o Gundla Nageshwar Reddy, 43 Yrs, Occ: Agrl., R/o: Janumpally Village of Pebbair Mandal, Mahabubnagar District.
 6. Pothula Venkateshwar Reddy, S/o Krishna Reddy, 27 Yrs, Occ: Agrl.,
 7. Pothula Prashanthi, D/o Krishna Reddy, 21 Yrs, Occ: Agrl.,
- Sl.Nos.6 and 7 are R/o: Chakalipally Village of Gopalpeta Mandal.

(Defendants No6 and 7 are added as per the orders of this court in IA No.936 of 2011, dt.22-12-2011).

...Defendants.

Sub: Suit filed for specific performance of contract.

This suit coming for final hearing before me on 09-10-2017 in the presence of Sri S.Baleeshwaraiah, Advocate for the Plaintiff and of Sri J.Brahmaiah Chary, Advocate for the defendants No1, 6 and 7 and of Sri K.Ramachandra Reddy, Advocate for Defendants No.3 to 5 and of Sri Sanketh Mithra, Advocate for D2 and the matter having been stood over for consideration, this court delivered the following:-

J U D G M E N T

1. The suit is filed for specific performance of the contract. The brief facts of the plaint are that:

The suit lands bearing Sy.No.760/C1 an extent of 0-02 guntas and 762 an extent of Ac 1-13 guntas totally admeasuring Ac 1-15 guntas both we lands situated in the limits of Pangal village and Mandal were originally

owned by one Pothula Kista Reddy S/o Papi Reddy, 85 Yrs, R/o: Pangal Village. The said Kista Reddy has sold the suit lands to the plaintiff and executed an agreement of sale on 23-08-2007 by fixing the sale price at Rs.1,60,000/- and on the date of the agreement the plaintiff has paid a sum of Rs.80,000/- to the said Kista Reddy as earnest money and the said Kista Reddy has delivered the possession of the suit land to the plaintiff. The balance sale consideration was agreed to be paid dt.07-04-2008 and after receiving the balance sale consideration the said Kista Reddy has to execute the registered sale deed in favour of the plaintiff. But, the said Kista Reddy has died on 07-04-2008 due to old age and as such the plaintiff could not pay the balance sale consideration to him and did not obtain the registered sale deed. The said Kista Reddy has died issueless and intestate leaving behind him the D1 to D5 herein as his legal heirs. D1 and D2 are the brother's sons of Kista Reddy and the D3 to D5 are the daughters of the brother of Kista Reddy and he is having only one brother by name Narayana Reddy who has predeceased Kista Reddy. Being the legal heirs of said Kista Reddy the D1 to D5 are entitled to receive the balance of sale consideration from the plaintiff and they are liable to execute the regular registered sale deed in favour of the plaintiff in respect of the suit land, when the plaintiff demanded the D1 to D5 to receive the balance sale consideration and to execute the registered sale deed, but the defendants went on postponing the matter for one or other reasons. In the mean time the D1 has created a false and forged will deed dt.19-10-1990 said to have been executed by Pothula Kista Reddy to the effect that the said Kista Reddy had bequeathed the suit lands and also the house property in his favour. Basing on it D1 filed OS No.135 of 2008 dt.21-07-2008 on the file Junior Civil Judge's Court, Kollapur against the plaintiff for perpetual injunction in respect of the suit land and house property against the plaintiff herein and also filed IA No.126/2008 for temporary injunction and the same was dismissed on 30-04-2009. There were cases pending between the said Kista Reddy and D1 and D2 herein in the Nagarkurnool court till the death of Kista Reddy. As such the will deed

filed by D1 is false, forged and created by D1. On 03-05-2009 the plaintiff got issued a legal notice to all the defendants to receive the balance sale consideration and to execute the registered sale deed in favour of the plaintiff in respect of the suit land. The D1, 2, 4 and 5 have received notice and D3 has evaded receiving the same. But, D1 has given false reply notice denying the allegations.

2. When the suit is posted for trial D1 has requested the plaintiff for compromise of the matter, accordingly the matter is referred to Lok Adalat on 01-02-2010. On 06-03-2010 D1 has entered in to an agreement of sale with the plaintiff in respect of the above said suit land agreeing to sell the same to the plaintiff by fixing the sale price Rs.5,50,000/- and on the date of agreement the plaintiff has paid a sum of Rs.2,00,000/- to D1 in the presence of Kummari Balaswamy, G.Bal Reddy Advocate and Konda Reddy Advocate. As per agreement the balance of Rs.3,50,000/- was agreed to be paid on or before 15-04-2010 and the registered sale has to be executed, in that agreement D1 and the plaintiff have to withdraw the suit No.35/2008 and OS No.22/2009 i.e., present suit. The plaintiff has paid balance sale consideration of Rs.3,50,000/- in the presence of Kummari Balaswamy and Rammurthy, after that the D1 did not pass any receipt on the ground that the case is posted in the Lok Adalat on 17-04-2010 and filed compromise petition. The patta of the suit land in the name of late Kista Reddy and the Advocate advised to D1 to get patta in the name of D1 from the office of Tahsildar, Pangal and then go for compromise and the D1 get patta vide proceedings No.E/1983/2008, dated: 25-05-2010. Thereafter, D1 failed to execute the registered sale deed in the name of the plaintiff in respect of the suit land. The D1 violated the terms of agreement and did not perform his part of contract and on the other hand he has executed a registered gift deed in favour of his son and daughter by name Pothula Venkateshwar Reddy and Pothula Prashanthi gifting the suit land in their names. D1 got issued a legal notice though the counsel mentioned that D1 has cancelled the agreement of sale d.t.06-03-2010 and also mentioning that he has

executed a registered gift deed in favour of his children. The children of D1 are liable to execute the registered sale deed in favour of the plaintiff along with the other defendants in respect of the suit land, since the gift deed is bogus and not binding on the plaintiff. Hence, the plaintiff filed this suit.

2) The defendants filed her written statement denying the plaint contents and further stated that the defendant is owner of the property in plot NO.352 to an extent of 30X60 situated at KDR Nagar, Wanaparthi, which is acquired by her from her brother as Gift through a registered Deed NO.6186/2005 Dt:31.10.2005, and offered to sell the property to the plaintiff and the plaintiff accepted the said offer and accordingly on 28.03.2010 the defendant executed an agreement of sale by receiving an amount of Rs.50,000/- out of sale consideration of Rs.7.90.000/- in the presence of witnesses, among them one is husband of defendant and the balance sale consideration was payable on 28.6.2010 to get register the sale deed.

3) The defendant further submitted that the defendant being the absolute owner and possessor of the residential plot bearing No.352 extent of 30X60 = 200 Sq.Yards having in need of money for the marriage of her daughter offered the plaintiff for sale and the plaintiff accepted the offer and entered into an agreement of sale and the consideration was fixed at Rs.7,90,000/- and an amount of Rs.50,000/- was paid towards part of sale consideration and the plaintiff agreed to pay the balance sale agreement of sale, it is clearly mentioned that by 28.6.2010 he he failed to pay the balance sale

consideration, he agreed to forego the part sale consideration and the agreement stands cancelled. Thus the time is the essence of the above said contract. It is further submitted that the defendant sold the above said plot to the plaintiff for the purpose of marriage of her daughter by name Swapna, which was scheduled on 26.11.2010. Despite of several demands by the defendant the plaintiff did not pay the balance sale consideration, in the said circumstances the defendant has sold her joint residential house to one Somisetty Sreedevi of Wanaparthi on 14.03.2011 for a meager sale consideration that too by giving lion share to her coparcener. The defendant sustained heavy loss on selling her residential house and faced severe problems. It is further submitted that even after issuance of the legal notice to the plaintiff, the plaintiff did not give any reply to the said notice, on the other hand the plaintiff got issued another legal notice to the defendant with false allegations. It is further submitted that even after issuance of the legal notice to the plaintiff, the plaintiff did not give any reply to the said notice, on the other hand the plaintiff got issued another legal notice to the defendant with false allegations. It is further submitted that though a suit was filed in OS No.110 of 2010 before the Hon'ble Junior Civil Judge, Wanaparthi in respect of the suit schedule property the plaintiff is not party to the said suit and further the injunction orders were not extended. It is further submitted that the plaintiff herein got filed the said suit by instigating the plaintiff in the said suit and later the plaintiff after realizing the facts not pressed the said suit, as such the said suit was dismissed as not pressed. It is further submitted that the plaintiff played mischief by withdrawing the amount deposited by hi in the bank to show his readiness for purchase of the suit schedule property, after filing the present suit which shows his malafide intention and the said fact disentitles him from seeking the specific relief. It is further submitted that the suit in OS NO.110 of 2010 was dismissed as not pressed on 16.3.2011 and the defendant got issued legal notice on 11.4.2011, and the plaintiff got issued the legal notice on 18.4.2011 without giving any reply to the notice of the defendant and till then he kept quite. It

is further submitted that now the defendant is not in need of selling the suit house to the plaintiff, since the time is essence of the contract the agreement between plaintiff and defendant stands cancelled and the suit is liable to be dismissed.

3) After perusal of the plaint, written statement and documents, this Court framed the following issues for trial on 17-08-2009:

Issue No.1:-Whether the suit agreement of sale dt.07-04-2008 is true, valid and binding on the defendant No1 to 5 and also whether late Kista Reddy sold the suit property for Rs.1,60,000/- and received Rs.80,000/- as an advance and executed the agreement of sale and delivered the of property to the plaintiff?

Issue No.2:-Whether the plaintiff was ready and willing to perform his part of contract during the life time of Kista Reddy and also thereafter till now?

Issue No.3:-Whether the late Pothula Kista Reddy and her wife by name P.Shankamma jointly executed the stamped will dt.19-10-1996 in favour of D1 bequeathing the suit property and that it is binding on the plaintiff?

Issue No.4:-Whether the plaintiff represented before Tahsildar of Pangal that late Kista Reddy borrowed the money and he has to get back the same and that he has no objection for mutating the land in favour of D2 as contended in written statement?

Issue No.5:- To what relief?

ADDITIONAL ISSUES FRAMED ON 28-06-2012:

Issue No.1:-Whether the agreement of sale dt.06-03-2010 is true, valid and binding on the defendant?

Issue No.2:-Whether the plaintiff has to file a separate suit for specific performance of agreement of sale dt.06-03-2010?

Issue No.3:-Whether the suit is barred under O-II R-2 CPC?

Issue No.4:-To what relief?

4) On behalf of the plaintiff, plaintiff examined as P.W.1 and P.Ws.2 to 6 and got marked Ex.A1 to A12. On behalf of the defendant D1 examined as Dw1 and Dws2 and 3 and got marked Ex.B1 to B25.

5) **ISSUE NO.1 to 3:-**

According to PW.1 the defendant is the owner of the suit schedule property and he contacted the defendant to her husband to purchase the suit schedule property and the defendant agreed for the sale consideration of Rs.7,90,000/- on 28.03.2010 and he paid an amount of Rs.50,000/- in advance and the defendant executed an agreement of sale with condition to pay the balance amount of Rs.7,40,000/- on or before 28.06.2010. Ex.A1 is the agreement of sale. Meanwhile the defendant informed to him that her brothers daughter filed suit for partition and there is interim injunction restraining from alienating the suit schedule property she also handed over the orders in IA No.162 of 2010 in OS No.110 of 2010. It is Ex.A4 and she further informed to him that she is taking steps to vacate the orders and she will register the same by receiving the balance. Thereafter the defendant issued notice on 11.04.2011 informing that the agreement was cancelled, a legal notice is Ex.A5. Further he issued legal notice by stating that he has no knowledge about the disposal of the suit and IA till receipt of the notice in

Ex.A4 and called for the defendant to receive the balance consideration as he is ready to pay the same with one day prior call. The said notice is Ex.A6, Ex.A7 is served acknowledgement, Ex.A2 is plaint in OS No.110 of 2010, Ex.A3 is copy of petition in IA No.160 of 2010 and he also deposed that the defendant did not choose to call him, hence the suit. He also filed Bank statement pertaining to his account i.e., Ex.A8 and certified copy of injunction order in IA No.160 of 2010 and Ex.A9 and order in the above said I.A. Dt:7.5.2010 is Ex.A10. Original term deposit bond for the principle amount of Rs.4,00,000/- Dt:19.08.2011 as Ex.A11, Ex.A12 is the Salary Certificate Ex.A13 is the Certified copy of Registered Document Dt:23.03.2010.

6) P.W.2. also examined on behalf of plaintiff.

7) Whereas the D.W.1. deposed that she is absolute owner of the suit schedule property and she also admitted his offering of suit schedule property to the plaintiff for sale for a sale consideration of Rs.7,90,000/- and received an amount of Rs.50,000/- and execution of Ex.A1 and also admitted about the payment of balance consideration on or before 28.8.2010. If plaintiff failed to pay the balance consideration he agreed to forego the advance amount and the agreement stands cancelled and she further deposed that she sell away the above said property for the purpose of marriage of her daughter on 26.11.2010 since the plaintiff failed to pay the balance consideration, she sell away her residential house to one Somisetty Sreedevi and she issued legal notice but the plaintiff without giving of any reply, issued another legal notice and she also admitted about OS No.110 of 2010 in respect of suit schedule property but she is not party to the said suit and the injunction order also not extended and subsequently suit is dismissed as not pressed and also deposed that the plaintiff is not at all ready and willing to pay the balance consideration and to get registration of the same. She filed Ex.B1 wedding card Dt:26.11.2010, and ex.B2 is the certified copy of registered Sale deed Dt:14.3.2011. D.W.2. examined on behalf of defendant.

8) Based on the above evidence of P.W.1 and P.W.2 and D.W.1 and D.W.2. and Ex.A1 to A13 and Ex.B1 and B2, the learned counsel for the plaintiff contended in his written arguments as well as in oral arguments that the plaintiff is always ready to pay the balance sale consideration i.e., to perform his part of contract but the defendant in collusion with her relatives the OS No.110 of 2010 is filed and she informed that after disposal of the said suit she will receive the balance consideration and executed the registered of the sale and she is taking steps to vacate the interim orders in the above said suit and all of sudden she received legal notice by stating that the Ex.A1 agreement was cancelled as the plaintiff is failed to pay the balance sale consideration within time. But the plaintiff filed Ex.A8 to show his balance amount in his savings Bank account and he also filed Ex.A11 F.D.R. and the plaintiff is entitled to the suit relief.

9) Whereas the learned counsel for the defendant contended that the plaintiff failed to pay the balance sale consideration within stipulated time and forego the earnest money and he also not at all ready and willing to perform his part of contract and he has no balance consideration with him to pay the same at any point of time till filing of the suit even after issuance of the legal notice to the defendant and she also contended that an injunction order vacated one month prior to the stipulated date of agreement but the plaintiff failed to pay the balance consideration and he is not entitled for suit relief.

10) In view of the above contentions of both sides and on perusal of the evidence of both sides, it is clear that the execution of Ex.A1 is an admitted fact, the receipt of advance amount of Rs.50,000/- under Ex.A1 is also an admitted fact. The stipulation of time for payment of sale consideration and got execution of registration of sale on or before 28.06.2010 is also an admitted fact. Further filing of OS No.110 of 2010 and IA No.162 of 2010 and a interim injunction against the property under Ex.A1 preventing the alienation of the property under Ex.A3 and A4 and extension of the orders under Ex.A9 and Ex.A10 till 07.05.2010 is also admitted fact. Further

dismissal of the above OS No.110 of 2010 has not pressed is also an admitted fact. Further the notice issued by the Defendant to the plaintiff Dt:11.4.2011 informing that the agreement of sale is cancelled under Ex.A5 is also admitted fact, thereafter issuance of the notice by the plaintiff to the Defendant Dt:18.4.2011 under Ex.A6 is also admitted fact. Further admittedly the OS No.110 of 2010 is filed subsequent to Ex.A1 agreement and it is for the plaintiff if really he was informed by the defendant about filing of the suit and injunction orders in IA No.160 of 2010 in OS No.110 of 2010 he has to take necessary steps to implead as party in the above suit being holder of the agreement of sale and to file the Ex.A1 herein in the above suit and got it and marked the same under as exhibit in the above suit, than the result and consequences will be different. But the plaintiff failed to take such steps, by knowing very well about the IA No.162 of 2010 in OS No.110 of 2010 against the property under agreement of sale and the defendant is also party in the above suit. He also failed to know at-least proceedings of the suit and // whether it is pending or disposed off etc., If there is such attempt certainly he will call for the defendant to receive the balance consideration and execution of the agreement of sale immediately after disposal of the above suit and after vacation of the injunction orders and admittedly vacated by 07.05.2010 itself, as per Ex.A10 i.e., much prior to the stipulated time of agreement i.e., 28.6.2010. There is no such endeavour on behalf of the plaintiff and he was kept silent till receipt of notice from the defendant under Ex.A5. It shows that the plaintiff has no due diligence and interest to perform his part of contract as per terms of Ex.A1 within stipulated time. Even though the time is not essence of contract. However the plaintiff lastly replied by issuing notice to the defendants under Ex.A6 Dt:18.4.2011 and he demanded the defendant as to come forward to execute the registered sale deed on the date with one day prior notice to him within this week i.e., before 23.04.2011. Accordingly he fixed the date as 23.04.2011, now it has to be see how far he is ready and willing to perform his part of contract. The plaintiff must establish that he is ready

with balance consideration of Rs.7,40,000/- between 18.4.2011 to 23.4.2011. In this regard he filed Ex.A8 statement of his Savings Bank account. As per Ex.A8 between 18.4.2011 to 23.4.2011, there is an amount of Rs.1,60,583/- only. Thereafter the plaintiff credited a sum of Rs.3,80,000/- and Rs.99,300/- and Rs.1,51,000/- on 26.4.2011 but till 23.4.2011 shown an amount of Rs.1,60,583/- only available and it shows that the plaintiff has no amount with him to pay the balance consideration of Rs.7,40,000/- between 18.4.2011 till 23.4.2011, the date fixed by himself. He took term deposit under Ex.A11 for a sum of Rs.4,00,000/- on 19.08.2011 and its date of maturity is 31.12.2012. If really he secured the said amount for the purpose of payment of balance sale consideration of Rs.7,40,000/- he is nothing to do with the said amount but taking term deposit for Rs.4,00,000/- out of the above said funds again raised doubt on the truthfulness of the plaintiff that he always ready and willing to perform his part of contract.

11) In this regard the learned counsel for the plaintiff relied on citation report in **2005(6) ALD 74 (SC)** and also on the Judgments of Apex Court in Govind Prasad Chaturvedi Vs.Hari Dutta Shastri and another on 28.01.1977 and also another Judgment in Balasaheb Dayandeo Naik (died) through L.Rs and others Vs.Appasaheb Dattatraya Pawar Dt:24.01.2009 in respect of that whether the time is essence of contract or not?

12) On the other hand the learned counsel for the defendant relied on a citation reported in **2013 (6) ALD 579 (DB)**.

13) The facts and circumstances of the above case has no application to the facts and circumstances of the case on hand. In the above case date of performance, extension of time for performance can be extended even when date was fixed in the original agreement. The extension need not necessarily be in writing but may be proved by oral agreement or in some cases even by the evidence of conduct including forbearances of part of other party. But in the case on hand no such facts or circumstances except whether the time is essence of contract and the plaintiff always ready and willing to perform his part of contract or not and at the same time it is clearlu

exploited from the verdict of the Hon'ble Apex Court on 24.01.2009 that the time is not essence of contract relates to sale of immovable it will normally be presumed that the time is not essence of contract. Accordingly in the case on hand the contract is sale of land so the stipulation as to time is not the essence of contract. Accordingly Issue No.2 is answered.

14) Further the learned counsel for the plaintiff contended that the plaintiff is ready and willing to perform his part of contract and he is entitled for suit relief.

15) In this regard the counsel for the defendant 2013 (6) ALD (DB) In the High Court of Judicature, Andhra Pradesh at Hyderabad Hon'ble Sri L.Narsimha Reddy and Sri S.V.Bhatt in CCCA Nos.124 and 149 of 2000 :

Specific Relief Act 1963 - Sections 9, 16 and 20 - Suit for specific performance - Basic facts that plaintiff has to prove - stated:

In a suit for specific performance, the plaintiff has to prove certain basic facts viz., (a) execution of the agreement of sale by the concerned parties; (b) the manner in which the consideration has either passed or has been agreed to be paid; (c) the conditions that are required to be complied with by either parties; and (d) the time frame, if any, that is required to be adhered to, by the parties.

The first ingredient referred to above is a matter of proof. If there is no serious dispute as to execution of agreement, the burden upon the plaintiff gets lightened to that extent. If the defendants dispute the very execution of agreement or the circumstances under which it came into existence, the plaintiff has to discharge the burden, in this behalf.

Specific Relief Act 1963 - Section 9 - Defence plea that agreement of sale not capable of enforcement - Specific plea of defendants that agreement of sale was only a nominal document and never intended to be acted upon - Property jointly owned by defendants' father and son - plaintiff failed to prove that sale agreement was executed by father for and on behalf of son also - Absence of son, in transaction would certainly be fatal - Further, against sale consideration of Rs.15 Lakhs, just about 3% paid and even as regards this, there is any amount of uncertainty - No attempt made by plaintiff to offer balance sale consideration - When property not only large in extent, but also situated in prime locality, endeavor of purchaser must be to get sale deed executed at earliest - But not a single letter addressed on behalf of plaintiff requiring defendants to take any steps - plaintiff not taking any steps, not only before last date stipulated for conclusion but also till date of filing of suit, would only add strength to plea of defendant that agreement of sale was not intended to be acted upon - Particularly so, when there was

absolute silence on part of both parties from date of agreement for about three years, till date of filing of suit - Plaintiff, held failed to prove existence of agreement of sale, which confirms to requirements under law.

16) From the above verdict of the Hon'ble High Court of Andhra Pradesh, it is clear that at Para No.31, 32, and 33 readiness and willingness of the plaintiff, determination. In para 34 and 35 it is noted that readiness and willingness of plaintiff not fenamina i.e., expected to exist just on the date of filing of suit or on the date of deposition. The plaintiff obligation to be ready with balance sale consideration commences with the signing of contract and his required to be present till contract is concluded. Though it is not equallent to state that he must demonstrate that he was possessed adequate means and was willing to pay it to other party. Both these important ingredients were thoroughly missing, plaintiff cannot be said to have ready and willing to perform its part of contract. In the case on hand it is very clearly discussed supra that the plaintiff failed to take any steps though he is well nowledged about the OS No.110 of 2010 and IA No.162 of 2010 against the property under agreement of sale and against the defendant herein and he also kept silent without knowing the disposal of the suit and non extension of injuncion orders much prior to the stipulated time of agreement Dt:28.06.2010 and no reaction till receipt of notice from the defendant under Ex.A5 Dt:11.4.2011.

17) Apart from the above facts and circumstances the plaintiff has no balance consideration with him from the date of his Legal Notice i.e., 18.04.2011 till the date fixed by him i.e., 23.04.2011 as already discussed supra and he also admitted the same in his cross examination and the same is also established and proved by Ex.A8 and Ex.A11 Dt:19.08.2011. Accordingly the above facts and circumstances has application to the facts and circumstances to above verdict of the Hon'ble High Court of Andhra Pradesh. Hence the plaintiff failed to establish and prove that he ready and willing to perform his part of contract though the time is not essence of contract.

18) Here there is opt-ness and necessary to discuss the conduct of the defendant i.e., as she agreed with the plaintiff to sell away the property for a sum of Rs.7,90,000/- and received an advance of Rs.50,000/- and agreed to receive the balance consideration of Rs.7,40,000/- on or before 28.06.2010 meanwhile OS No.110 of 2010 in IA No.162 of 2010 filed against her and another for suit schedule property being the defendant in the above said case she must inform the stage of the case and atleast inform the result of the suit immediately after disposal but admittedly she has not taken such step and finally issued Ex.A5 Legal Notice by stating that the agreement is cancelled and the defendant is forego the advance amount of Rs.50,000/-, the above said conduct of the defendant is not like a prudent person. Similarly there is such negligence and failure to take steps by the plaintiff and kept silent without knowing the stage of the OS No.110 of 2010 and kept mum till receipt of the notice under Ex.A5. However in view of the above facts and circumstances and the time is not essence of contract, the plaintiff is entitled for refund of earnest money with interest from the date of agreement, it is discussed for the purpose of proper understanding and as a ground for proper adjudication of the suit. Though there is no such issue or relief, pray in the suit. Accordingly the above issue No.1 to 3 are answered and the plaintiff not entitled for specific performance of contract as prayed for as he failed to establish and prove that he is ready and willing to perform his part of contract.

19) In view of the findings of Issue No.1 to 3, in the result the suit is dismissed with costs.

In the result, suit is dismissed with costs.

Typed to my dictation to the Superintendent, JCJ Court, Alampur corrected and pronounced by me in the open court, this the 23rd day of October, 2017.

Senior Civil

**Judge,
Wanaparthi.**

Appendix of evidence

Witnesses examined for

Plaintiffs:

P.W.1. M.Balraju
 P.W.2. T.Brahmaiah
 PW3 K.Balaswamy
 PW4 C.Rammurthy
 PW5 B.Konda Reddy
 PW6 G.Bal Reddy

Defendants:

D.W.1. P.Krishna Reddy
 D.W.2. M.Ramulu
 DW3 P.Venkateshwar Reddy

Exhibits marked for

Plaintiffs:

Ex.A1. original agreement of sale dt.23-08-2007 executed by Pothula Kista Reddy in his favour.
 Ex.A2. office copy of legal notice (4) served acknowledgments and (1) undelivered postal cover dt.03-05-2009
 Ex.A3. reply notice dt.18-05-2009
 Ex.A4. CC of order in IA No.196/2008, dt.30-04-2009
 Ex.A5. CC of decretal order dt.30-04-2009
 Ex.A6. agreement of sale dt.06-03-2010 executed by D1 in his favour.
 Ex.A7. receipt dt.06-03-2010
 Ex.A8. CC of pahani for the year 2007-08
 Ex.A9. CC of pahani for the year 2008-09
 Ex.A10. attested copy of letter, dt.21-05-2008
 Ex.A11. attested copy of application, dt.12-07-2008
 Ex.A12. attested copy of application dt.19-07-2008

Defendants:

Ex.B1. original will deed dt.19-10-1990
 Ex.B2. CC of decree in OS No.181 of 2007
 Ex.B3 CC of pahani for the year 2007-08
 Ex.B4 CC of pahani for the year 2008-09
 Ex.B5 CC of pahani for the year 2009-10
 Ex.B6 CC of ROR dated 23-07-2010
 Ex.B7 RDO proceeding D/1067/2009, dated: 13-07-2009
 Ex.B8 death certificate of Pothula Kista Reddy
 Ex.B9 death certificate of Shankamma
 Ex.B10 CC of pahani for the year 2006-07
 Ex.B11 land holding certificate
 Ex.B12 CC of sworn statement, dt.18-05-2010
 Ex.B13 CC of private complaint
 Ex.B14 CC of order in CFR No.2135 of 2010
 Ex.B15 CC of ROR for the year 2011-12
 Ex.B16 original ration card
 Ex.B17 original voter identity card
 Ex.B18 CC of FIR
 Ex.B19 CC of ryoth passbook
 Ex.B20 original title deed of D1
 Ex.B21 original pattadar passbook of D1
 Ex.B22 original ROR of D1
 Ex.B23 CC of pahani of D1
 Ex.B24 CC of pahani of D1
 Ex.B25 original registered gift deed dt.28-07-2010.

**Judge,
Wanaparthi.**

Senior Civil