



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

[3397]

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

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

I.A.No.1 of 2026

IN/AND

SECOND APPEAL No.633 of 2012

Between:

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

AND

Padidam Chinna Chenchu Munuswamy and Others ...**RESPONDENT(S)**

Counsel for the Appellant(S):

1.M RAVINDRA

Counsel for the Respondent(S):

1.P SRI RAM

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

I.A.No.1 of 2026
IN/AND
SECOND APPEAL No.633 of 2012

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure (for short, 'C.P.C.') is filed aggrieved against the decree and judgment dated 13.02.2012 in A.S.No.188 of 2005 on the file of the Court of learned III Additional District Judge (FTC) Nellore, (for short, 'the first appellate Court'), in reversing the decree and judgment dated 17.08.2005 in O.S.No.51 of 1994 on the file of the Court of learned Senior Civil Judge, Gudur, (for short, 'the trial Court').

2. The appellant No.1 herein is the defendant No.1, the respondent Nos.1 to 3 are the plaintiffs and the respondent Nos.4 to 14 are the defendant Nos.2 to 12 before the trial Court. The appellant No.1 died during the pendency of the second appeal and the appellant No.2 is added as the Legal Representative of the deceased Appellant No.1.

3. The plaintiffs initiated action in O.S.No.51 of 1994, on the file of the trial Court with a prayer for specific performance of agreement of sale directing the defendant to execute a requisite sale deed in favour of the plaintiffs in pursuance of the agreement of sale dated 28.09.1991 and for costs.

4. The trial Court dismissed the suit. Felt aggrieved of the same, the unsuccessful plaintiffs in the above said suit filed A.S.No.188 of 2005 on the

file of the first appellate Court. By decree and judgment dated 13.02.2012 in A.S.No.188 of 2005, the first appellate Court allowed the appeal suit by setting aside the decree and judgment passed by the trial Court.

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

6. Case of the plaintiffs, in brief, as set out in the plaint averments in O.S.No.51 of 1994, is as follows:

The defendant No.1 borrowed a sum of Rs.1,60,000/- from the plaintiffs on 28.09.1991, for his necessities and became indebted to them and the defendant No.1 agreed to repay the said sum before 28.09.1992 and delivered the possession of the schedule mentioned property to the plaintiffs. The plaintiffs pleaded that the defendant No.1 executed a stamped agreement of sale in favour of the plaintiffs on the same date i.e. on 28.09.1991, agreeing inter alia that if the defendant No.1 paid the said amount to the plaintiffs, they would have to cancel the said agreement and return it to the defendant No.1 and that if he committed default, the defendant undertook to execute a registered sale deed in favour of the plaintiffs at their expense. The plaintiffs further pleaded that despite of repeated demands made by the plaintiffs, the defendant No.1 had been postponing to repay the amount and after the expiry of the period mentioned in the said agreement, the defendant No.1 had been postponing to execute the requisite sale deed on some pretext or the other.

The plaintiffs further pleaded that the defendant No.1 and his son asked the plaintiffs to be present before the District Registrar's Office, Nellore, for the purpose of the said execution of the registered sale deed, but the defendant No.1 and his son failed to turn up at the District Registrar's Office, Nellore, on the agreed date. The plaintiffs further pleaded that they got issued a legal notice dated 06.02.1994, to the defendant No.1, stating to execute the said sale deed, in reply to that legal notice, the defendant No.1 issued a reply notice dated 05.03.1994, with all false allegations and also alleged that the said agreement of sale is a forgery. Hence, the present suit.

7. The defendant No.1 filed written statement before the trial Court. The brief averments in the written statement filed by the defendant No.1 are as follows:

The defendant No.1 pleaded that the agreement of sale mentioned in the suit is a rank forgery and the persons who figured as attestors and the scribe are amenable to the plaintiffs and obliged to them. The defendant No.1 further pleaded that the conditions in the agreement reveal that it is actually a usufructuary mortgage and the condition on failure of payment of the loan advanced that the defendant No.1 has to execute a sale deed is a clog on equity of redemption and therefore invalid. The defendant No.1 further pleaded that his share is given to his wife towards her maintenance and she is receiving the rents from the tenant who is in occupation of the building along with her son. The defendant No.1 pleaded that his wife became the absolute owner of the same under Section 14 of the Hindu Succession Act, and the

market value of the property is more than Rs.8,00,000/- by the date of alleged agreement of sale and the basic value of the same in the Sub-Registrar's Office is more than Rs.3,00,000/- by the date of the alleged agreement of sale and that the defendant No.1 would not have agreed to sell the said building for the paltry sum of Rs.1,60,000/- and as such, he requested for the dismissal of the suit.

8. The defendant No.5 filed written statement before the trial Court. The brief averments in the written statement filed by the defendant No.5 are as follows:

The defendant No.5 pleaded that he joined as a tenant in a portion of the suit schedule building of Velugoti Venkata Sathya Prasad Krishna Yachendra in or about 1989 and continued as such till 1997, in which year the defendant No.5 purchased an extent of 179.60 square yards of vacant site from the said Velugoti Venkata Sathya Prasad Krishna Yachendra, under a registered sale deed dated 04.10.1997, for a valuable sale consideration of Rs.54,000/- and subsequently, the defendant No.5 constructed a pucca building in the said site and the defendant No.5 is residing therein. The defendant No.5 further pleaded that he is bona fide purchaser for value without notice of the alleged agreement of sale in favour of the plaintiffs said to have been executed by the defendant No.1. The defendant No.5 further pleaded that he is in possession of 179.60 square yards in his own rights since the date of purchase in the year 1997, and as such, he requested for the dismissal of the suit.

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

1. Whether the agreement of sale dated 28.09.1991 is true, valid and binding on the defendant?
2. Whether the defendant's wife is the absolute owner of the suit property?
3. To what relief the plaintiffs are entitled to?

On 28.04.2005, the trial Court framed the following additional issues:

1. Whether the 1st defendant has no right of alienation in the plaint schedule property?
 2. Whether the son of the 1st defendant got right and title to the suit property?
 3. Whether the 5th defendant inducted as tenant by the son of the 1st defendant in or about 1989?
 4. Whether the 5th defendant is a bonafide purchaser for valuable consideration without notice of the suit agreement of sale?
10. During the course of trial in the trial Court, on behalf of the plaintiffs, P.W.1 to P.W.3 were examined and Ex.A-1 to Ex.A-27 were marked. On behalf of the defendants, D.W.1 and D.W.2 were examined and Ex.B-1 and Ex.B-2 were marked.
11. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit. Felt aggrieved thereby, the

unsuccessful plaintiffs filed the appeal suit in A.S.No.188 of 2005, wherein the following points came up for consideration:

- 1) Whether the agreement of sale dated 28.09.1991 is true, valid and binding on the 1st defendant or not?
- 2) Whether the plaintiff is entitled for specific performance basing on the sale agreement?
- 3) Whether the 1st defendant's wife is absolute owner of the suit schedule property?
- 4) Whether the 1st defendant has no right to sell suit schedule property as his son got right or title over the suit property?
- 5) Whether this appeal is liable to be allowed, if so, on what ground? and
- 6) To what relief?

12. The learned first appellate Judge after hearing the arguments, answered the points, as above, against the defendants and allowed the appeal by setting aside the judgment and decree passed by the learned trial Judge. Felt aggrieved of the same, the unsuccessful defendant No.1 in O.S.No.51 of 1994 filed the present second appeal before this Court.

13. On hearing both sides, at the time of admission of the second appeal on 03.09.2025, this Court framed the following substantial questions of law:

1. *Whether the lower appellate Court has not committed an error in ordering refund of the sale consideration and interest to the plaintiffs covered by the alleged agreement of sale Ex.A.20, in the absence of*

any relief, being claimed by the plaintiffs or evidence or issue in relation thereto?

2. *Whether the lower appellate Court has not erred in ordering the refund of sale consideration and interest without any prayer, without considering the limitation aspect involved to order refund in the absence of any claim?*
3. *Whether the lower appellate Court has not erred in its failure to consider that refund of sale consideration and interest cannot be ordered on the basis of Ex.A.20 which is a mortgage by conditional sale and the suit for specific performance of Ex.A.20 is not maintainable and Ex.A.20 itself is not admissible in evidence for want of registration under Section 58 of the Transfer of Property Act, 1882?*
4. *Whether the Courts below have not erred in holding that Ex.A-20 is a true and valid document on the basis of the evidence of P.W.1 and Handwriting Expert?*

14. Heard Sri M.Ravindra, learned counsel appearing for the appellant/defendant No.1, and Sri Pathanjali Pamidigattam, learned counsel, representing Sri P.Sri Ram, learned counsel for the respondents/plaintiffs.

15. Law is well settled that under Section 100 of C.P.C., the High Court cannot interfere with the findings of fact arrived at by the first appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled

position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

16. Learned counsel for the appellant would contend that both the Courts erred in holding that Ex.A-20 is true and also proved by the plaintiff. In the present suit, to prove Ex.A-20 suit document, the plaintiff No.1 got himself examined as P.W.2 and he also examined one of the attestors to the suit document as P.W.3. The evidence of P.W.3 goes to show that the suit document was executed in the house premises of the defendant No.1 and an amount of Rs.1,60,000/- was paid to the defendant No.1 by the plaintiffs. P.W.2/plaintiff narrated in his evidence about the borrowing of Rs.1,60,000/- by the defendant No.1 and execution of Ex.A-20 in favour of the plaintiffs. It is not the case of the defendant No.1 that there was a previous enmity in between the plaintiffs and the defendant No.1 and due to that P.W.3 deposed falsehood against the defendant No.1. The defendant No.1 as D.W.1 admitted that there is no enmity in between himself and the plaintiffs. The plaintiffs also relied on the evidence of the Handwriting Expert to prove the suit document; the said Handwriting Expert was examined as P.W.1 and the suit document was sent to P.W.1 for comparison of the signatures of the defendant No.1 on the suit document with those of the admitted signatures of the defendant No.1 in the other documents. P.W.1 compared the same and came to the conclusion that the signature of the defendant No.1 on the suit document is that of the defendant No.1. As noticed supra, as per the own admissions of the defendant No.1, there is no enmity in between the plaintiffs and the

defendants; in such a case, there is no necessity for the plaintiffs to fabricate the suit document. The evidence of P.W.1 to P.W.3 establishes that the suit document contains the signature of the defendant No.1 and after borrowing money of Rs.1,60,000/-, the defendant No.1 executed suit document in favour of the plaintiffs. Therefore, the suit document is proved by the plaintiffs in accordance with law. On appreciation of the entire evidence on record, the learned trial Judge rightly came to the conclusion that Ex.A-20 is proved by the plaintiffs in accordance with law. On re-appreciation of the entire evidence on record, the learned First Appellate Judge also came to the same conclusion that the suit document Ex.A-20 is proved in accordance with law. Therefore, I do not find any illegality in the said finding arrived at by both the Courts below.

17. The learned counsel for the appellant would contend that though the plaintiffs have not sought for alternative relief of refund of amount, the First Appellate Court ordered the refund of the amount, therefore, the decree and judgment passed by the First Appellate Court may be set aside. As seen from the suit document Ex.A-20 dated 28.09.1991, it goes to show that the defendant No.1 borrowed a sum of Rs.1,60,000/- on 28.09.1991 and agreed to repay the same within one (01) year, failing which he agreed to execute a registered document in respect of the plaint-schedule property in favour of the plaintiffs. The very recitals of the suit document itself go to show that the first contract entered into by the defendant No.1 with the plaintiffs is nothing but repaying the borrowed money from the plaintiffs. If the defendant No.1 is able

to repay the amount borrowed within one (01) year, the second condition will not come into operation. Admittedly, the defendant No.1 has no intention to sell the plaint schedule property as on the date of Ex.A-20 and the plaintiffs have no intention to purchase the said property as on the date of Ex.A-1, but, as a default clause only it was agreed by the defendant No.1 to execute a registered document in favour of the plaintiffs. Therefore, the relationship in between both parties is only that of creditor and debtor, but not of vendor and vendee. On appreciation of the entire evidence on record, both the Courts came to a concurrent finding that the relationship in between both the parties to the suit is that of creditor and debtor, but not that of vendor and vendee. No cross objections are filed by the defendant No.1 to challenge the said finding in the present second appeal.

18. As seen from the suit document Ex.A-20, Ex.A-20 reflects that there is no mutual agreement between both the parties. An agreement must create mutual rights and liabilities between both the parties and in the plaint it was also recited that after the defendant No.1 borrowed Rs.1,60,000/-, the defendant No.1 executed Ex.A-20 document on a stamp paper. Ex.A-20 is not a contract to sell under Section 2(g) of the Indian Contract Act. The recitals in Ex.A-20 go to show that it is not a contract to sell the properties. Both the Courts below concurrently held that though there is a recital in the said agreement that the possession was not delivered to the plaintiffs, there is no evidence to show that the possession was delivered to the plaintiffs under the said document. On appreciation of the entire evidence on record, both the

Courts below rightly came to the conclusion that the relationship in between both the parties to the suit is that of creditor and debtor, but not that of vendor and vendee. Therefore, I do not find any illegality in the said finding arrived at by the trial Court as well as the First Appellate Court. The First Appellate Court rejected the main relief of specific performance of agreement of sale as sought by the plaintiffs. No cross objections are filed by the plaintiffs in the present second appeal. Therefore, the plaintiffs are entitled to a simple money decree from the defendant No.1, since the suit document is proved by the plaintiffs. The factum of lending of money of Rs.1,60,000/- to the defendant No.1 by the plaintiffs is proved. Moreover, the suit is filed within three (03) years from the date of Ex.A-20 document and therefore, there is no illegality in granting a money decree against the defendant No.1 by the First Appellate Court. No cross objections are filed by the plaintiffs in the present second appeal filed by the defendant No.1.

19. Ex.A-20 suit document itself reveals that there is no agreement between both the parties with regard to the interest clause, if the defendant No.1 failed to repay the same. But, the learned First Appellate Judge awarded 24% interest per annum from the date of suit document Ex.A-20 till the date of filing of the suit. Therefore, the plaintiffs are not entitled to the interest of 24% per annum from the date of the suit document till the date of filing of the suit, since there is no agreement with regard to the rate of interest between both the parties to the suit. Therefore, the plaintiffs are entitled to interest @ 12% per annum instead of @ 24% per annum from the date of the suit document till the

date of filing of the suit till the date of decree and later @ 6% per annum till the date of realization. On appreciation of the entire evidence on record, the learned First Appellate Judge rightly decreed the suit for awarding an amount of Rs.1,60,000/-, except the rate of interest as stated supra. In the light of the material available on record and upon earnest consideration, now it is manifest that the substantial questions of law raised in the course of hearing in the second appeal on behalf of the appellants did not arise or remain for consideration. Therefore, there is no need to interfere with the judgment and decree passed by the learned First Appellate Judge, except the rate of interest awarded by the First Appellate Court as noticed *supra*.

20. In the result, the second appeal in S.A.No.633 of 2012 is partly allowed by modifying the decree and judgment dated 13.02.2012 passed by the First Appellate Court in A.S.No.188 of 2005, as the suit in O.S.No.51 of 1994 on the file of the Senior Civil Judge, Gudur, is partly decreed directing the appellant No.2, who is the legal representative of the appellant No.1 (defendant No.1) to pay a sum of Rs.1,60,000/- with interest @ 12% per annum on Rs.1,60,000/- from 28.09.1991 till the date of filing of the decree and thereafter, with a rate of interest @ 6% per annum till the date of realization from out of the estate of the deceased appellant No.1 (defendant No.1) which are in the hands of the appellant No.2. In view of the facts and circumstances of the case, each party shall bear their own costs.

I.A.No.1 of 2026

The Interlocutory Application vide I.A.No.1 of 2026 is filed by the petitioners/plaintiffs with a specific prayer to amend the prayer in the plaint in O.S.No.51 of 1994 for seeking the return of earnest money as an alternative relief by invoking the discretion of the Court.

21. The brief averments in the affidavit of the petitioner are that she is the wife of the respondent No.3 in the second appeal and she is well acquainted with the facts of the case and they have filed a suit for seeking relief of specific performance of agreement of sale and the said suit was dismissed by the trial Court, against which an appeal was preferred by the appellants in A.S.No.188 of 2005. The First Appellate Court negatived the relief of specific performance of agreement of sale and ordered refund of amount with interest to the plaintiffs. The petitioner further pleaded that the learned counsel for the appellants raised an issue that when the plaint does not contain a specific prayer seeking the return of earnest money as an alternative relief, the Appellate Court cannot grant a relief which is not expressly sought for by invoking the discretion of the Court and therefore, the petitioners filed the present application to amend the prayer portion in the original plaint in O.S.No.51 of 1994.

22. The present suit is filed for seeking the relief of specific performance of agreement of sale dated 28.09.1991 before the trial Court and on considering the entire material on record, the learned trial Judge dismissed it vide its judgment dated 17.08.2005 on merits. Against the said finding, an appeal was preferred by the petitioners herein and the said appeal was partly allowed on

merits, against which a second appeal has been filed by the defendant No.1 in the year 2012. The present application for seeking amendment is filed at the stage of submission of arguments by the learned counsel for the respondents in the second appeal. As noticed supra, the suit was originally instituted in the year 1994; after a lapse of thirty (30) years the petitioners/respondents have come up with an application for seeking an amendment of the prayer in the plaint in O.S.No.51 of 1994 at the stage of the second appeal, that too after fourteen (14) years of institution of the second appeal and if the proposed amendment is allowed, certainly it will change the nature of the suit. Admittedly, in the affidavit of the petitioners, there is no explanation by the petitioners for the inordinate delay in filing of the present application and the said inordinate delay is unexplained by the petitioners. For the aforesaid reasons, the interlocutory application vide I.A.No.1 of 2026 is devoid of merits and the same is liable to be dismissed.

23. In the result, I.A.No.1 of 2026 in S.A.No.633 of 2012 is **dismissed** and S.A.No.633 of 2012 is **partly allowed** by modifying the decree and judgment dated 13.02.2012 passed by the First Appellate Court in A.S.No.188 of 2005, as the suit in O.S.No.51 of 1994 on the file of the Senior Civil Judge, Gudur, is partly decreed directing the appellant No.2 i.e., the legal representative of the deceased appellant No.1 (defendant No.1) to pay a sum of Rs.1,60,000/- with interest @ 12% per annum on Rs.1,60,000/- from 28.09.1991 till the date of filing of the decree and thereafter, with a rate of interest @ 6% per annum till the date of realization from out of the estate of the deceased appellant No.1

(defendant No.1) which are in the hands of the appellant No.2. Considering the facts and circumstances of the case, each party shall bear their own costs in the second appeal.

Pending miscellaneous applications, if any, shall stand disposed of in consequence. There shall be no order as to costs.

V. GOPALA KRISHNA RAO, J.

Date: 15.04.2026

SRT