

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA THE AND STATE OF ANDHRA PRADESH**

A.S. No. 164 of 2015

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3.	Certified Copy of Decree and Judgment in O.S. No. 710 of 2010 on the file of X Addl. Dist. Judge (FTC), Ranga Reddy District, at L.B. Nagar.	14-07-2015	-do-	Filed
4.	Copy of Decree and Judgment in O.S. No. 710 of 2010 on the file of X Addl. Dist. Judge (FTC), Ranga Reddy District, at L.B. Nagar.	-do-	-do-	7 - 15
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Place: Hyderabad.

Dated: 11 -08-2015

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COUNSEL FOR PETITIONER.

MEMORANDAM OF APPEAL FILED UNDER ORDER 41 RULE 1 R/W
SECTION 96 OF C.P.C

IN THE HIGH COURT OF JUDICATURE OF HYDERABAD
 FOR THE STATE OF TELANGANA & THE STATE OF ANDRA PRADESH

A.S.No. 164 OF 2016

BETWEEN:

Smt. V.Dhana Laxmi, W/o V.Raj Kumar,
 Aged about 47years, Occ: House hold,
 R/o H.No.27-88/6/5/1A,
 Anand Bagh, Malkajgiri, Hyderabad.

...APPELLANT/Plaintiff

AND

1.Uppala Sridhar, S/o. Narsaiah,
 Aged about: 39 yrs, Occ: Business,
 R/o H.No. 10-22, Gajwel Village & Mandal,
 Medak Dist.

2.Jeedipalli Ram Reddy, S/o Narayana Reddy,
 Aged about: 62 yrs, Occ: Business,
 R/o. H.No.3-49, Turkapalli Village,
 Shameerpet Mandal, R.R.Dist.

3. Aakula Krishna Murthy, S/o. Late Vittal,
 Aged about: 46yrs, Occ: Business,
 R/o. Plot No. 180/A,
 Old Vasavi Nagar Karkhana,
 Secunderabad.

4. B.Sathya Narayana, S/o Narsaiah
 Aged about: 58yrs, Occ: Business,
 R/o. Turkapalli Village,
 Shameerpet Mandal, R.R.Dist.

5. G.Sanjeeva S/o Kistaiah
 Aged about: 57yrs, Occ: Business,
 R/o. Kolthur Village,
 Shameerpet Mandal, R.R.Dist.

RESPONDENTS/Defendants

That the address for service of summon on the Appellant is to the care of his Advocates, Sri Bankatlal Mandhani (4819), Sri Ghanshyamdas Mandhani, Advocates, H.No.2-2-1105/27/B/1, Tilaknagar, Hyderabad.

That the address for service of notices etc., on the respondents is the same as given in the cause title above.

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statement denying execution and contents etc., of Ex.A-2 and hence ought to have decreed the suit in toto. That the adoption memo filed by the defendants No.1 to 4 cannot be looked into for any purpose as the same cannot be treated as written statement on behalf of said defendants.

7. That the Respondents No.1 to 4 did not deny their signature and the execution nor entered into witness box and hence ought to have drawn adverse inference against them and ought to have decreed the suit intoto.

8. That the Court below failed to appreciate that the except the vague bare denial of execution by DW-1(D.No.5) , there is nothing on record to show that the respondents No.1 to 4 have not executed Ex.A-2 and hence ought to have decreed the suit intoto.

9. That the Court below ought to have appreciated that the DW-1 himself has stated that he cannot identify the signatures of the other defendants who have joined in execution of Ex.A-2 and hence ought to have decreed the suit by not relying on the statement of DW-1.

10. That appellant recently learnt at the time of filing of the present appeal, that Defendant No. 2/Respondent No.2 herein as Defendant No.2 in O.S.No.136 of 2007 on the file of Learned Principal Junior Civil Judge, Medchal, gave evidence as DW-1 and he clearly stated on oath that they received Rs. 42,00,000-00 from the appellant under the agreement of sale. The appellant has applied for grant of certified copy of Judgement and the evidence of DW-1 therein and crave leave of the Hon'ble High Court to receive the same by way of additional evidence in the appeal on filing of the same in interests of justice.

11. That the Court below ought to appreciated on the basis of record that all the material on record eventually probabalises payment of Rs.42,00,000-00 by the plaintiff to the defendants under the agreement of sale and ought to have decreed the suit as prayed for.

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18. That the lower court grossly erred in not considering the own admission of the defendants that there was a dispute about the title of the property sought to be sold by the defendants to the plaintiff.

19. For the above mentioned grounds among the other grounds which may be argued at the time of arguments.

COURT FEE:

Appeal is filed against refusal of Reliefs only i.e., i) on Interest Refused on Rs.12,00,00-00 from the date of payment made to the Defendants till date of demand and ii) also for Principal amount of Rs. 30,00,000-00(Rs.Thirty Lakhs) with interest @ 18% PA from the date of agreement of sale

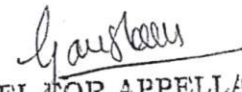
- | | |
|--|-------------------------|
| a) Principal Amount not decreed
(42,00,000-00 minus 12,00,000-00) | ;Rs.30,00,000-00 |
| b) Interest @ Rs. 18% P.A. from
28-12-2006 to 9-10-2010(date of legal notice)
on Rs. 12,00,000-00 (46 months 03 days)
(from date of Ex.A-1 agreement) | :Rs. 8,29,800-00 |
| c) Interest @ Rs.18% from 11-10-2007
To 27-04-2015 (7Years 6 Months 16 days)
On Rs.30,00,000-00
(From date of Ex.A-2 oppandam) | :Rs.40,62,000-00 |
| Total | :Rs.78,89,800-00 |

Hence a advalorem Court fee of Rs. 80,726-00 is paid herewith under S.49 R/w S.20 of the A.P.C.F& S.V.Act which is proper and sufficient.

PRAYER:

The appellant herein therefore prays that this Hon'ble court may be pleased allow the appeal by setting aside the Judgment and Decree in O.S.No.710 of 2010 dated 27-04-2015 Passed by the learned X Addl. District Judge (FTC), R.R.Dist at Medchal in so far as against the Appellant and pass such other order or orders as this Hon'ble court may deems fit and proper in the circumstances of the case and in the interest of Justice and equity.

Date:10-08-2015


COUNSEL FOR APPELLANT

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DECREE IN ORIGINAL SUIT

IN THE COURT OF THE X ADDL DISTRICT JUDGE(FTC)
RANGA REDDY DISTRICT: AT L B NAGAR.

Present:- Sri K. Venkateswarlu,
FAC X Addl. District Judge,
Ranga Reddy District

Dated on this the 27th day of April, 2015

O.S.NO. 710 OF 2010

Between:

Smt. V. Dhana Lakshmi W/o Sri. V, Raj Kumar,
Aged: 42 years, Occ: House-Hold
R/o H.No. 24-88/6/5/1A, Anand Bagh,
Malkajgiri, Hyderabad.

..Plaintiff

A N D

1. Sri. Uppala Sridhar S/o Narsaiah,
aged about 34 years, Occ: Business
R/o H.No. 10-22 Gajwel Village and Mandal,
Medak, District,
2. Sri. Jeedipally Ram Reddy, S/o Narayana Reddy,
aged about 57 years, Occ: Business
R/o H.No. 3-49, Turkapally Village,
Shameerpet Mandal, Ranga Reddy District,
3. Sri. Aakula Krishna Murthy, S/o Late. Vittal,
aged about 41 years, Occ: Business
R/o Plot No. 180/A, Old Vasavi Nagar Kharkana,
Secunderabad,
4. Sri. B Satyanarayana, S/o Narasaiah,
aged about 53 years, Occ: Business
Turkapally Village, Shameerpet Mandal,
Ranga Reddy District
5. Sri. G. Sanjeeva, S/o Kishtaiah,
aged about 52 years, Occ: Business
Turkapally Village, Shameerpet Mandal,
Ranga Reddy District

..Defendants

Claim : This is a suit filed by the plaintiff for recovery of money of Rs.61,48,600/- with future interest @ 24% P.A from the date of the suit till the date of realization

Valuation : The suit for recovery of money for Rs. 61,48,600/ and a court fee of Rs. 63,926/- is paid U/s Article 1(1) of APCF & SV Act.

Cause of Action : The cause of action for filing of the suit arose on 25-12-2006 when the defendant's received Rs. 42,000,00/- from the plaintiff, and have promised to return the amount received by them with interest 30% per annum from 28-12-2006 till the repayment and this promise was made by the defendant's on 31-1-2008

Suit presented on 12-11-2010



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For Copy

IN THE COURT OF X ADDL. DIST. JUDGE (FTC), R.R.DISTRICT

PRESENT: SRI VENKATESWARLU. K
XI ADDL. DIST JUDGE, (FTC),
F.A.C. XI ADDL. DIST JUDGE, (FTC),
AT L.B.NAGAR, R.R.DISTRICT

Monday the 27th day of April, 2015.

O.S. No. 710 of 2010

Between:

V.Dhana Lakshmi W/o.V.Raj Kumar Aged: 42 years

... Plaintiff

And

- 1.Uppala Sridhar S/o.Narsaiah Aged: 34 years
- 2.Jeedipally Ram Reddy S/o.Narayana Reddy Aged: 57 years
- 3.Aakula Krishna Murthy S/o.Late Vittal Aged: 41 years
- 4.B.Satyanarayana S/o.Narsaiah Aged: 53 years
- 5.G.Sanjeeva S/o.Kishtaiah Aged: 52 years

.... Defendants.

This suit coming before me on 13-3-2015 in the presence of Sri.B.Chakrapani, Advocate for the plaintiff, Sri.GB Raj, Advocate for D1 to D5, and upon perusal of the material papers on record having stood over for consideration till this day, this court delivered the following:

JUDGMENT

1. This is a suit for recovery of Rs.61,48,600/- with interest and costs. The case of the plaintiff is that that defendants offered to sell Ac.1.00 of land in Sy. No.50 of Yadaram Grampanchayat in Medchal Mandal and plaintiff agreed to purchase the same and an agreement of sale was entered between them on 28-12-2006 under which plaintiff agreed to purchase the said land for Rs.51,50,000/- and paid Rs.42,00,000/- as advance, that subsequently when plaintiff was getting to ready to pay balance of sale consideration and obtain sale deed she received notice dt.10-12-2007 on behalf of K.Bangaraiah claiming title and possession over the said property, that plaintiff informed about the notice to the defendants who assured her to clear the cloud



4. During the course of trial plaintiff and her husband are examined as Pws 1 and 2 respectively. Exs.A1 to A9 are exhibited. On the other hand D5 alone is examined as DW1 and Exs.B1 to B5 are exhibited on behalf of defendants.

5. Heard both sides.

6. Issue No.2

It is an admitted fact that date of agreement between parties was 28-12-2006. Suit was filed on 12-11-2010. It is mentioned in the para regarding limitation that defendants promised to get the cloud over their title cleared and that promise was made on 31-1-2008 but failed to keep the promise. As such cause of action for the suit for refund of the advance paid by the plaintiff arises on that day. In the affidavit of PW1 the averments in the plaint are copied. But the date of compromise said to be made by the defendants with the plaintiff was not mentioned in para No. 9. In para No. 10 some dates are mentioned but no meaning can be derived as to what those dates referred to. It is an admitted fact that plaintiff got issued Exs.A3 notice to the defendants demanding them to perform their part of the agreement, but no reply was received from the defendants. So it can be held that defendants refused to perform their part of the agreement after receipt of Ex.A3 which is dt.13-7-2009 and suit is filed within 3 years from the said date. As such the suit claim is within limitation though suit was not filed within 3 years from the date of Ex.A1 agreement which is admitted by the both the parties. Hence issue No. 2 is held in the affirmative.

7. Issue nos.1 to 3

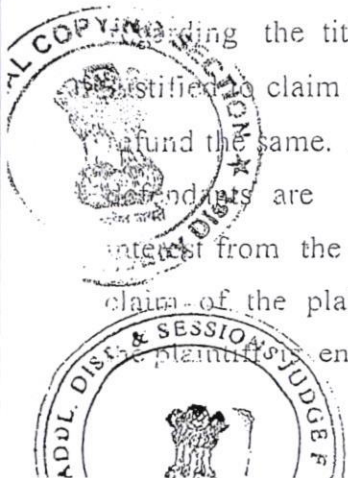
It is pleaded in the plaint that plaintiff paid Rs.42,00,000/- before executing Ex.A1 agreement and the same matter was copied in the affidavit of PWs 1 and 2. But in the cross examination PW2 admitted that by the date of Ex.A1 only Rs.12,00,000/- was paid. Plaintiff relied upon 'Ex.A2 document styled as 'Sundari' which is denied by the defendants. There are 2 attestors



to the case on hand. The only undisputed document is Ex. A1, according to which Rs.12,00,000/- paid to the defendants. Though no reply was issued on behalf of the defendants for the notice issued by the plaintiff, Pws 1 and 2 did not choose to exhibit and prove them. Similarly Ex.A2 is not proved by PW1 and not referred by PW2. As such except Ex.A1 no other document is proved by the plaintiff. It is clear from Ex.A1 only Rs.12,00,000/- was paid by the plaintiff to the defendants.

11. DW1 admitted in cross examination that there was a suit pending between defendants and one Bangaraiah but pleaded ignorance about result of the suit. It shows that there was of dispute about the title of the property sought to be sold by defendants to the plaintiff. So plaintiff is justified in demanding the defendants either to clear the title and execute sale deed or refund the amount received by them. Defendants relied upon a document styled as settlement deed but the said document is not exhibited. It appears that both parties either intentionally or unintentionally did not exhibit all the documents filed by them into the court, particularly crucial documents relied upon by them. Though the affidavit of DW1 reads that there was settlement according to which Rs.10,00,000/- was refunded to the husband of plaintiff in presence of some mediators said to be present at the time of execution of the said document none of them are examined. As such the evidence adduced by the defendants does not establish that they repaid any amount to the plaintiff towards settlement of the dispute as claimed by them. As such with the material on record what is proved is only Ex.A1 according to which Rs.12,00,000/- was received by the defendants and as there are disputes

regarding the title of the property which defendants failed to clear, plaintiff is justified to claim refund of amount paid by her and defendants are bound to refund the same. As they failed to prove any settlement regarding the same defendants are liable to refund and they are also liable to pay reasonable interest from the date of demand of refund under Ex.A5 dt.9-10-2010. The claim of the plaintiff that they paid Rs.42,00,000/- is not proved. As such plaintiff is entitled to part decree in view of the aforesaid discussion.



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EXHIBITS MARKED

FOR PLAINTIFF

- Ex.A1: Agreement of Sale dt.28-12-2006 executed by D1 to D5
- Ex.A2: Oppandam
- Ex.A3: O/c. Of the legal notice
- Ex.A4: Set of postal receipts
- Ex.A5: Another legal notice dt.9-10-2010
- Ex.A6 to A9: Postal Acknowledgment of A1, A2, A3, A4 and A5

FOR DEFENDANT

- Ex.B1: Reply notice
- Ex.B2: Postal receipt
- Ex.B3: Acknowledgment
- Ex.B4: Reply notice
- Ex.B5: Acknowledgment



X Addl. District & Sessions Judge (ETC),
Ranga Reddy District
(Ranga Reddy Dist.)
Ranga Reddy Dist.

COURT OF THE DISTRICT & SESSIONS JUDGE
RANGA REDDY DISTRICT
C.A. No. 10438 of 2016
Application Filed on: 5/05/15
Charges Called on: 16/07/15
Charges Deposited on: 16/07/15
Receipt No: 6569/15 Rs. 36/-
Copy made ready on: 23/07/15
Copy delivered on:

Superintendent
Central Copying Section
Ranga Reddy District.

READY BY: *[Signature]*
COMPARED BY:
CERTIFIED TRUE PHOTO COPY

[Signature]
Copying Superintendent



IN THE COURT OF THE HON'BLE II ADDITIONAL DISTRICT JUDGE,
RANGA REDDY DISTRICT AT: L.B.NAGAR.

O.S.NO. 710 OF 2010

BETWEEN:

SMT.V.DHANA LAKSHMI

PLAINTIFF

AND

UPPALA SRIDHAR AND OTHERS

DEFENDANTS

WRITTEN STATEMENT FILED BY THE DEFENDANT NO.5

1. The answering of this defendant does not admits any of the material averments or adverse allegations made by the Plaintiff in the above suit, save as those as are specifically admitted herein, and put to the plaintiffs to strict proof of the same. The allegations which are not specifically denied by this Defendant herein are construed to be denied by this Defendant.

2. That the suit is not maintainable neither on facts nor as per law and so also this Hon'ble court has got no jurisdiction to entertain this suit, and as such the suit is liable to be dismissed on this ground also. Further relief sought by the Plaintiff in this suit is for recovery of money only, but not for relief of specific performance as per procedure.

3. In reply to Para No.1 of the Plaint, it is true that the defendants herein are absolute owners of all that the land in survey No.50/part, admeasuring Ac.1.00 Guntas, situated at Murahadipally Village, Yadaram Gram Panchayat, Medchal Mandal, Ranga Reddy District, by virtue of Registered Sale Deed document No.29100 of 2006, dated: 21-12-2006 registered before the SRO Medchal, Ranga Reddy District.

Contd.2

:: 03 ::

6. In reply to Para No.6 to 8 of the plaint, as already stated above the defendant got issued reply to the legal notice dated: 09-10-2010 and the said reply filed along with the list the same may be read as part and parcel of this written statement. In so far as the alleged criminal proceedings are concerned this defendants will protect their rights and interests whenever situation arises. Further the defendants are not at all liable to pay any amounts much less the total amount of Rs.61,48,600/- as per the table mentioned in the Para No.9 of the Plaint.

THE TRUE AND REAL FACTS ARE THAT:

// That the defendants herein entered into an agreement of sale dated: 28-12-2006 with the Plaintiff with certain terms and conditions in respect of the above said land for a total sale consideration amount of Rs.51,50,000/-. In pursuance to the said agreement of sale the plaintiff paid an amount of Rs.12,00,000/- as on 28-12-2006. At the same time, the defendants deny that after receiving Rs.42,00,000/- from the plaintiff, the defendants entered into an Agreement of sale Dated: 28-12-2006 as stated by the plaintiff. Since, the said contentions are false and incorrect the plaintiff is put to strict proof of the same.

// It is further submitted that the defendants in pursuance to the above agreement of sale ready and willing to perform their part of contractual obligations, but it is plaintiff who defaulted in making payment of balance sale consideration amount as agreed upon. The cheques which were issued towards payment of part of sale consideration amount to the defendants were returned as unpaid by the bankers.

Contd.4

by the defendants to Plaintiff in pursuance to the earlier agreement of sale entered between the parties. Further in pursuance to the said agreement all the title deeds and link documents in original were handed over to the husband of the plaintiff. The said document dated: 15-05-2008 was filed herewith and the same may be read as part and parcel of this written statement. That the Plaintiff and her husband having received the above said amount and so also having entered into agreement 15-05-2008, kept quite all these years and now with ill-motives and for wrongful gains filed the present suit with all false and baseless contentions. The defendants in good faith and as advised by above said mediators/elders did not insisted for the issuance of receipt for the payment of Rs.10,00,000/- received by the Plaintiff. But now the plaintiff having suppressed the fact of receipt of the above said amount and other sequence of events filed the present suit. Hence the plaintiff is put to strict proof of all her contentions and more particularly the maintainability of the suit.

// That the suit is also barred by the limitation and so also the plaintiff did not explained has to how is entitled exorbitant interest rate on the alleged principle amount.

It is therefore prayed that this Hon'ble court may be pleased to dismiss the suit with exemplary costs, and pass such other order or orders as this Hon'ble court deems fit and proper under the circumstances of the case and in the interest of justice.

Place: LB.Nagar

Date:

DEFENDANT NO.5

COUNSEL FOR DEFENDANT NO.5

Contd.6

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IN THE COURT OF THE HON'BLE DISTRICT
R.R. DISTRICT.
AT: L.B.NAGAR

O.S.No. 7/0 OF 2010

BETWEEN:

Smt. V.Dhana Lakshmi,
W/o. Sri V.Raj Kumar, aged 42 yrs,
Occ:house-hold, R/o. H.No.24-88/6/5/1A
Anand Bagh, Malkajiri, Hyderabad.

.....Plaintiff

AND

1.Sri Uppala Sridhar, S/o.Narsaiah,
Aged about 34 yrs, Occ: Business
R/o. H.No.10-22 Gajwel Village and Mandal,
Medak District.

2. Jeedipally Ram Reddy, S/o. Narayana Reddy,
Aged about 57 yrs, Occ: Business,
R/o.H.No.3-49, Turkapally Village,
Shameerpet Mandal, Ranga Reddy District.

3. Aakula Krishna Murthy, S/o. Late. Vittal,
Aged about 41 yrs, Occ: Business,
R/o.Plot No.180/A, Old Vasavi Nagar Kharkana,
Secunderabad.

4. B.Satyanarayana, S/o.Narsaiah,
Aged about 53 yrs, Occ: Business,
R/o. Turkapally Village, Shameerpet Mandal,
Ranga Reddy District.

5. G.Sanjeeva, S/o.Kishtaiah,
Aged about 52 yrs, Occ: Business,
R/o.Kolthur Village, Shameerpet Mandal,
Ranga Reddy District.

..Defendants

SUIT FOR RECOVERY OF THE AMOUNT OF RUPEES 61,48,600/-
PLAINT FILED UNDER SECTION 26 AND ORDER 7 RULE 1 AND 2 OF
C.P.C

DESCRIPTION OF THE PARTIES:

The address for the purpose of all notices on plaintiff is that of his
counsels:

M/s

BURMA CHAKRAPANI
BURMA NAGESHWAR RAO
M.GANGHADAR.

ADVOCATES - MEDCHAL

DESCRIPTION OF THE DEFENDANT:

The address for service of summons, notices, process etc., is
as above mentioned in the cause title.

....Contd. 2

6. That plaintiff waiting for more than two years 9 months after January 2008 for the defendants to respond and honor the promise of returning the amount receiving by them with promised @ 30% to per annum got received a legal notice on 9-10-10 calling upon the defendants to return the amount of Rs. 42,00,000/- along with the promissory notice of interest with in 15 days from the date of receipt of the legal notice.

7. That defendants received the legal notice dated 09-10-10 sent by the plaintiff but have failed to respond nor came forward to return the amount received by them.

8. That the defendants have induced the plaintiff into there sale transaction without having proper title upon the property offered for sale and cheated the plaintiff of her amount and are with holding the amount of Rs. 42,00,000/- since 28-12-2006 and are neither conveying the property to the plaintiff nor returning the amount received by them from the plaintiff with the promised rate of interest as such with holding the amount of plaintiff for continued period and without setting and responding to the plaintiff amounts to cheating for which the plaintiff reserve her right to initiate appropriate proceedings for the offence of cheating under section 420 of IPC.

9. That the plaintiff submit that the defendants received Rs.42,00,000/- from the plaintiff on 25-12-2006 and have promised to return the amount received by them with interest 30% per annum from 28-12-2006 till the repayment and this promise was made by the defendant on that as per this promise that defendants are liable to pay to the plaintiff the promised rate of interest with the amount of Rs. 42,00,000/- received by them on 28-12-2006.

THE PARTICULARS OF THE AMOUNT CLAIMED;

A. principle amount of Rs. 42,00,000/-	
Rs.42,00,000/- with interests from 28-12-2006 to 7-11-10	
@ Rs. 3 % per month 46 months 10 days.	Rs.42,00,000/-
B Interest amount till filing of the suit	Rs.19.46,000/-
C. Legal notice dated 09/10/10	Rs. 2,000/-
.....	
	Rs. 61,48,600/-
.....	

LIMITATION

That the suit is filing with in the period of limitation as per note dated 11/19/10 In which the defendants promised to get the property cleared from the rival claim an failures to return the amount received by them to return to amount of Rs. 42,00,000/- received by the with interest @ 30 % per annum from the date of receiving amount dated 28-12-2006 on the agreement of sale till the date of receipt as said from 31/1/08 the suit is filed with in the period of limitation of 3 years.

JURISDICTION:

The plaintiff entered in to Agreement of Sale to the land situated at Muradipally Village, Medchal Mandal, R.R.District and paid amount under the Jurisdiction of this Hon'ble Court. Hence this Hon'ble Court had right to entertain the suit.

VALUATION:

The defendants are collectively due and payable to an amount of Rs.61,48,600/- (Sixty one lakhs forty eight thousand and six hundred only) on which for purpose of a court fee of Rs. Is paid herewith under section 20 R/Art 1(1) of of AP Court fees and suit valuation Act,1956.

PRAYER:

It is therefore, prayed that the Hon'ble Court may be pleased to pass the Judgement and decree as follows:-

- a. The Defendants be directed to pay to the Plaintiff a sum of Rs. 61,48,600/- with an interest.
- b. Future interest @ 24% per annum from the date of suit to till realization.
- c. Costs of the suit be awarded.
- d. Any other relief or relief's to which the Plaintiff entitled to may also be granted.

Date: 08/11/2010

PLAINTIFF

Place:L.B.Nagar

COUNSEL FOR PLAINTIFF

...contd.5