

**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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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.

The appellant above named being aggrieved by the Judgment and Decree dated 27-04-2015 in O.S.No. 710 of 2010 passed by the Hon'ble X Addl. District Judge (FTC), Ranga Reddy District At: L.B.Nagar, prefer this appeal, in so far as against the appellant, on the following among other grounds.

GROUND OF APPEAL

1. The Judgment passed by the above named Hon'ble X Addl. District Judge (FTC), R.R.Dist, At: L.B.Nagar., in so far as against appellant is contrary to the material placed on record, law, equity Justice and good conscious.
2. That the Court below ought to have decreed the suit intoto and not partly for Rs.12,00,000-00 out of total claim of Rs.42,00,000-00 and also ought not to have refused to grant interest from the date of agreement of sale Ex.A-1 to the defendants.
3. That the Court below ought to have granted interest on the relief of recovery of Rs. 12,00,000-00 awarded by it from i.e., 28-12-2006 till date of decree by appreciating the fact that they are not entitled to retain the same in view of the fact that they have no right to sell the subject matter of the property under the agreement of sale and not from the date of demand.
4. That the lower court grossly erred in ignoring the contents of the Exhibit.A-2 which is the settlement (OPPANDA PATHRAM) by not relying on the same on the ground that it remained not proved.
5. That the Court below ought to have appreciated that in the reply legal notices Ex.B1 and B-4 got issued by the defendants there is no denial of the payment made by the plaintiff of amount of Rs. 42,00,000-00 under the agreement of sale and receipt thereof by the defendants.
6. That the Court below ought to have appreciated that the Respondents No. 1 to 4/Defendants No.1 to 4 have not filed written

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.

12. That the Court below ought to have appreciated that the conduct of defendants in the circumstances of the various vague defences at different stages is not truthful and ought to have rejected the denial of Ex. A-2 by DW-1 as malafide one.

13. That the Court below ought to have directed taking of expert opinion under S.45 of Indian Evidence Act before holding Ex.A-2 as not proved.

14. That the lower court ought to have considered the contents of Ex.A.2 in which the respondents/defendants acknowledged the receipt of the amount of Rs. 42,00,000/- (Forty Two Lakhs Only) from the plaintiff towards the sale of the land bearing Sy.No.50 admeasuring Ac.1.00 gts situated at Yadaram village, Medchal Mandal, R.R.Dist.

15. That the respondents/defendants also agreed to receive the balance sale consideration of Rs.9,50,000/- (Nine Lakhs Fifty Thousand Only) from the agreed total sale consideration of Rs. 51,50,000/- (Fifty One Lakhs Fifty Thousand only). That from this acknowledgement in the Oppanda Pathram dated 11-10-2007 which is Ex.A.2 it is quite clear that the respondents/defendants received Rs. 42,00,000/- from the total sale consideration amount of Rs. 51,50,000/- leaving the balance sale consideration of Rs.9,50,000/- to be received at the time of registration of the sale deed.

16. That the lower court grossly erred in ignoring the Oppanda Pathram Ex.A.2 in which the respondents/defendants agreed to get the property clear of the title failing which they have also agreed to return Rs.42,00,000/- with interest @ 3% P.A. on the amount received by them.

17. That the lower court grossly erred in decreeing the suit for Rs.12,18,000/- (Twelve Lakhs Eighteen Thousand Only) and dismissing the claim of the plaintiff for the balance claim amount.

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

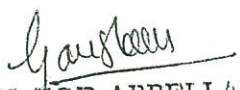
- | | |
|--|-------------------------|
| a) Principal Amount not decreed
(42,00,000-00 minus 12,00,000-00) | ;Rs.30,00,000-00 |
| b) Interest @ Rs. 18% P.A. from
28-12-2006 to 9-10-2010(date of legal notice)
on Rs. 12,00,000-00 (46 months 03 days)
(from date of Ex.A-1 agreement) | :Rs. 8,29,800-00 |
| 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

Suit Numbered on : 24-11-2010



This suit is coming for final hearing before me in the presence of Sri B. Chakrapani, Advocate for the plaintiff and of Sri G.B.Raj, Advocate for the defendants and upon perusal of the record and the matter having stood over for consideration till this day, this court doth decrees as follows:

- 1) That the suit of the plaintiff be and the same is hereby decreed for a sum of Rs 12,18,000/- with interest @ 12% per annum on the said amount from the date of suit till the date of realization.
- 2) It is further decreed that the plaintiff made excess claim than what she is entitled she is not entitled to costs even for the amount for which decree is passed as the claim which is granted is more than the claim granted.
- 3) That the rest of the claim of the plaintiff is dismissed.

Given under my hand and seal of this court on this the 27th day of April, 2015.


FAC X Addl. District Judge (FTC),
Ranga Reddy District.
Ranga Reddy Dist.

Costs of the Suit

No		For Plaintiff	For Defendants
1	Stamp on Plaint	Rs.63,926-00	
2	Stamp on Power	Rs. 2-00	Rs. 2-00
3	Service of process	Rs. 300-00	
4	Pleader Fee/Jr. Fee	FC & MC not filed	
	TOTAL	Rs. 64,228-00	Rs. 2-00


FAC X Addl. District Judge (FTC),
Ranga Reddy District.
Ranga Reddy Dist.

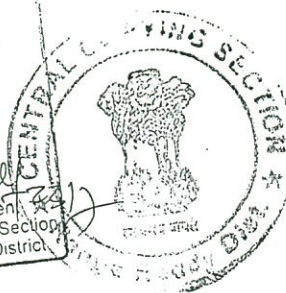
Note:-

"The Parties should apply as soon as possible for the return of all documents which they may wish to preserve, as the record will be liable to be destroyed after three years from this date".



APPLY TO THE DISTRICT
SESSIONS JUDGE
RANGA REDDY DISTRICT
C.A. No. 10438 of 2015
Application Filed on: 5/05/15
Charges Called on: 16/07/15
Charges Deposited on: 16/07/15
Receipt No: 6559/15 Rs: 36/-
Copy made ready on: 23/07/15
Copy delivered on:


Superintendent,
Central Copying Section,
Ranga Reddy District.



READY BY: 
COMPARED BY:
CERTIFIED TRUE PHOTO COPY


Superintendent

File Copy

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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

A n d

- 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

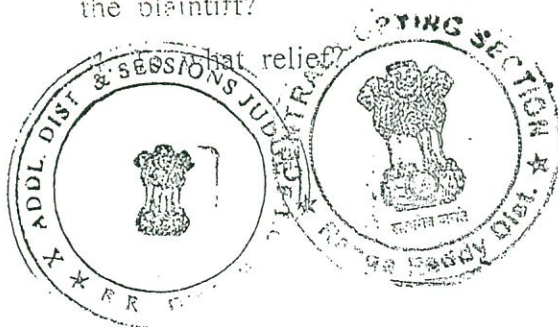


on their title but defendants kept quiet, then plaintiff got issued a notice to the defendants calling upon them to act upon agreement, that having received the said notice defendant kept quiet, that earlier defendants promised to repay the advance received by them with interest 36% per annum, but as they failed to pay that amount plaintiff got issued another notice dt.9-10-2010 demanding refund of the amount with interest, that having received the said notice defendant kept quiet. Hence the suit.

2. D5 filed written statement which is adopted by D1 to D4. The case of the defendants is that there was an agreement of sale between plaintiff and defendants for sale of land for a total consideration of Rs.51,50,000/- and in pursuance of the agreement dt. 28-12-2006 plaintiff paid only Rs.12,00,000/- but not Rs.42,00,000/- as claimed by the plaintiff, that though the defendants have been ready and willing to perform their part of the contract plaintiff did not come forward, that cheques issued towards payment of balance consideration were dishonoured, that as the plaintiff and her husband were not coming forward a settlement was made in the presence of Nanda Reddy under which Rs.10,00,000/- was refunded to plaintiff and her husband on 2-2-2008 in the presence of Nanda Reddy, Jeevan Reddy and others and an agreement was also executed to that effect which was signed by the husband of the plaintiff, that having received the amount plaintiff kept quiet for a long time, that due to good faith defendant did not obtain any receipt for the amount refunded, that defendants are not liable to pay any amount to the plaintiff.

3. Based on the aforesaid pleadings the following issues are settled for trial.

1. Whether the plaintiff is entitled for recovery of Rs.61,48,600/- as prayed?
2. Whether the suit is in time?
3. Whether the defendant paid a sum of Rs.10 Lakhs on dt.2-2-2008 to the plaintiff?



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.

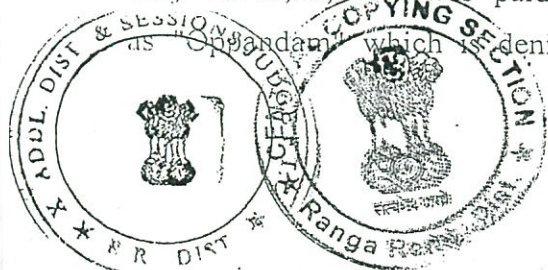
5. Heard both sides.

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 Affidavit' which is denied by the defendants. There are 2 attestors

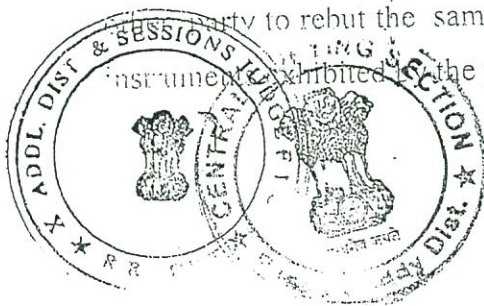


on Ex.A2. But none of them are examined. Ex.A2 reads that Rs.42,00,000/- was paid by that date and there was defect in the document of the defendants, so it could not be proceeded and that defendants agreed to clear the said defect by the end of January 2008 failing which they undertook to repay the amount with interest @ 36% per annum and if the said defect is cleared plaintiff should pay the balance and should get sale deed registered. PW 1 pleaded ignorance about execution of any document with her husband and pleaded that her husband PW 2 knows better.

8 PW 2 also filed the affidavit copying the averments in the plaint and though there are number of receipts filed on behalf of plaintiff showing that some amount paid to the defendants they are not exhibited and no explanation is given as to why they are not exhibited. As already stated supra though there are two attestors on Ex.A2 none of them are examined PW2 did not refer to Ex.A2 document and so he was not cross examined on that aspect. Except making claim in the notice to the defendants that Rs.42,00,000/- was paid by plaintiff there is no evidence adduced on behalf of plaintiff to support the same.

9. The learned counsel for the plaintiff relied upon a decision of our High Court between N.Saibaba Naidu Vs. P.Lakshmibayamma reported in ALD-2005-5-21 (CrI) 261 (AP) which is a case based on pro note in which Sec.118 of NI Act was considered. There is no pro note or other negotiable instruments in this case. It is not understandable as to how Sec.118 of N.I.Act is applicable to the facts of the case and how it helps the case of plaintiff.

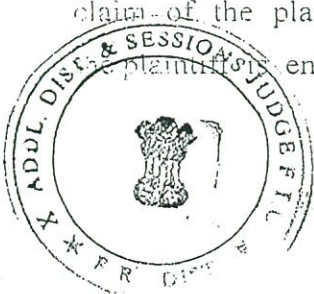
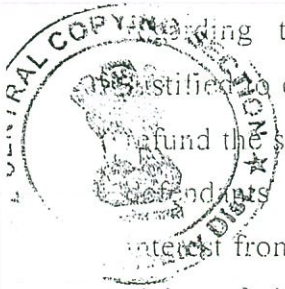
10. The learned counsel for the plaintiff relied upon a decision of our High Court between P.Venkatamma Vs. D.Sulochana reported in ALD-2005-6-21 which is also U/Sec.118 of N.I. Act wherein the presumptions in favour of the holder of the document is available and the burden is on the party to rebut the same. But in this case on hand there is no negotiable instrument exhibited by the plaintiff. As such the said decision is not applicable.



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.



Hence issue No. 3 is held in the negative. So far as issue No.1 is concerned it is held plaintiff is entitled to refund of Rs.12,00,000/- with interest at the rate of 18% per annum from 19-10-2010 till the date of suit which comes to Rs.12,18,000/- and with further interest on the said amount @ 12% per annum from the date of suit till the date of realization.

12. Issue No.4

In the result suit is decreed for a sum of Rs.12,18,000/- with interest 12% per annum on the said amount from the date of suit till the date of realization. Since plaintiff made excess claim than what she is entitled she is not entitled to costs even for the amount for which decree is passed as the claim which is not granted is more than the claim granted. Rest of the claim of the plaintiff is dismissed.

Dictated to Personal Assistant transcribed by him, corrected and pronounced by me in the open court on this the 27th day of April, 2015.

X Addl. District & Sessions Judge (F.T.C.),
Ranga Reddy District.

APPENDIX OF EVIDENCE

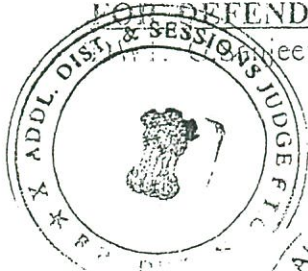
WITNESSES EXAMINED

FOR PLAINTIFF

PW1: B.Dhana Lakshmi

PW2: V.Raj Kumar

FOR DEFENDANT



EXHIBITS MARKEDFOR 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.

COURT OF THE DISTRICT & SESSIONS JUDGE
RANGA REDDY DISTRICT
 C.A. No. 10438 of 2015
 Application Filed on: 5/05/15
 Charges Called on: 16/07/15
 Charges Deposited on: 16/07/15
 Receipt No: 6559/15 Rs: 36/-
 Copy made ready on: 23/07/15
 Copy delivered on:

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 Superintendent
 Central Copying Section
 Ranga Reddy District.

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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

3. In reply to Para No.2 it is true that the defendants herein offered to sell the above said land to the Plaintiff for a total sale consideration of Rs.51,51,000/- and the defendants have received a sum of Rs.12,00,000/- towards advance sale consideration amount on various dates as on the date of Agreement of sale. Further the defendant at the same time deny that a legal notice dated: 10-12-2007, was received by the Plaintiff which was stated to be got issued by one K.BANGARAIHA who stated to be owner of 6 Acre of land in survey No.50 of the said Murahadipally village as contended in Para No.3 of the Plaint. It is further denied that the defendant assured the plaintiff that they will solve the issue by the end of January, 2008 and that failing which the defendants promised to repay the advance sale consideration amount to the Plaintiff that to with the interest at the rate of 30% per annum. These all are the false and baseless contentions and hence the Plaintiff is put to strict proof of the same.

4. In reply to Para No.4 and 5 of the Plaint, it is further denied that the Plaintiff waited to resolve the alleged dispute. In so far as legal notices exchanged between the parties herein, all the defendants got issued reply notices through their counsel and all the said reply notices and other related documents are filed along with the list and the same may be read as part and parcel of this written statement. It is also denied that the defendants allegedly did not cleared the property as contended by the plaintiff.

:: 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

// Thus the Plaintiff having failed to pay the total sale consideration amount within the stipulated time, started dragging the issue by giving one reason or the other. Even recitals of the legal notice got issued by the plaintiff, it clearly goes to show that even after nearly one year after entering into agreement of sale the Plaintiff was still getting ready to fulfill her part of contract, to pay balance sale consideration amount to the defendants.

// The defendants being peace loving citizens of India subsequent to the agreement of sale, approached the Plaintiff and more particularly her husband on several occasions. But it is the plaintiff and her husband complicated the issue by involving as many as persons and so also creating litigations in collusion with one Mr. Bangaraiah who is relative of Plaintiff and others. Further in order to settle the issue talks were held at the place of Sri Nanda Reddy Ex-Mandal President of Medchal who resides at Athvelli Village. In the result of which the defendants paid an amount of Rs.10,00,000/- on 02-02-2008 to the Plaintiff herein and her husband in the presence of the said Sri Nanda Reddy and Jeevan Reddy and certain other elders, towards repayment of advance sale consideration amount received by the defendants and for cancellation of Agreement of sale dated: 28-12-2006. Further subsequent to making payment of Rs.10,00,000/- as stated above to the Plaintiff and her husband an agreement dtd:15-05-2008 was also entered on a white paper wherein the husband of the plaintiff and some of the defendants herein signed in the presence of the witnesses. The said document also clearly goes to show that there is no amount is due to be paid

:: 05 ::

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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:: 06 ::

VERIFICATION

I the above named defendant No:5 do hereby declare that the above said facts are true and correct to the best of my knowledge and belief, nothing material has been concealed there from. Hence verified on this the ____ day of May, 2011 at LB Nagar.

Place: LB Nagar

Date: -05-2011

DEFENDANT NO.5

22

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, Malkajgiri, 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

1. That the Defendants herein claimed that they are the absolute owners of the land bearing Sy.No. 50/Part admeasuring Ac.1-00 gts situated at Murahadipally village Yadaram Grampanchayat Medchal Mandal, Ranga Reddy District, by virtue of purchased from Atluri Rajendra Prasad through Registered Sale deed document bearing No. 29100/2006, dated 21-12-2006 Registered of Medchal, Ranga Reddy District.
2. That defendants offered for sale this above said land to the plaintiff for a total consideration of Rs. 51,50,000/- (Rupees Fifty One Lakhs and fifty Thousand only) that plaintiff accepting their offer of sale of the above said land for said sale consideration paid an amount of Rs. 42,00,000/- (Rupees Fourty two Lakhs only) as advanced and part sale consideration to the defendants towards the purchase of the land bearing Sy.No.50/part admeasuring Ac.1-00 gts situated at Murahadi pally village Yadaram Grampanchayat Medchal Mandal, Ranga Reddy District,
3. That the defendants after receiving Rs. 42,00,000/- (Rupees Fourty Two Lakhs only) from the plaintiff entered into agreement of sale deed with the plaintiff on 28-12-2006 that plaintiff after paying the advance and part sale consideration was getting ready to pay the balance sale consideration and fulfill her part of contract mean while the plaintiff received on legal notice on 10-12-2007 from Sri.V. Rajshekar on behalf of his client K. Bangaraiah, stating that Bangaraiah is the owner and possessor of the land bearing Sy.No. 50 admeasuring Ac. 6-00 gts situated at Murahadi pally village Yadaram Grampanchayat Medchal Mandal, Ranga Reddy District, that after receiving that notice from K. Bangaraiah the plaintiff inform the defendants of the notice received by her for which the defendants assured the plaintiff that they would clear the cloud casts upon the title and the claim of Bangaraiah by the end of January 2008 and promised the plaintiff that if they fail to clear the title and the claim of K.Bangaraiah they would return to the plaintiff the amount of Rs. 42,00,000/- (Rupees Fourty Two Lakhs only) received by them with interest @ 30% per annum from the date of receiving till the re-payment of the amount received.
4. That the plaintiff waited for the defendants to get the title cleared and the claim of K.Bangaraiah but defendants were sleeping over the matter there upon the plaintiff got legal notice on calling upon the defendants to act upon the agreement and their promise.
5. That defendants received the notice and sought further for getting the property cleared from the claim of K. Bangaraiah that the defendants there after also not come forward to clear the claim of K. Bangariah not returned the amount of Rs. 42,00,000/- received by them from plaintiff.

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/-

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

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VERIFICATION

I the above described plaintiff, do hereby declare that the contents of the plaint above mentioned are true and correct to the best of my knowledge and belief. Hence, verified on this 08th day of November, 2010 at L.B.Nagar.

PLAINTIFF

Dated: 08/11/10

Place: Medchal

LIST OF DOCUMENTS

Sl.No.	Date of Doc.	Parties to Document	Description of Document
1.	28.12.2006	Defendants to Plaintiff	Agreement of Sale
2.	11.10.2007	Plaintiff/Defendnts	oppandapatram
3.	14.07.2009	Defendants to Plaintiff	Legal Notice
4.	-do-	-do-	postal receipts
5.	09/10/10	-do-	Legal notice
6.	-do-	-do-	postal receipts
7.			Ack. Cards.

Date: 08/11/ 2010

Place: L.B.Nagar

PLAINTIFF

COUNSEL FOR PLAINTIFF





Ref
23/2/16

Under Section 96 R/w. Order 41 Rule 1 & 2
of C.P.C.

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

APPEAL SUIT

A.S. No. 164 of 2015

Ranga Reddy :: DISTRICT.

In the Court of the Hon'ble X Addl. Dist.
Judge (FTC), Ranga Reddy District, at L.B.
Nagar.

O.S. No. 710 of 2010

Smt.V. Dhana Laxmi : APPELLANT

BY : M/s. BANKATLAL MANDHANI
(4819)

AND

Uppala Sridhar and others :: RESPONDENTS

Nature of Claim :
Suit for recovery of money

In the Lower court of :
First Instance

Plaint presented :
Decree passed on : 27-04-2015.
In the High Court :

Appeal Presented on : 11-08-2015
Appeal Re-presented on :
Appeal admitted : 20/2/16
Appeal filed : 89,800-00
Appeal valued at Rs. 78,22,000-00

Court Fee paid Rs. 80,726-00
To be heard on

A.S. MP No. of 2015.