

P. Subbarayudu vs Smt. K. Padmavathi on 28 February, 2024

APHC010035442007

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

[3397
]

WEDNESDAY ,THE TWENTY EIGHTH DAY OF
FEBRUARY
TWO THOUSAND AND TWENTY FOUR
PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA
RAO

FIRST APPEAL NO: 49 OF 2007

Between:

P. Subbarayudu

...APPELLANT(S)

AND

Smt K.Padmavathi

...RESPONDENT(S)

Counsel for the Appellant(s):SRI. 3063/N SUBBA RAO

Counsel for the Respondent(s): 804/P GANGA RAMI REDDY

The Court made the following:

JUDGMENT:

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This Appeal, under Section 96 of the Code of Civil Procedure [for short 'the C.P.C.'], is filed by the Appellant/plaintiff challenging the Decree and Judgment, dated 12.07.2005, in O.S. No.36 of 2002 passed by the learned Senior Civil Judge, Kovvur [for short 'the trial Court']. The Respondent herein is the defendant in the said Suit.

2. The appellant/plaintiff filed a Suit, with a prayer, to direct the defendant to execute registered sale deed in respect of plaint 2 VGKRJ AS 49 of 2007 schedule property by receiving balance of sale consideration and deliver possession of plaint schedule property to the plaintiff within the time stipulated by this Court and in case of default through process of law, further prayed alternatively to direct the defendant to return Rs.1,00,000/- together with interest @ 24% p.a. from 08.05.2002 till the date of payment, in case the Court feels that the plaintiff is not entitled to a decree for specific performance of agreement of sale.

3. Both the parties in the Appeal will be referred to as they are arrayed before the trial Court.

4. The brief averments of the plaint, in O.S. No.36 of 2002, are as under:

The defendant is the absolute owner of the plaint schedule property i.e., 32 ankanams out of 180 ankanams of site within specified boundaries with 15 ankanams of terraced building therein bearing door No.B-10-352 having purchased the same under registered sale deed dated 26.03.1985. The defendant offered to sell an extent of 32 ankanams out of 180 ankanams of site and the plaintiff agreed to purchase the same for consideration of 3 VGKRJ AS 49 of 2007 Rs.5,50,000/- and paid Rs.1,00,000/- to the defendant on 08.05.2002, who in turn executed an agreement of sale on the same day in favour of the plaintiff. As per the terms of the said agreement, the plaintiff should pay balance of sale consideration on or before 25.07.2002 and obtain regular sale deed from the defendant with his own expenses. The said agreement was attested by the sons of defendant.

ii) As the time was the essence of contract, the plaintiff had been demanding the defendant to perform her part of contract i.e., to receive balance of sale consideration and execute registered sale deed in his favour, that the defendant had been evading to do so, hence the plaintiff got issued legal notice dated 23.07.2002 calling upon the defendant to perform her part of contract and the same was received by the defendant's son, on her behalf, but no reply was sent nor complied the demand. Further, the defendant got issued notice through others to her and also to the plaintiff as if the defendant is indebted to others and calling upon the plaintiff not to purchase the said property. Hence, the plaintiff was constrained to file the suit.

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5. The defendant filed written statement by denying all the averments mentioned in the plaint and further contended as under: -

The husband of the defendant i.e., Kagitha Anandarao purchased 180 ankanams of site @ Rs.250/- per ankanam under registered sale deed dated 26.03.1985. The sale deed was taken for Rs.36,000/- in her name. Subsequently her husband constructed terraced building in an extent of 15 ankanams about 8 years ago by investing Rs.5,00,000/- with the income derived from the saw mill and his savings. Anticipating the conduct of their sons, her husband purchased site and constructed the building in the plaint schedule property in her name.

ii) Her elder son by name Syamasundar obtained loan from Syndicate Bank, Buchireddipalem. As the bank people pressed to discharge the said loan, the said Syamasundar obtained her signatures on 2 empty stamped papers by misrepresentation that her signatures were required as surety. The plaintiff fabricated the agreement with the said stamp papers, containing her signatures, by paying some amount to Syamasundar, who in turn, utilized it to discharge debt due to the bank. She neither received Rs.1,00,000/-

5 VGKRJ AS 49 of 2007 from the plaintiff nor executed agreement of sale in favour of the plaintiff. No notice was given to her as alleged in the plaint and prayed the Court to dismiss the suit.

6. Based on the above pleadings, the trial Court framed the following issues:

(i) Whether the plaintiff is entitled for specific performance of contract as prayed for?

(ii) Whether the agreement of sale dated 08.05.2002 is fabricated?

7. During the course of trial in the trial Court, on behalf of the Plaintiff, PW1 to PW4 were examined and Ex.A1 to Ex.A5 were marked. On behalf of the Defendant DW1 and DW2 were examined, no documents were marked, but proposed in additional affidavit of defendant to mark Ch.No.98, dated 11.11.2004 for Rs.1,00,000/-.

8. After completion of the trial and on hearing the arguments of both sides, the trial Court decreed the suit vide its judgment, dated 12.07.2005 and directed the defendant to pay Rs.1,00,000/- to the plaintiff together with interest @18% p.a. and dismissed the suit with regard to the relief of specific performance of Ex.A1 agreement of 6 VGKRJ AS 49 of 2007 sale, against which the present appeal is preferred by the appellant/plaintiff in the Suit questioning the Decree and Judgment passed by the trial Court.

9. Heard Sri N.Subbarao, learned senior counsel for the appellant and Sri P.Gangarami Reddy, learned counsel for the respondent.

10. Leaned senior counsel on behalf of appellant would contend that the learned trial Judge erred in rejecting the main relief of specific performance of agreement of sale. He would further contend that the trial Judge committed an error in disbelieving the Ex.A2 legal notice and Ex.A3 acknowledgment without assigning any cogent reasons. He would further contend that the trial judge came to wrong conclusion that Ex.A1 was executed without any intention to perform the terms of the contract incorporated therein, but only as a security in connection with money transaction in between the plaintiff and defendant as on the date of Ex.A1. He would further contend that appeal may be allowed by granting the main relief of specific performance of agreement of sale dated 08.05.2002.

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11. Per contra, the learned counsel for respondent would contend that on appreciation of the entire material on record, the trial Judge rightly rejected the main relief of specific performance of agreement of sale dated 08.05.2002 and granted alternative relief of refund of advance amount of Rs.1,00,000/- to the plaintiff in the suit proceedings. He would further contend that appeal may be dismissed.

12. Having regard to the pleadings in the suit, the findings recorded by the trial Court and in the light of rival contentions and submissions made on either side before this Court, the following

points would arise for determination:

1. Whether the appellant/plaintiff is entitled the main relief of specific performance of agreement of sale dated 08.05.2002?
2. Whether the trial Court committed any error in granting alternative relief of refund of advance amount of Rs.1,00,000/- to the plaintiff instead of granting main relief of specific performance of agreement of sale dated 08.05.2002?

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3. Whether the decree and judgment passed by the trial Court needs any interference, if so, to what extent?

13. Point Nos.1 and 2:

1. Whether the appellant/plaintiff is entitled the main relief of specific performance of agreement of sale dated 08.05.2002?
2. Whether the trial Court committed any error in granting alternative relief of refund of advance amount of Rs.1,00,000/- to the plaintiff instead of granting main relief of specific performance of agreement of sale dated 08.05.2002?

The case of the plaintiff is that the defendant is the absolute owner of the suit schedule property having purchased the same under a registered sale deed dated 26.03.1985 and the defendant offered to sell an extent of 32 Ankanams out of 180 ankanams of site, detailed in the schedule, and the plaintiff agreed to purchase the same for a consideration of Rs.5,50,000/- and the plaintiff herein paid Rs.1,00,000/- to the defendant on the date of agreement of sale itself and the defendant herein executed an agreement of sale on the same date in favour of the plaintiff. The plaintiff further 9 VGKRJ AS 49 of 2007 pleaded that as per the terms of said agreement, the plaintiff has to pay the balance sale consideration on or before 25.07.2002 and obtained regular sale deed from the defendant with his own expenses.

14. The defense taken by the defendant in the written statement is that the elder son of the defendant by name Syamasundar obtained loan from the Syndicate Bank, Buchireddipalem, as the bank people pressed for discharging the loan, Syamasundar misrepresented the defendant and obtained the signatures of the defendant, as required as security, on two empty stamp papers. The defendant further pleaded that the plaintiff fabricated the said agreement on the stamps papers containing her signatures by paying some amount to the son of the defendant by name Syamasundar, who discharged his bank debt. She further pleaded that she never received Rs.1,00,000/- nor executed agreement of sale in favour of the plaintiff.

15. On appreciation of the entire evidence on record, the trial Judge held in its judgment that the defendant herself executed Ex.A1 agreement of sale in favour of the plaintiff and received 10 VGKRJ

AS 49 of 2007 advance amount of Rs.1,00,000/- under Ex.A1 agreement of sale. The trial Court further held that the agreement of sale is not a fabricated one and it was executed by the defendant herself. The same is held in para No.28 of the judgment by the trial Court. The said finding is not at all challenged by the defendant by way of filing cross objections or by way of filing appeal. Therefore, now the point to be decided in the appeal is whether the plaintiff is entitled the main relief of specific performance of agreement of sale dated 08.05.2002.

16. The suit is filed based on Ex.A1 agreement of sale dated 08.05.2002. Ex.A1 recitals goes to show the defendant offered to sell the plaint schedule property for Rs.5,50,000/- from out of which an advance amount of Rs.1,00,000/- was paid on the date of agreement of sale, there was a condition in Ex.A1 that the remaining balance of sale consideration of Rs.4,50,000/- has to pay on or before 25.07.2002. There is no condition in Ex.A1 agreement of sale that if the remaining balance sale consideration was not paid by 25.07.2002, the advance amount will be forfeited and the agreement will stand cancelled. The contention of the plaintiff is that the time is 11 VGKRJ AS 49 of 2007 an essence of contract and has been constantly demanding the defendant to perform her part of the contract to receive balance sale consideration to execute a registered sale deed in his favour, but the defendant has been avoiding to do so.

17. The legal position in this regard is no more res integra. The law is well settled that, grant of decree of specific performance of agreement of sale is not an automatic and it is a discretionary relief, the same is required to be exercised judiciously, sound and reasonable. As stated supra Ex.A1 is a crucial document, based on which the suit is filed. Though the execution of Ex.A1 agreement of sale in favour of the plaintiff is disputed by the defendant, but on appreciation of the entire evidence on record, the trial Judge came to conclusion that Ex.A1 is genuine document and the same is not fabricated document and the trial Judge further hold that after obtaining Rs.1,00,000/- towards advance sale consideration from the plaintiff, the defendant executed Ex.A1 agreement of sale. The said finding is not at all challenged by the defendant by filing cross objections. Therefore, the same is attained finality.

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18. The defendant pleaded in the written statement that the elder son of the defendant by name Syamasundar obtained loan from Syndicate Bank, Buchireddipalem and as the bank people got pressure him to discharge the loan and Syamasundar misrepresenting the defendant that the signatures of the defendant is required as a surety and obtained signatures of the defendant on two empty stamp papers. The defendant further pleaded that neither she received Rs.1,00,000/- nor executed agreement of sale dated 08.05.2002 in favour of the plaintiff. As stated supra, on appreciation of the entire evidence on record, the learned trial Judge came to conclusion that Ex.A1 is a genuine document and it is not a fabricated document.

19. The time stipulated to perform the contract of both the parties in Ex.A1 is fixed by 25.07.2002. The case of the plaintiff is that he is constantly demanding the defendant to receive the balance sale consideration and to execute a regular registered sale deed in favor of the plaintiff but the defendant is not at all cooperating for executing the registered sale deed. Ex.A2 goes to show that the plaintiff

issued a legal notice on 23.07.2002 through his counsel 13 VGKRJ AS 49 of 2007 through courier service by demanding the defendant to execute a regular registered sale deed and to receive the remaining balance sale consideration. Ex.A3 goes to show the same is received by the son of the defendant by name Anil on 28.07.2002, the defendant admits that the said Anil is her third son. The learned counsel for defendant would contend that the said notice was not served on the defendant and it was sent to Nellore address. Per contra, the learned counsel for plaintiff would contend that the head office of courier service is situated at Nellore, the place of destiny is in Nellore District. It does not mean that the Ex.A2 notice is not at all served on the defendant. In cross examination, it was not suggested to PW1 that the signature on Ex.A3 is not belongs to the son of defendant by name Anil. In cross examination, it was not suggested to plaintiff by the learned counsel for defendant that the Ex.A2 notice is not at all received by the defendant. In evidence in cross examination the defendant admits that she is having 3 sons and all her 3 sons are residing with her. It is not the case of the defendant that she is having enmity with her 3 sons including Anil. According to the defendant herself, all her sons are staying under one roof, therefore, I am of the considered view that Ex.A2 notice was 14 VGKRJ AS 49 of 2007 received by the son of the defendant and she is having knowledge of Ex.A2 contents of notice. Therefore, the service of Ex.A2 notice on the defendant is held sufficient. It is an admitted fact that no reply notice was given by the defendant to deny the contents of Ex.A2 legal notice, according to the defendant she is having cordial terms with her son Anil and they are staying under one roof. If the defendant did not really receive the Ex.A2 notice what prevented the defendant to examine her son as a witness on her behalf, who is staying with her under one roof.

20. PW2 is the scribe of Ex.A1 agreement of sale. PW3 and PW4 are the third parties to the suit transaction. The learned counsel for defendant would contend that the defendant never executed Ex.A1 agreement of sale in favour of the plaintiff and her elder son Syamasundar obtained her signatures on 2 empty stamp papers as a surety to discharge the bank loan. It seems that the signature on Ex.A1 agreement of sale is not at all disputed by the defendant, to prove the said defense, the defendant did not try to examine the said Syamasundar as a witness and no evidence is adduced by the defendant to show that her son Syamasundar was obtained her 15 VGKRJ AS 49 of 2007 signatures on 2 empty stamp papers and by using the same, created the Ex.A1 agreement of sale.

21. The learned counsel for defendant would contend that except the evidence of plaintiff, no evidence is adduced by the plaintiff to show that he is ready and willing to perform his part of the contract.

22. In a case of Kurella Venkata Satyavathi vs. Kanyamayini Devendar Yadav 1 the Division Bench of composite High Court of Andhra Pradesh held as follows:

The next crucial question that falls for consideration is whether a party to a document is entitled to adduce oral evidence contrary to its recitals. The underlying object of Section 92 of the Indian Evidence Act is that the admission of oral evidence would defeat the very object of reducing the agreement to a written form. Section 92 of the Act postulates that the parties to the instrument are precluded from adducing oral

evidence to contradict, vary, add to or subtract from the terms of a valid written instrument. However, the party to a document is entitled to adduce oral evidence under which circumstances he was compelled to execute the same. Thus, the plaintiff is precluded to adduce oral evidence contrary to the recitals of the sale deed in question in view of Section 92 of the Indian Evidence Act.

MANU/AP/0516/2014 16 VGKRJ AS 49 of 2007 In the case on hand, the execution of Ex.A1 is proved by the plaintiff. The trial Judge also by giving cogent reasons held in its judgment that Ex.A1 is not a fabricated document and Ex.A1 is executed by the defendant after receiving Rs.1,00,000/- towards advance amount from the plaintiff. The defendant failed to adduce any evidence to show that her son obtained her signatures on the empty stamp papers and the same is fabricated as Ex.A1.

23. The learned counsel for defendant placed a reliance in Padmakumari and others vs. Dasayyan and others². The learned counsel for defendant place another reliance in Saradamani Kandappan vs. S.Rajalakshmi and others³, in that decision it was held as under:

(i) The Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

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(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-

limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.

24. The learned counsel for respondent placed another reliance in Smt Chand Rani vs. Smt Kamal Rani⁴, in that decision it was held as under:

In the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are:

1. from the express terms of the contract;
2. from the nature of the property; and
3. from the surrounding circumstances, for example: the object of making the contract.

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25. The learned counsel for respondent placed another reliance in U.N.Krishnamurthy vs. A.M.Krishnamurthy 5 , in that decision it was held as follows:

It is well settled that, in a suit for specific performance of an agreement, it is for the plaintiff to prove his readiness and willingness to perform his obligations under the agreement. Where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the plaintiff to show that he was in a position to pay the balance money. The plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money. In the case on hand, the date of agreement of sale is 08.05.2002, on the date of Ex.A1 agreement of sale itself, an amount of Rs.1,00,000/- was paid by the plaintiff to the defendant from out of Rs.5,50,000/- and it was agreed that the plaintiff has to pay the remaining balance sale consideration on or before 25.07.2002. The case of the plaintiff is that he is constantly demanding the defendant to receive the remaining balance sale consideration, but she is not cooperating for registration. Ex.A2 goes to show that the plaintiff demanded the defendant by issuing Ex.A2 legal notice within a stipulated time i.e., on 23.07.2002 by informing AIR 2022 SCC 3361 19 VGKRJ AS 49 of 2007 the defendant that he is ready with balance sale consideration and requested the defendant to receive the same and to execute a regular registered sale deed in favour of plaintiff. Ex.A3 goes to show that the said notice was received by the son of the defendant.

As stated supra, the said service of notice on the defendant is held sufficient and the defendant is having knowledge of contents of Ex.A2 because her son and herself are staying under one roof and she is not having any enmity with her son. It is an admitted fact that no reply notice was given by the defendant to deny the contents of Ex.A2 legal notice. As a last resort, the plaintiff approached the Court and filed a suit for specific performance of agreement of sale on 30.09.2002 within 2 months from the date of receipt of Ex.A2 legal notice by the defendant. As stated supra, the date of agreement of sale is 08.05.2002, within 6 months from the date of Ex.A1 agreement of sale, the present suit for specific performance of agreement of sale is filed by the plaintiff. To show the bonafidees of the plaintiff, the plaintiff filed an affidavit in I.A.No.223 of 2002 in the suit proceedings before the trial Court. In the said affidavit it was stated that a sum of Rs.4,50,585/- is lying in his S.B.Account bearing No.OSB/SIB/14 and the original pass book issued by State 20 VGKRJ AS 49 of 2007 Bank of Hyderabad is also enclosed along with the affidavit. In the said affidavit it was further recited by the plaintiff that the certificate to that effect was issued by the

Branch Manager of the said bank which is enclosed along with his affidavit. The contents of the said affidavit clearly goes to show the readiness of the plaintiff to pay the balance sale consideration and to obtain a regular registered sale deed from the defendant. Ex.A4 and Ex.A5 relates to some other transactions. Ex.A4 and Ex.A5 goes to show in the said sale transactions, the defendant signed as a vendor, her sons signed as an attestors. In Ex.A1 agreement of sale also both the attestors are none other than the sons of the defendant.

26. It is well settled that in a suit for specific performance of agreement of sale, it is for the plaintiff to prove his readiness and willingness to perform his obligation under the agreement. Where certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the plaintiff to show that he was in a position to pay the balance money. The plaintiff has to prove that he has the money or as alternatively made necessary arrangements to get the money. In the case on hand, as 21 VGKRJ AS 49 of 2007 stated supra, within 6 months from the date of Ex.A1 agreement of sale, the present suit for specific performance is filed by the plaintiff. The plaintiff also issued a legal notice on 23.07.2002 within a stipulated time fixed by both the parties by demanding the defendant to receive the balance sale consideration and to execute a regular registered sale deed in favour of the plaintiff. No reply notice was issued by the defendant to deny the said contents of Ex.A1 legal notice. In the case on hand, the plaintiff expressed his readiness and willingness to perform his part of the contract i.e., to pay the balance sale consideration and insisted the defendant after receiving the same to execute a regular registered sale deed.

27. It is a well-accepted principle that in a case of sale of immovable property, time is never regarded as the essence of the contract. Relying upon the earlier decisions of the Apex Court in Gomathinayagam Pillai vs. Palaniswami Nadar 6 and Govind Prasad Chaturvedi vs. Hari Dutt Shastri 7, the Apex Court held that fixation of the period within which the contract has to be performed does not made the stipulation as to time is the essence of AIR 1967 SC 868 (1977) 2 SCC 539 22 VGKRJ AS 49 of 2007 the contract. Where the contract relates to sale of immovable property, it will normally be presumed that the time is not the essence of the contract.

28. In the case on hand, the material on record amply proves that the plaintiff is always ready and willing to perform his part of the contract and to prove his bonafides the plaintiff issued a legal notice on 23.07.2002 within a stipulated time fixed by both the parties, having received the said notice, the defendant failed to issue any reply. The material on record reveals that from the beginning itself the plaintiff is always ready and willing to perform his part of the contract, but the defendant failed to cooperate with the plaintiff to receive the balance sale consideration and to execute a regular registered sale deed in favor of the plaintiff. Therefore, undoubtedly the plaintiff is entitled the main relief of specific performance of agreement of sale dated 08.05.2002 as prayed in the plaint, but the trial Judge instead of granting main relief of specific performance of agreement of sale, granted alternative relief of refund of advance amount of Rs.1,00,000/- to the plaintiff, the same is not sustainable under law, therefore, the decree and judgment passed by the trial 23 VGKRJ AS 49 of 2007 Court is modified as the suit is decreed with costs by granting relief of specific performance of agreement of sale dated 08.05.2002 and the plaintiff is directed to pay the remaining balance sale consideration of Rs.4,50,000/- within two months from the date of this judgment to the defendant, if the defendant refused to receive the same, the plaintiff is directed to

deposit the same before the trial Court, the defendant is directed to execute a registered sale deed in favour of the plaintiff within one month from the date of receipt of remaining balance sale consideration or from the date of deposit by the plaintiff as the case may be, failing which the plaintiff is at liberty to take necessary steps as per law. Defendant is at liberty to take back the amount of Rs.1,00,000/- which was deposited before the trial Court. Point Nos.1 and 2 are answered accordingly.

29. Point No.3:

Whether the decree and judgment passed by the trial Court needs any interference, if so, to what extent? In view of my findings in point Nos.1 and 2, the trial Court committed a grave error in dismissing the suit with regard to the relief of specific performance of Ex.A1 agreement of sale and 24 VGKRJ AS 49 of 2007 decreeing the suit directing the defendant to pay Rs.1,00,000/- to the plaintiff together with interest thereon at the rate of 18% p.a. from the date of Ex.A1 agreement of sale till the date of decree, therefore, the decree and judgment passed by the trial Court is not sustainable under law and the same is liable to be modified.

Accordingly this point is answered.

30. In the result, this appeal is allowed by modifying the decree and judgment passed by the trial court as the suit is decreed with costs by granting relief of specific performance of agreement of sale dated 08.05.2002 and the plaintiff is directed to pay the remaining balance sale consideration of Rs.4,50,000/- within two months from the date of this judgment to the defendant, if the defendant refused to receive the same, the plaintiff is directed to deposit the same before the trial Court, the defendant is directed to execute a registered sale deed in favour of the plaintiff within one month from the date of receipt of remaining balance sale consideration or from the date of deposit by the plaintiff as the case may be, failing which the plaintiff is at liberty to take necessary steps as per law. Defendant is at liberty to take back the amount of Rs.1,00,000/-

25 VGKRJ AS 49 of 2007 which was deposited before the trial Court. Considering the circumstances of the case, I order that each party do bear their own costs in the appeal.

As a sequel, miscellaneous petitions, if any, pending in the Appeal shall stand closed.

V.GOPALA KRISHNA RAO, J Date: 28.02.2024 sj 26 VGKRJ AS 49 of 2007 THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO APPEAL SUIT No.49 OF 2007 Date: 28.02.2024 sj