



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

[3397]

**TUESDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX**

PRESENT

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

SECOND APPEAL NO: 364/2015

Between:

Tanala Satyanarayana Died and Others

...APPELLANT(S)

AND

Tanala Rama Rao Died As Per Lrs and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1. T V JAGGI REDDY

Counsel for the Respondent(S):

1. T N M RANGA RAO

The Court made the following:

THE HON'BLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.364 of 2015

This second appeal under Section 100 of the Code of Civil Procedure ("C.P.C." for short) is filed aggrieved against the Judgment and decree, dated 15.04.2015 in A.S.No.73 of 2010, on the file of the II Additional Senior Civil Judge, Kakinada, ("First Appellate Court" for short) reversing the Judgment and decree, dated 24.08.2006 in O.S.No.15 of 1992, on the file of the Principal Junior Civil Judge, Kakinada ("Trial Court" for short).

2. The appellant herein is the defendant No.3, the respondent No.1 herein the plaintiff and the respondent Nos.2 and 3 herein are the defendant Nos.1 & 2 in O.S.No.15 of 1992.

3. During the pendency of the second appeal, the sole-appellant herein died and as per Order dated 30.04.2025, passed by this Court in I.A.No.3 of 2023, the Legal Representatives of the deceased sole-appellant were brought on record as appellant Nos.2 to 5. The respondent No.1 also died during the pendency of the second appeal and as per the Order dated 04.07.2025, passed by this Court in I.A.No.3 of 2025, the Legal Representatives of the deceased respondent No.1 were also brought on record as respondent Nos.4 to 8.

4. The plaintiff initiated action in O.S.No.15 of 1992, on the file of the Principal Junior Civil Judge, Kakinada, with a prayer for separate possession

of the agreement of sale dated 09.03.1979, directing the defendant Nos.1 and 2 to execute the registered sale deed in favour of the plaintiff and if they fail to do, the Court may execute the sale deed on their behalf and also put the plaintiff in vacant possession of plaint schedule property after evicting the defendants there from and for costs.

5. The learned trial Judge dismissed the suit without costs. Felt aggrieved of the same, the unsuccessful plaintiff in the above said suit filed appeal suit before the First Appellate Court. The learned First Appellate Judge allowed the appeal with costs by setting aside the decree and judgment passed by the learned trial Judge. Aggrieved thereby, the defendant No.3 in O.S.No.15 of 1992, who is none other than the respondent No.3 in A.S.No.73 of 2010, approached this Court by way of second appeal.

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

7. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.15 of 1992, is as follows:

The plaint schedule property bearing 16th ward, Kakinada Municipality in Pankevari Street was the self-acquired property of K.Suryanarayana, S/o. Lakshmana Rao and the said Suryanarayana offered to sell the said property to the plaintiff for a sum of Rs.5,000/- and the plaintiff agreed to purchase the same, therefore, the said K.Suryanarayana executed a registered sale agreement dated 09.03.1979, in favour of the plaintiff agreeing to sell the

schedule property and received the entire sale consideration before the Sub-Registrar and put the plaintiff in possession of the said property thereof and since then, the plaintiff has been enjoying the said property with absolute rights. The plaintiff pleaded that he along with his family members resided in the said property for some time and after the sale of the house, the said K.Suryanarayana left for Hyderabad and later on died at Hyderabad. The plaintiff further pleaded that he asked K.Suryanarayana to execute a registered sale deed and the said K.Suryanarayana promised to execute the same by stating that he was going to Hyderabad for medical treatment and that after returning from Hyderabad, he would execute a registered sale deed in favour of the plaintiff, but, the said K.Suryanarayana died at Hyderabad.

The plaintiff further pleaded that the defendant No.1 is the eldest son and the defendant No.2 is the youngest son of the said K.Suryanarayana and the wife of K.Suryanarayana is no more. The plaintiff further pleaded that he asked the defendant No.1 to execute a registered sale deed, the defendant No.1 promised to execute the same, but for some reason or the other the defendant No.1 was evading execution of the registered sale deed. While so, on 09.05.1990, due to big cyclone at Kakinada, the plaintiff lost the original sale agreement. Further, the defendant No.3 is the brother of plaintiff and the plaintiff borrowed a sum of Rs.10,000/- from him, hence, the plaintiff permitted the defendant No.3 to live in the scheduled property. Later, the plaintiff paid the same amount through one Vadapalli Satyavathi to the defendant No.3. Though the amount was repaid by the plaintiff, the defendant No.3 by

colluding with the other defendants, is not vacating the house property, as such, the plaintiff is constrained to file the present suit.

8. The defendant Nos.1 and 2 remained *ex-parte* before the trial Court.

9. The 3rd defendant filed written statement before the trial Court denying the material averments made in the plaint. The brief averments in the written statement are as follows:

No agreement of sale was executed by K.Suryanarayana in favour of the plaintiff and in fact, the defendant No.3 has been residing in a portion of the plaint schedule property since 1978, as a tenant under the tenancy of K.Suryanarayana, who is not the absolute owner of the plaint schedule property and no such agreement of sale has taken place between the plaintiff and the said K.Suryanarayana. Hence, the said K.Suryanarayana did not execute any registered sale deed in favour of the plaintiff. The defendant No.3 pleaded that the plaintiff was never in possession and enjoyment of the plaint schedule property at any time and at any point of time, K.Suryanarayana never put the plaintiff in possession of the said property. The defendant No.3 further pleaded that the plaintiff borrowed Rs.10,000/- from him for the purpose of family expenses and necessities, later, when the defendant No.3 demanded him to discharge the said debt, the plaintiff filed the present suit with the false and untenable allegations. The defendant No.3 pleaded that the plaintiff had not paid the debt amount of Rs.10,000/- to him and the defendant Nos.1 and 2 have nothing to do with the schedule property. Further, the

plaintiff has no right to ask the defendant No.3 to vacate the plaintiff schedule property as he is continuing there as a tenant since 1994, and the plaintiff also has no right to seek distinct reliefs against the defendant Nos.1 and 2 for specific performance and against the defendant No.3 for possession. Hence, he prayed to dismiss the suit with costs.

10. On the basis of above pleadings, the learned trial Judge framed the following issues for trial:

- I. Whether the agreement of sale dated 09.03.1979 is true, valid and binding on the defendants?
- II. Whether the plaintiff is entitled for specific performance?
- III. To what relief?

As per the orders in I.A.No.19 of 1997, dated 13.02.1997, the following additional substantial issues were framed by the trial Court:

- I. Whether the plaintiff is liable to pay the Court fee for the relief of possession of the property against defendant No.3 as per the provisions of Section 29 of A.P.C.F. and S.V. Act?
- II. Whether the suit is bad for mis-joinder of causes of action?

As per the orders in I.A.No.9 of 2001, dated 20.04.2001, the following additional substantial issue was framed by the trial Court:

- I. Whether the plaintiff is entitled for possession of the property after evicting the 3rd defendant there from?

11. During the course of trial in the trial Court, on behalf of the plaintiff, P.W.1 to P.W.3 were examined and Ex.A.1 was marked. On behalf of the defendants, D.W.1 was examined and Ex.B.1 to Ex.B.4 were marked.

12. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit without costs. Felt aggrieved thereby, the unsuccessful plaintiff filed the appeal suit in A.S.No.73 of 2010, on the file of the II Additional Senior Civil Judge, Kakinada, wherein, the following points came up for consideration:

- I. Whether the sale agreement under Ex.A-1 is genuine and enforceable or not?
- II. Whether the plaintiff/appellant is entitled for recovery of possession of the schedule property after evicting the respondent/3rd defendant from there?
- III. Whether there are grounds to interfere with the attachment and decree of the trial Court and if so to what extent?

13. The learned First Appellate Judge after hearing the arguments, answered the points, as above, against the defendants and allowed the appeal setting aside the decree and judgment passed by the learned trial Judge. Felt aggrieved of the same, the defendant No.3 in O.S.No.15 of 1992, who is none other than the respondent No.3 in A.S.No.73 of 2010, filed the present second appeal before this Court.

14. On hearing both sides counsel at the time of admission of the appeal, on 09.10.2025, this Court framed the following substantial questions of law:

- I. Whether judgment and decree of the lower appellate Court is vitiated in ignoring to consider the non-issuance of notice before institution of the suit for specific performance?
- II. Whether the judgment and decree of the lower appellate Court is vitiated in decreeing the suit for specific performance since the plaintiff failed to prove as to the real owner of the plaint schedule property? And
- III. Whether the judgment and decree of the lower appellate Court is vitiated in ignoring to consider the recitals of Ex.A-1 and the evidence of P.Ws.1 and 2?

15. Heard Sri T.V. Jaggi Reddy, learned counsel for the appellants and heard Sri T.N.M. Ranga Rao, learned counsel for the respondents.

16. The law is well settled that under Section 100 of CPC, the High Court cannot interfere with the findings of fact arrived at by the First Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence. In a case of **Bhagwan Sharma v. Bani Ghosh**¹, the Apex Court held as follows:

“The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact

¹ AIR 1993 SC 398

were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature.”

In a case of ***Kondira Dagadu Kadam vs. Savitribai Sopan Gujar***², the Apex Court held as follows:

“The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

17. Learned counsel for the appellant would contend that without issuing any notice, the plaintiff directly approached the Civil Court for seeking relief of specific performance of the agreement of sale, and the First Appellate Court ignored the same and granted the main relief of specific performance of the agreement of sale against the defendant Nos. 1 and 2. In the case at hand, the decree of specific performance has been granted against the defendant Nos. 1 and 2 by the First Appellate Court. For the reasons best known to the defendant Nos. 1 and 2, they did not choose to prefer any appeal to challenge the said decree of specific performance as granted by the First Appellate Court. The defendant No. 3, who is not a party to the agreement of sale, preferred a second appeal against the decree and judgment passed by the First Appellate Court. The claim of the appellant as per the written statement filed before the trial Court is that he is a tenant of the schedule premises under the tenancy of K. Suryanarayana.

² AIR 1999 SC 471

18. In a case of ***Baddam Prathap Reddy Vs. Chennadi Jalapathi Reddy and Another***³, the Composite High Court of Andhra Pradesh held as follows:

“21. This Court, however, hastens to add that, in law, oral demand by the buyer of immovable property, as such, being sufficient compliance with requirements of Form Nos. 47 and 48 cannot be totally ruled out. In such circumstances, the proof of oral demand should be strong and unimpeachable and mere allegation, that too, in a passing manner would not be sufficient compliance with the requirement of law. This aspect of the matter, however, has to be gone into a little deeper in an appropriate case, but it would be sufficient to leave the issue with the observations as made hereinabove.”

In the aforesaid case law the Composite High Court of Andhra Pradesh further held as follows:

“26. From the above brief discussion, the law can be taken as well settled that a suit for specific performance has to comply requirements prescribed in Section 16(c) of the Specific Relief Act and Form Nos. 47 and 48 of Appendix A of CPC, and averments should be proved. If a suit is filed for specific performance of agreement of sale without making prior demand by way of a notice on the defendant - vendor, such a suit is not in compliance with Form Nos. 47 and 48, and therefore, it is liable to be dismissed. This Court also hastens to add that in appropriate case, subject to strictly proving such allegation, an oral demand can also be proper compliance with requirement of law, but this question has to be gone into in detail in appropriate case.”

19. As stated supra, in the case at hand, the plaintiff has sought the relief of specific performance of the registered possessory agreement of sale dated 09.03.1979, against the defendant Nos. 1 and 2 alone. As per the plaint averments and as per Ex. A-1, the total consideration of Rs. 5,000/- was paid on the date of the agreement of sale to the father of the defendant Nos. 1 and

³ (2008) 06 AP CK 0049

2, in the Sub-Registrar Office, on the date of execution of the registered agreement of sale, and the possession was also delivered to the plaintiff, and the plaintiff is enjoying the same with absolute rights. The plaintiff further pleaded that after alienation of the house, the said K. Suryanarayana, viz., the father of the defendant Nos. 1 and 2, left for Hyderabad and where he died. During the lifetime of the father of the defendant Nos. 1 and 2, the plaintiff insisted to execute a registered sale deed, as the plaintiff was ready and willing to perform his part of the contract. The plaintiff further pleaded that the said K. Suryanarayana i.e. the father of defendant Nos. 1 and 2, promised to execute the same, but stated that as he was going to Hyderabad for medical treatment, he would come again and execute a sale deed, but he did not come back; later, the plaintiff came to know that the said K. Suryanarayana died at Hyderabad, leaving the defendant Nos. 1 and 2 as sole legal representatives, and the wife of K. Suryanarayana was also not alive. The plaintiff demanded that the defendant Nos. 1 and 2 execute a registered sale deed, but they failed to execute the same, and therefore the plaintiff is constrained to file the suit. In the cause of action of the plaint, the plaintiff specifically pleaded that in the month of February, 1991, when the plaintiff demanded that the defendant Nos. 1 and 2 execute a sale deed and also demanded that the defendant No. 3 vacate the premises at Kakinada, where the schedule property is situated, the defendant No. 3 did not vacate the same. The contention of the plaintiff is that the defendant No. 3 is none other than the own brother of the plaintiff, and the plaintiff borrowed Rs. 10,000/-

from the defendant No. 3, and on the request of the defendant No. 3, he permitted the defendant No. 3 to live in the said house, and the possession of the defendant No. 3 is only a permissive possession. The defendant Nos. 1 and 2 remained set ex parte before the trial Court and the First Appellate Court. It is not the case of the defendant Nos. 1 and 2 that the plaintiff has not obtained original of Ex. A-1 from their father prior to his death or the plaintiff did not demand them to execute a regular registered sale deed.

20. In a case of ***Vidhyadhar Vs. Manikrao and another***⁴, the Apex Court held as follows:

“Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct.”

21. In the case at hand, the plaintiff made an oral demand to the father of the defendant Nos. 1 and 2 during his lifetime, and after his death, the plaintiff demanded that the defendant Nos. 1 and 2 execute a regular registered sale deed. But, for the reasons best known to them, the defendant Nos. 1 and 2 remained set ex parte before the trial Court and the First Appellate Court. Though the First Appellate Court granted the main relief of specific performance of the agreement of sale against the defendant Nos. 1 and 2, they did not prefer any second appeal before this Court.

22. Learned counsel for the appellant would contend that the original agreement of sale was not filed by the plaintiff and that the decree of specific

⁴ AIR 1999 Supreme Court 1441(1)

performance of the agreement of sale cannot be granted. Here, a decree of specific performance of the agreement of sale is granted by the First Appellate Court against the defendant Nos. 1 and 2, no second appeal is filed by the defendant Nos. 1 and 2, and no decree of specific performance was granted by the First Appellate Court against the defendant No. 3. The defendant Nos. 1 and 2 remained set ex-parte before the trial Court and before the First Appellate Court. The agreement of sale is a registered agreement of sale, and Ex. A-1 is a registration extract of the agreement of sale obtained from the Sub-Registrar Office, Kakinada. As per the own case of the plaintiff, the original registered agreement of sale was lost in a cyclone in the year 1990, and he obtained a certified copy from the concerned Sub-Registrar Office, and got it exhibited as Ex. A-1. Even as per the case of the plaintiff, on the date of execution of the registered agreement of sale, the possession was delivered to the plaintiff by the vendor.

23. The plaintiff before the First Appellate Court got exhibited the intimation obtained from the Electricity Department under the Right to Information Act, with regard to the electricity service connection in the name of the plaintiff, and as per Ex. A-3, which is marked before the First Appellate Court, the said electricity connection was obtained by the plaintiff in the year 1979 itself. It shows that the plaintiff came into possession of the plaint schedule property by virtue of the registered agreement of sale dated 09.03.1979. Learned counsel for the appellant would contend that the father of the defendant Nos. 1 and 2 is not having full ownership rights and that he has a joint right in the

plaint schedule property, and that the father of the defendant Nos. 1 and 2 was not having any absolute rights in the plaint schedule property and placed a case law in ***Janardan Das and Others Vs. Durga Prasad Agarwalla and Others***⁵.

24. As seen from Ex. A-1, it was averred in Ex. A-1 that the schedule property is a property of "Poorvarjitham" and K. Suryanarayana was in the absolute possession and enjoyment of the same, and by receiving a total sale consideration of Rs. 5,000/- on 09.03.1979, he executed a registered agreement of sale in favour of the plaintiff, and the possession was also delivered to the plaintiff on 09.03.1979 under original Ex. A-1. In the said document itself, it was recited that the said K. Suryanarayana was having absolute rights and he is in the absolute enjoyment and possession over the same. It is not in dispute that the late Suryanarayana died leaving his children, i.e., defendant Nos. 1 and 2. It is not the case of the defendant Nos. 1 and 2 that their father did not execute any registered agreement of sale dated 09.03.1979. It is also not the case of the defendant Nos. 1 and 2 that their father alienated Ex. A-1 property to the plaintiff for illegal or immoral necessities. Even assuming that if the schedule property is a joint family property, being a manager of the joint family, the father of the defendant Nos. 1 and 2, Suryanarayana, alienated the same and received a total sale consideration of Rs. 5,000/- and delivered the possession to the plaintiff under the said registered agreement of sale, which is undisputed by the defendant

⁵ (2025) 2 CivCC 139

Nos. 1 and 2. After the demise of the father of the defendant Nos. 1 and 2, a suit is filed against the defendant Nos. 1 and 2 for seeking relief of specific performance of the agreement of sale. The defendant Nos. 1 and 2 are not denying their obligation to execute a registered sale deed. The defendant No. 3, who is none other than the brother of the plaintiff, is in no way connected with the registered agreement of sale.

25. The specific case of the plaintiff is that he borrowed Rs. 10,000/- from the defendant No. 3 and the same is undisputed by the defendant No. 3. The case of the plaintiff is that he borrowed Rs. 10,000/- from the defendant No. 3, and at the request of the defendant No. 3, the plaintiff permitted him to live in the schedule property, and later the plaintiff paid the amount through P.W. 3 to the defendant No. 3, and the defendant No. 3 promised to vacate the same, but he did not vacate the schedule property. The defendant No. 3 is the own brother of the plaintiff, and his possession is a permissive possession. The said Satyavathi is examined as P.W. 3. The defendant No. 3 specifically pleaded that after borrowing the amount of Rs. 10,000/- by the plaintiff, he demanded the plaintiff to repay the same, but the plaintiff filed the suit with false and untenable allegations.

26. Learned counsel for the appellant placed a case law of Apex Court in ***Vinay Eknath Lad Vs. Chiu Mao Chen***. In the case at hand, the claim of the appellant as per the written statement is that he is a tenant under the tenancy

of Koppisetty Suryanarayana, who is none other than the father of the defendant Nos. 1 and 2. It is the specific case of the plaintiff that he obtained a registered possessory agreement of sale from the said Koppisetty Suryanarayana in the year 1979 itself, and subsequently, the said Koppisetty Suryanarayana died leaving the defendant Nos. 1 and 2 as sole legal representatives. The plaintiff contended that during the lifetime of Koppisetty Suryanarayana, he demanded to execute a regular registered sale deed, and after the death of Suryanarayana, he demanded that the defendant Nos. 1 and 2 execute a regular registered sale deed, but they did not come forward, and the same is undisputed by the defendant Nos. 1 and 2. The defendant Nos. 1 and 2 remained set ex parte. Execution of the registered possessory agreement of sale by Koppisetty Suryanarayana is undisputed by the defendant Nos. 1 and 2.

It is well settled that *“every tenant is estopped from questioning the title of the landlord. A tenant is liable to pay the rents to the landlord and not to the paramount owner until he obtains the order of eviction from the Court.”*

27. Learned counsel for the appellant placed a case law in **Sat Paul Vs. Delhi Administration**⁶, wherein the Apex Court held as follows:

“33. The rigidity of the rule prohibiting a party to discredit or contradict its own witness was to an extent relaxed by evolving the terms “hostile witness” and “unfavourable witness” and by attempting to draw a distinction between the two categories. A “hostile witness” is described as one who is not desirous of telling the truth at the instance of the party calling

⁶ 1976 SCC 1 727

him, and an 'unfavourable witness' is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves an opposite fact (see Cross on Evidence, p. 220, 4th Edn., citing Stephen's Digest of the Law of Evidence).

34. *In the case of an 'unfavourable witness', the party calling him was allowed to contradict him by producing evidence aliunde but the prohibition against cross-examination by means of leading questions or by contradicting him with his previous inconsistent statements or by asking questions with regard to his discreditable past conduct or previous conviction, continued. But in the case of a 'hostile' witness, the Judge could permit his examination-in-chief to be conducted in the manner of cross-examination to the extent to which he considered necessary in the interests of justice. With the leave of the court, leading questions could be put to a hostile witness to test his memory and perception or his knowledge of the facts to which he was deposing. Even so, the party calling him, could not question him about his bad antecedents or previous convictions, nor could he produce evidence to show that the veracity of the witness was doubtful. But the position as to whether a previous inconsistent statement could be proved against a hostile witness, remained as murky as ever."*

In the case at hand, execution of a registered agreement of sale is undisputed by the defendant Nos.1 and 2. Though a decree of specific performance is granted against the defendant Nos.1 and 2 by the First Appellate Court, no appeal is filed by the defendant Nos.1 and 2.

28. In case of **Zarina Siddiqui Vs. A.Ramalingam alias R.Amarnathan**⁷, the Apex Court held as follows:

“35.Further, if a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of the process of law.”

⁷ 2014 (4) CCC 199 (SC)

In the case at hand, the execution of the registered agreement of sale by Koppisetty Suryanarayana is not at all disputed by the executant of the document, and after the death of the executant, his sole legal representatives, viz., defendant Nos. 1 and 2, also did not dispute the execution of the registered agreement of sale by Suryanarayana. Passing of the total sale consideration under the registered possessory agreement of sale is undisputed by the executant of that document. During his lifetime or subsequent to the death of the executant of the possessory agreement of sale, the family members of the executant/defendant Nos. 1 and 2 also did not dispute the same. The defendant No. 3 herein is a third party, who is unconnected with the registered possessory agreement of sale. It is also settled law that "passing of consideration under a registered possessory agreement of sale cannot be questioned by a third party."

29. The defendant No. 3, who is unconnected with the agreement of sale, contended in the written statement itself that the defendant No. 3 has been residing in a portion of the plaint schedule property since 1978, as a tenant under the tenancy of Koppisetty Suryanarayana. The defendant No. 3 further pleaded that no agreement of sale is executed by the said Koppisetty Suryanarayana in favour of the plaintiff at any point of time and that it is a rank forgery. But, in the evidence affidavit as D.W. 1, the defendant No. 3 pleaded that the original owner of the property is Panchikarla Suryanarayana, but not Koppisetty Suryanarayana. Therefore, it is evident that the appellant, who is a party to the lis, does not disclose the true facts and misled the Court.

30. The material on record reveals that a decree of specific performance is granted against the defendant Nos. 1 and 2 by the First Appellate Court, and the First Appellate Court also directed the defendant Nos. 1 and 2 to execute a regular registered sale deed in favour of the plaintiff. No appeal is filed by the defendant Nos. 1 and 2 against the said decree and judgment. As per the case of the appellant/defendant No. 3, he is a tenant under the tenancy of the executant of Ex. A-1 agreement of sale, but the alleged tenancy is not proved by the appellant. As per the case of the plaintiff, the appellant/defendant No. 3 is none other than the own brother of the plaintiff, and the same is undisputed by the appellant. The case of the plaintiff is that he borrowed Rs. 10,000/- from the defendant No. 3, who is none other than his own brother, and at the request of defendant No. 3, he permitted the defendant No. 3 to live in the schedule property for some period, and subsequently, the plaintiff repaid the said amount through P.W. 3 to the defendant No. 3, but the defendant No. 3 failed to vacate the same, and the possession of the defendant No. 3 is a permissive possession. Since the plaintiff is entitled to the relief of specific performance of the agreement of sale from the defendant Nos. 1 and 2, and since the possession of the defendant No. 3 is a permissive possession, the defendant No. 3 is liable to be evicted. As stated supra, the decree of specific performance of the agreement of sale is granted against the defendant Nos. 1 and 2 by the First Appellate Court, and the same is unchallenged by the defendant Nos. 1 and 2. After execution of the registered sale deed by the

defendant Nos. 1 and 2 in favour of the plaintiff, the defendant No. 3 is liable to be evicted from the plaint schedule premises.

31. In the case at hand, on appreciation of the entire evidence on record, the learned First Appellate Judge has rightly allowed the appeal filed by the plaintiff and set aside the findings recorded by the learned trial Judge. In the light of the material on record and upon earnest consideration now, it is manifest that the substantial questions of law raised in the course of hearing in the second appeal on behalf of the appellant did not arise or remain for consideration. This Court is satisfied that this second appeal did not involve any substantial question of law for determination.

32. In the result, the second appeal is dismissed, confirming the judgment and decree passed by the first appellate Court. Pending applications, if any, shall stand closed. Each party do bear their own costs in the second appeal.

JUSTICE V. GOPALA KRISHNA RAO

Date: 20.01.2026

SRT