



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA
FIRST APPEALS No. 428 of 2022 and 477 of 2022**

COMMON JUDGMENT

ASHISH AND ANOTHER

...Appellants

and

PRITESH AND OTHERS

...Respondents

FIRST APPEAL No.477 of 2022

**SMT. MANJU BALA ALIAS MANJULA
CHORDIA**

...Appellant

and

PRITESH AND ORTHERS

...Respondents

Appearance: In F.A. No.428/2022

*Shri A.K. Sethi, learned Senior Advocate assisted by Shri Harish Joshi,
learned counsel for the appellants.*

*Shri Vishal Baheti, learned Senior Advocate assisted by Shri R.K. Shastri,
learned counsel for respondent No.1.*

Shri Jitendra Bharat Mehta, learned counsel for respondents No.2 and 4.

*Shri Aproov Joshi, learned Government Advocate for respondent No.3 /
State.*



Appearance : - In F.A. No.477/2022

Shri Jitendra Bharat Mehta, learned counsel for the appellant.

Shri Vishal Baheti, learned Senior Advocate assisted by Shri Ramkrishna Shastri, learned counsel for respondent No.1.

Shri Aproov Joshi, learned Government Advocate for respondent No.3 / State.

Shri A.K. Sethi, learned Senior Advocate assisted by Shri Harish Joshi, learned counsel for respondents No.4 and 5.

Reserved on 27.03.2025

Pronounced on 03.04.2025

Originally the plaintiff (Pritesh Chordia) filed Civil Suit No.267-A/2010 against Manju Bala and 5 Ors., the said suit was decreed on 08.02.2022 for specific performance and declaration.

Challenging the judgment and decree dated 08.02.2022, the present appeals filed by the appellant / defendant (Smt. Manju Bala) in First Appeal No.477/2022 and subsequent purchasers / defendants No.5 and 6 (Ashish and Anil Kumar) filed another First Appeal No.428/2022.

COMMON JUDGMENT

First Appeals No.428/2022 and 477/2022

01. Invoking jurisdiction of this Court under Section 96 of CPC, the appellants / defendants No.5 (Ashish) and 6 (Anil Kumar) have filed First Appeal No.428/2022 and the appellant (Manju Bala) / defendant No.1 filed another First Appeal No.477/2022 calling in question the validity, legality, propriety and correctness of the judgment and decree dated 08.02.2022 passed by V District Judge, Ratlam (M.P.) in Civil Suit No.267-A/2010



decreeing the suit filed for specific performance and declaration declaring that the sale deeds dated 20.09.2010, 18.12.2013 and 13.12.2016 are *void* in respect of disputed agricultural land situated in Village Viriyakhedi, Ratlam in survey No.162/4 area 0.640 hectares.

02. Since these appeals are arising out of the judgment in Civil Suit No.267-A/2010 dated 08.02.2022, they have been heard together and are being decided by this common judgment with the consent of all the counsels.

03. For sake of convenience, the parties are hereinafter referred to as they are arrayed before the learned trial Court in Civil Suit No.267-A/2010.

04. The necessary facts and legal contentions urged on behalf of the parties are stated herein with a view to find out as to whether the impugned judgment and decree in decreeing the suit for specific performance and for declaration declaraing the registered sale deeds dated 20.09.2010, 18.12.2013 and 13.12.2016 are *void* in respect of disputed agricultural land requires to be examined by following these appeals.

05. In this judgment for the sake of brevity, I would like to refer to the ranking of the parties as assigned in the plaint presented before the Court. Since there is congruence in mentioning exhibits in judgment of the learned trial Court, I will refer to the documents as per annexures presented along with these appeals.

06. The facts leading to the present appeals in a nutshell are as under :

The plaintiff (Pritesh) has filed a suit against the defendants No.1 to 6 seeking for specific performance and declaration declaring that the registered sale deeds dated 20.09.2010, 18.12.2013 and 13.12.2016 are illegal and *void* and for permanent injunction for the disputed agricultural land bearing survey No.162/4 situated in Village Viriyakhedi, Ratlam admeasuring 0.640 hectares. Further averred that defendant No.1 (Manju



Bala) is the owner of the disputed agricultural land / schedule property, which is free from encumbrances proposed to sell the entire disputed land to the plaintiff for Rs.14,50,000/-. Considering the negotiations, the defendant No.1 (Manju Bala) had executed an agreement of sale dated 17.04.2009 in favour of the plaintiff by receiving an advance sale consideration of Rs.3,00,000/- by way of Cheque No.1350219 of Mandsaur Regional Rural Bank, the said cheque was encashed by defendant No.1. Further averred that plaintiff would pay remaining amount of sale consideration to the defendant No.1 on or before 17.07.2010 (15 months) and condition was imposed that if the plaintiff fails to pay the balance sale consideration within 15 months, the agreement of sale executed by defendant No.1 will be cancelled and the advance amount paid by the plaintiff will be forfeited. Accordingly, plaintiff secured the balance sale consideration of Rs.11,50,000/- called upon the defendant to execute a sale deed in favour of plaintiff as he was ready with a balance sale consideration, approached the Sub-Registrar Office on 17.07.2010 and purchased the stamp and obtained receipt from the Office of Sub-Registrar. Despite that, the defendant for the reasons best known to her, she could not attend the Sub-Registrar Office for execution of the sale deed by receiving balance sale consideration, hence, for breach of agreement, the plaintiff made inquiries on 15.11.2010 and he came to know that the defendant No.1 has sold the subject land to defendant No.2 and executed a sale deed of the disputed land on 20.09.2010 for sale consideration of Rs.15,00,000/-. The sale deed executed by defendant No.1 in favour of defendant No.2 is null and void and defendant No.2 is not entitled to get any title. The agreement of sale executed by defendant No.1 in favour of plaintiff has over riding effect of defendant No.2, amendments were sought to amend the plaint, further averred that defendant No.2 (Smt. Naina) sold the disputed property



to defendants No.4 and 5 (Hiralal and Ashish) on 18.12.2013 in spite of agreement of sale dated 17.04.2009 is existing, thereafter, defendants No.4 and 5 (Hiralal and Ashish) sold the disputed property to defendant No.6 (Anil Purohit) under sale deed dated 13.12.2016, all the sale deeds are hit by Section 52 of the Transfer of Property Act, 1882, all the sale deeds dated 20.09.2010, 18.12.2013 and 13.12.2016 are declared to be null and *void* and revokable under Section 52 of the Transfer of Property Act, 1882, the present suit filed by the plaintiff basing on the cause of action on 17.07.2010, defendant No.1 did not appear for registration in the office of Sub-Registrar despite of the plaintiff is present to perform the contract when she could not appear he has no option except file the suit for specific performance and declaration declaring the sale deeds dated 20.09.2010, 18.02.2013 and 13.12.2016 declared to be null and void and seeks for permanent injunction.

07. As seen from the written statement of defendant No.1, there is a clear and categorical denial of her signature as well as the execution of agreement of sale dated 17.04.2009, further averred that defendant No.1 was the owner of the land admeasuring 0.640 hectares in survey No.162/4 Village Viriyakhedi, Tehsil and District Ratlam. On 20.09.2010 the said disputed land was sold to defendant No.2 (Naina) by defendant No.1 and possession was also given to defendant No.2, further averred that defendant No.1 was no longer the owner of the said land, defendant No.1 never executed any sale agreement in favour of the plaintiff and the said sale agreement is forged by plaintiff, his father Ramesh and one Farooq, further averred that the said agreement dated 17.04.2009 does not bear the signature of defendant No.1. The said sale agreement dated 17.04.2009 brought into existence by plaintiff with the connivance of his father and Farooq causing loss to defendant No.1, further averred that the Stamp



bearing No.240566 dated 17.04.2009, the District Treasury Officer has informed that the said stamp has been issued by District Treasury to Smt. Chandrakala Verma, Stamp Vendor dated 04.06.2010 for challan dated 02.06.2010, therefore, the question of said stamp has been sold on 17.04.2009 does not arise, the alleged signature made on the disputed agreement to sale has been examined by Expert H.S. Tuteja, Indore has given a report that on comparing the alleged signature on the disputed agreement and the sale deed dated 20.09.2009 executed by defendant No.1 in favour of defendant No.2, the signature of defendant No.1 is not on the disputed agreement, further averred that the said agreement is forged and fabricated, it is inadmissible in evidence, the said agreement has not been executed in the proper stamp, further averred that plaintiff has purchased the stamp on 04.06.2010, the plaintiff has deliberately written the sale price of Rs.14,50,000/-, further averred that plaintiff had paid Rs.3,00,000/- by way of cheque bearing No.1350219 dated 18.04.2009 in connection with the other transactions, further averred that there was a doubt in the mind of defendant that the plaintiff should pay Rs.3,00,000/- with malice intent to usurp the property of defendant No.1 and prepared sale agreement on the forged stamp showing that the amount was paid by him for advance sale consideration, further averred that the plaintiff was never ready to pay balance sale consideration and he did never give any information requesting her to come to Sub-Registrar Office to fulfil his contract, therefore, the plaintiff is not entitled to any relief much less of any specific performance, declaration and permanent injunction and prayed for dismissal of the suit with an amount of Rs.10,000/-.

08. Written statement filed by defendant No.2 (Naina) containing *inter alia* that the defendant No.1 has sold the land in survey No.162/4 ademasuing 0.640 hectares through a registered sale deed dated 20.09.2010



by receiving sale consideration and handed over the possession of the said land from the date of sale and she is the bona fide purchaser of the disputed land, defendant No.1 has no ownership rights or possession in the suit land, further averred that her name has been mutated in the revenue records, further averred that the plaintiff filed a suit on the false allegation that on the basis of alleged agreement of sale dated 17.04.2009, the sale contract is not stamped under the provisions of Indian Stamp Act, 1899, the plaintiff has no cause of action to file this suit and prays for dismissal of the suit.

09. Written statement filed by defendants No.4 to 6 containing *inter alia* denied all averments made in the plaint, the alleged sale agreement dated 17.04.2009 neither stamped with the sufficient stamp under the Indian Stamp Act, 1899 nor registered under Section 17 of the Indian Registration Act, the alleged agreement of sale is not valid and the said agreement of sale is not enforceable under the provisions of Section 23 of the Indian Contract Act, 1872, further averred that the suit is barred by law, further averred that the plaintiff and defendant No.1 prepared arbitrary documents and creating unnecessary disputes, further averred that defendant No.4 to 6 are the *bona fide* purchasers of the disputed land, plaintiff is not entitled to get any relief against them and suit of the plaintiff is liable to be dismissed.

10. On the basis on the pleadings and documents on record, the learned trial Court framed the followings issues :-

- “(i). Whether, defendant No.1 has acquired the disputed land in survey No.162/4 area 0.640 hectares in Village Viriyakhedi, Tehsil and District Ratlam and sale agreement executed in favour of plaintiff dated 17.04.2009 for Rs.14,50,000 was true ?
- (ii). Whether, defendant No.1 received the advance amount of Rs.3,00,000/- through a cheque in the aforesaid agreement ?
- (iii). Whether, the sale agreement made by the defendant No.1 was not complied by the plaintiff for ready and willing to perform the contract ?
- (iv). Whether, the plaintiff is entitled to enforce the said sale agreement from defendant No.1?



In option / alternative

If the defendant No.1 does not comply with the sale agreement in that case is the plaintiff entitled to get the sale deed through Court?

(v). Whether, the sale deed dated 20.09.2010 executed by defendant No.1 to defendant 2 is illegal and *void* in effect as against the sale agreement dated 17.04.2009 made by the plaintiff ?

(vi). Whether, defendant No. 2 has no title or right in the disputed land by virtue of sale deed dated 20.09.2010 to defendant No.2 ?

(vii). Relief and costs.

(viii). Whether, the registration of the disputed land done by the defendants in their favour while the suit was pending is *void* under Section 52 of the Transfer of Property Act, 1882 ? ”

11. During the course of trial, PW-1 and PW-2 were examined and Exs.P-1 to 12 were got marked on behalf of the plaintiff. DW-1 to DW-3 were examined and Exs.D-1 to 8 were got marked on behalf of defendants.

12. According to the learned trial Court, issues No.1 and 2, proved, issues No.3 to 5 and 8, yes / proved. Issue No.6, as defendant No.2 has not acquired title over the suit land, issue No.7, as per Para 62 of the judgment, **resultantly**, suit is decreed for specific performance and declaration declaring that the sale deeds executed by defendant No.1 in favour of defendant No.2 dated 20.09.2009 subsequent sale deeds dated 18.12.2013 and 13.12.2016 (Exs.P-3 to P-5) are *void* and ineffective regarding the disputed agricultural land in Village Viriyakhedi, Tehsil and District Ratlam in Survey No.162/4 admeasuring 0.640 hectares. Consequently, the suit filed by the plaintiff in respect of disputed agricultural land in survey No.162/4 area 0.640 hectare situated in Village Viriyakhedi, Tehsil and District Ratlam is accepted, further direction that the registered sale deed dated 20.09.2010 executed by defendant No.1 in favour of defendant No.2 on Ex.P-3 and the registered sale deed dated 18.12.2013 executed by defenant No.2 in favour of defendants No.4 and 5 during the pendency of the suit the Ex.P-4 and registered sale deed dated 13.12.2016 executed by



defendant No.5 in favour of defendant No.6 (Ex.P-5) of the disputed land or declared void and ineffective, further directed the plaintiff to pay the balance sale consideration of Rs.11,50,000/- within two months from the date of decree and directed the defendant No.1 to execute a sale deed of the disputed agricultural land situated in Village Viriyakhedi, Ratlam in survey No.162/4 area 0.640 hectares, which is mentioned in the agreement of sale (Ex.P-6) in favour of the plaintiff and deliver possession of the disputed land, in case defendant No.1 failed to execute a sale deed within two months after receiving the balance sale consideration in compliance to the decree, the plaintiff can initiate proceedings for enforcement of decree through Court, get the sale deed of the disputed land as per law.

13. Feeling aggrieved by and dis-satisfied with the judgment and decree dated 08.02.2022 of learned trial Court in Civil Suit No.267-A/2010, first appeal No.428/2022 has been filed by defendants No.5 and 6 (Ashish and Anil) in the suit / appellants herein and another first appeal No.477/2022 has been filed by defendant No.1 (Manju Bala) in the suit / appellant herein respectively.

14. Shri A.K. Sethi, learned Senior Advocate assisted by Shri Harish Joshi, learned counsel for the appellants in F.A. No.428/2022 submitted that the appellants are the subsequent purchasers of the disputed land from defendant No.2, they are the bona fide purchasers of the disputed land by paying valid sale consideration and the names were mutated in the revenue records, further submitted that judgment and decree of the learned trial Court is not in accordance with law and prays to allow the appeal and set aside the judgment and decree of the learned trial court.

15. Shri J.B Mehta, learned counsel for the appellant herein and defendant No.1 (Manju Bala) in the suit in F.A. No.477/2022 submitted that he is also appeared on behalf of respondents No.2 and 4 in First Appeal



No.428/2022 / defendants No.1 and 2 in the suit submitted that the plaintiff has not proved his readiness and willingness to perform the part of contract for seeking relief of specific performance, further submitted that the learned trial Court erred in decreeing the suit of the plaintiff granted specific performance and directed him to deposit balance sale consideration, the learned trial Court has not properly appreciated the evidence and decreed the suit, further submitted that the Ex.P-6 disputed agreement of sale dated 17.04.2009 and suit is filed in November, 2010 and defendant No.1 sold the disputed property to defendant No.2 on 20.09.2010 much prior to filing of the suit, the stamp of agreement of sale document No.240566 issued on 04.06.2010 and the agreement is ante-dated, therefore, the very agreement of sale is fabricated and forged, further submitted that the plaintiff never expressed readiness and willingness to perform the part of contract and he contended that it is a fit and proper case, where specific performance ought not to be ordered, it is urged that the specific performance of an agreement need not necessarily be ordered merely because it is not lawful to do so and the matter lies in the judicious exercise of discretion of the Court, such discretion should not be used arbitrary, therefore, he prays to allow the appeal and set aside the judgment and decree of the learned trial Court.

16. Shri Vishal Baheti, learned Senior Advocate assisted by Shri Ramkishan Shastri advanced common arguments in both the appeals as the plaintiff (Pritesh) in the suit / respondent No.1 in both the appeals, submitted that respondent / plaintiff entered into a sale agreement with the defendant No.1 (Manju Bala) on 17.04.2009 and paid advance sale consideration of Rs.3,00,000/- by way of cheque to purchase of disputed land for an extent of land 0.640 hectares in survey No.162/4 situated in village Viriyakhedi for total sale consideration of Rs.14,50,000/-, further submitted that on the date of the agreement of sale dated 17.04.2009, the



plaintiff paid Rs.3,00,000/- as advance sale consideration through a cheque No.1350219 and the said cheque was honoured and encashed by defendant No.1, further submitted that in the agreement there was a condition the plaintiff has to pay the balance sale consideration on or before 17.07.2010 and obtained the registered sale deed, accordingly, the plaintiff sent oral communication directed her to attend the Sub-Registrar Office on 17.07.2010 to execute a sale deed by receiving balance sale consideration of Rs.11,50,000/- on 17.07.2010, plaintiff purchased the stamp and obtained receipt from the Sub-Registrar expressing readiness and willingness to perform his part of contract to pay the balance sale consideration and to obtain sale deed from defendant No.1, further submitted that unfortunately the defendant No.1 did not attend to the Sub-Registrar Office to receive the balance sale consideration and to execute the sale deed. Further submitted that in Paras 13 and 17 in the judgment of learned trial Court has categorically gave finding that the agreement of sale is valid and duly stamped and the plaintiff has proved his readiness and willingness to perform the part of contract under Section 16(c) of Specific Act, further submitted that defendant No.1 took a plea in the written statement that the signature on the agreement is not that of herself and forged, she has not taken any steps to send the disputed documents to the hand writing expert with admitted signatures, hence, the plea of forgery is unsustainable, further submitted that the evidence on record establishes that the defendant No.1 executed (Ex.P-6) agreement of sale with the plaintiff and agreeing to the terms and conditions. Further submitted that the trial Court on proper appreciation of evidence on record has come to a correct conclusion regarding the execution of sale agreement by the defendant No.1, the ordinary rule is that the specific performance should be granted, accordingly, the learned trial Court decreed the suit that the judgment and



decree of the learned trial Court found no illegality or arbitrariness and needs no interference by this Court and he prays to dismiss both the appeals.

17. After hearing elaborate arguments advanced on behalf of parties and on perusal of the record, I am of the view that the following points arise for consideration in these appeals :

“(i). Is the learned trial Court justified in granting the relief of specific performance of sale agreement dated 17.04.2009 and for declaration declaring the sale deeds dated 20.09.2009, 18.12.2013 and 13.12.2016 (Exs.P-3 to 5) are void ?

(ii). Is the judgment and decree passed by the learned trial Court needs any interference ?”

18. Coming to the appreciation of the evidence, it is no doubt from the experience and knowledge of human affairs depending upon facts and circumstances of each case and regard must be had to the credibility of the witness, probative value of the documents, relationship of the parties actions and inactions, lapse of time if any in proof of the events and occurrences, from consistency to the material on record to drawn wherever required the necessary inferences and conclusions from the broad probabilities and preponderances, from the overall view of entire case to judge as to any fact is proved or not proved or disproved and the conclusions arrived by the trial Court are sustainable or not. Since all the above points are interrelated to each other they are dealt together.

19. Undisputed facts as per the pleadings and evidence are that the defendant No.1 (Manju Bala) has not come forward to execute a sale deed on 17.07.2010 in spite of plaintiff being present before the Sub-Registrar Office and purchased the stamp paper and obtained receipt to get sale deed from the defendant No.1 by paying balance sale consideration, further undisputed fact that defendant No.1 sold the property to defendant No.2



under sale deed dated 20.09.2010 (Ex.P-3), further undisputed fact that defendant No.2 sold the disputed property to defendants No.4 and 5 under registered sale deed dated 18.12.2013 (Ex.P-4), further undisputed fact that defendants No.4 and 5 during the pendency of the suit, sold the property to defendant No.6 on 13.12.2016 (Ex.P-5). Admittedly, all the sale transactions done by defendants No.1, 2 and 4 to 6 have been made subsequent to the date 17.07.2010. Further undisputed fact that though the defendant No.1 has taken plea in the written statement that the signature of written statement is not that of herself and is forged, admittedly, burden lies on the defendant No.1 to discharge the same, she could not take any steps and the reasons assigned by learned trial Judge are on sound lines.

20. In view of the undisputed facts referred (supra), this Court should consider whether the plaintiff / respondent No.1 has proved and entitled for specific performance and for declaration sought for.

21. Before accepting the evidence and documents filed by respective parties, the appeals are one under Section 96 of the CPC, the scope of Section 96 of CPC is to be considered. While dealing with the scope of first appeals, three Judge Bench of Hon'ble Apex Court in case of **Santosh Hazari Vs. Purushottam Tiwari (Dead) By LRs**¹ held as follows:

“15.....the appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini Devi v. Bijendra Narain Choudhary* [AIR 1967 SC 1124]). We would, however, like to sound a note of caution.

1. (2001) 3 SCC 179



Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it.....”

22. In case of **H.K.N. Swami v. Irshad Basith²**, Hon'ble Apex Court ruled that:

“3.The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title. The order of the High Court is cryptic and the same is without assigning any reason.”

23. On the basis of these two judgments, the first appeals have to be decided on the basis of issues and evidence led by the parties before recording the findings of fact taken by the learned trial Court should be examined.

24. Now the plaintiff in the suit / respondent No.1 in both the appeals seeking for specific performance under agreement of sale dated 17.04.2009 and declaration, the learned trial Court dealt the issues in detail and gave findings that Manju Bala had executed agreement of sale dated 17.04.2009 for the sale of disputed land, further observed that the advance sale consideration of Rs.3,00,000/- was paid by the plaintiff through a cheque dated 17.04.2009 to Manju Bala to purchase disputed property in survey No.162/4 admeasuring 0.640 hectares situated in village Viriyakhedi, Ratlam, further observed that in compliance with the agreement the plaintiff has been ready and willing to perform his part of contract to fulfil, further observed that defendant No.1 / appellant (Manju Bala) refused / not



attending to Sub-Registrar Office to comply with the conditions in agreements to receive the balance sale consideration and to execute a sale deed, further observed that all three sale deeds dated 20.09.2009, 18.12.2013 and 13.12.2016 (Exs.P-3 to 5) are declared to be null and void and granted relief of specific performance, as per the Para 62 of the judgment.

25. The appellant has taken a plea that no notice was issued by the plaintiff and he has not fulfilled readiness and willingness to perform his part of contract and plaintiff examined as (PW-1), the burden of proving the fact that the plaintiff is ready and willing to abide by the condition in agreement of sale, he stated that he approached the Sub-Registrar Office by sending oral communication to the defendant No.1 with a request to attend the Sub-Registrar Office on 17.07.2010 to receive the balance sale consideration and to execute a sale deed and accordingly, PW-1 approached the Sub-Registrar Office and purchased the stamp on 17.07.2010 and obtained receipt, which are marked as Exs. D-1 and D-2 through DW-1 (Manju Bala). A judgment of High Court of Andhra Pradesh in the case of **Baddam Pratap Reddy vs. Chennada Jalapathi Reddy**³. Para 17 reads as follows:

“17. 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.”

26. Learned trial Court to answer the above issue of readiness and willingness that PW-2 is attesting witness gave evidence corroborating the



evidence of plaintiff (PW-1), undoubtedly, the evidence of this witness has not been questioned by the defendant No.1 during the cross-examination, hence, there is no reason to disbelieve the evidence of this witness, learned trial Court holds that plaintiff proved his readiness and willingness to perform his part of contract, therefore, the plea of defendant No.1 that the plaintiff has not fulfilled his readiness and willingness to perform the contract is negated. On the other hand, PW-1 stated that he sent oral communication to the defendant No.1 with request to attend the Sub-Registrar Office to receive the balance sale consideration on 17.07.2010 and execute a sale deed and he purchased stamps and obtained receipt to prove his *bona fide* readiness and willingness to perform his part of contract, the defendant No.1 (Manju Bala) has not attend the Sub-Registrar Office, therefore, the learned trial Court holds that plaintiff proved his readiness and willingness and the judgment referred above is aptly applicable to the present facts of this case.

27. Another plea taken by defendant No.1 (Manju Bala) in the written statement as well as evidence that the signaure on the agreement of sale are not that of herself and forged, which has come into the existence with the connivance of plaintiff, his father and Farooq, when the defendant No.1 has taken such plea there can be no straightjacket formula for the appreciation of oral evidence of witnesses. The credibility of the witnesses is the paramount consideration for the Court. After passing three legal tests viz. relevancy, admissibility and competence of witnesses, while considering the credibility of evidence of DW-1, the Court has to consider the various parameters so as to appreciate the oral evidence on the point by testing the same on the touch stone of two important yardsticks viz. probabilities and surroundings circumstances among other parameters, the learned trial Court also found fault with the defendant No.1 / DW-1 in failing to establish that



agreement of sale (Ex.P-6) is a forgery. However, when the burden of proof rests with the defendant No.1 / DW-1 to prove agreement of sale (Ex.P-6) as forged, it cannot be shifted to the plaintiff, therefore, the reasons assigned by the trial Court are on sound lines. If the averments made in the written statement of defendant No.1 and her testimony as DW-1 were discussed by the learned trial Court in right perspective that the defendant has not taken any steps to examine the agreement of sale dated 17.04.2009 with admitted signatures of the DW-1 by handwriting expert except denial of (Ex.P-6), she could not take steps for genuineness of the (Ex.P-6), one of the attesor Farooq as examined as PW-2 had categorically stated that the agreement of sale executed by defendant No.1 in his presence and paid of advance sale consideration of Rs.3,00,000/- by the plaintiff through a cheque and defendant No.1 signed on the agreement of sale, nothing was elucidated during the cross-examination of PW-2 and further defendant No.1 taken plea in the written statement that the disputed land examined by private hand writing expert with admitted signatures and stated that the signatures on the agreement of sale is not matched, the private expert opinion dated 11.11.2021 is available on record that the defendant No.1 has not taken any steps to mark the said opinion, perused the private expert opinion dated 11.11.2021 opined that Q1 and Q2 questioned signature of Manju Bala executed a photocopy of agreement of sale dated 17.04.2009 and admitted signature of Manju Bala on the photocopy of sale deed dated 20.09.2010 marked as A2 to A9 has signed by same person, therefore, in the light of the above opinion, the defendant No.1 has not shown any interest to mark the said opinion, on the ground that the said opinion is negated to the defendant No.1 as such the plea of defendant No.1 that (Ex.P-6) not executed by herself and forged is negated.



28. The another plea taken by defendant No.1 in her written statement and in evidence stated that (Ex.P-6) stamp of Rs.100/- *vide* document No.240566 issued on 04.06.2010, which was alleged to be executed (Ex.P-6) on 17.04.2009, which is ante-dated, therefore, the stamp paper which was brought into the existence by plaintiff, on perusal of (Ex.P-6) showing the stamp purchased on 17.04.2009, therefore, the plea taken by the defendant has no relevance and much weight cannot be given.

29. Learned counsel for the appellant in appeal No.477/2022 and respondent in F.A. No.428/2022 placed reliance on many of the decisions of the Hon'ble Supreme in the case of **Loonkaran Sethia v. Ivan E. John** reported in **AIR 1977 SC 359**, **Mohammadia Cooperative Building Society Limited v. Lakshmi Srinivasa Cooperative Building Society Limited and Ors.** reported in **(2008) 7 SCC 310**, **Sirumal v. Smt. Annapurna Devi** reported in **2000 (II) MPJR 474**, **Kamalrani v. Kumari Pinki** reported in **2001 (2) MPLJ 677**, **Ram Niwas v. Bano** reported in **(2000) 6 SCC 685**, **Smt. Katta Sujtha Reddy v. Siddamsetty Infra Projects Pvt. Ltd. and other** **AIR 2022 SC 5435** and **Gaddipati Divija and another vs. Pathuri Samrajyam & Ors** reported in **2023 SAR (Civ) 763**. The aforesaid citations are not much use of the appellant. The facts of these cases are different.

30. In view of the foregoing discussions, the defendant No.1 (Manju Bala) having knowledge execution of agreement of sale in favour of the plaintiff (Pritesh) with an intention to avoid to execute a sale deed by receiving balance sale consideration from the plaintiff she could not attend the Sub-Registrar Office on 17.07.2010, she sold the disputed land to the higher price to defendant No.2 for consideration of Rs.15,00,000/- with ulterior motive. At this juncture, a decision reported in the case of **K. Prakash v. B.R. Sampath Kumar**⁴, the Hon'ble Apex Court observed that:

4 (2015) 1 SCC 597



“18. Subsequent rise in price will not be treated as a hardship entailing refusal of the decree for specific performance. The rise in price is a normal change of circumstances; therefore, on that ground, a decree for a specific performance cannot be reversed.

19. However, the Court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the case, this Court, while granting a decree for specific performance, can impose such conditions which may to some extent compensate the defendant owner of the property. This aspect of the matter is considered by a three-Judge Bench of this Court in *Nirmala Anand v. Advent Corpn. (P) Ltd.*, (2002) 8 SCC 146. ...”

31. Another decision reported in the case of **Nirmala Anand V. Advent Corporation (P) Ltd. And others**⁵, the Hon’ble Apex Court held that:

“.....As a general rule, it cannot be held that ordinarily, the plaintiff cannot be allowed to have, for her alone, the entire benefit of a phenomenal increase in the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances in which parties may not have any control. The totality of the circumstances is required to be seen.”

32. In the light of the above judgments, the defendant No.1 changed her mind instead of executing a sale deed in favour of PW-1 by receiving balance sale consideration, she executed a sale deed in favour of defendant No.2 on 20.09.2010 and in turn defendant No.2 sold the disputed property to defendants No.4 and 5 executed a sale deed on 18.12.2013 during pendency of the suit and defendant No.5 executed a sale deed in favour of defendant No.6 on 13.12.2016 (Exs.P-3 to P-5) for the disputed land, the learned trial Court rightly upheld that the said sale deeds are declared to be void.

33. After going through the entire evidence on record, this Court upholds the trial Court’s findings that the defendant No.1 executed (Ex.P-6) agreement of sale dated 17.04.2009 and agreeing to the terms and

5 2002(6) A.L.D. 54 (S.C.)



conditions therein, the plaintiff is always ready and willing to perform his part of contract as stated (supra). There is no justifiable reasons to arrive at a different conclusions. The learned trial Judge used his discretion to grant relief of specific performance of the agreement, the said discretion was based on proper exercise of sound principles. The conduct of the defendant resisting to execute a sale deed is quite normal with oblique motive to sell the disputed land to the defendant No.2 with higher price and many transactions were made in between defendants No.2 to 6 pending suit it is hit by Section 52 of the Transfer of Property Act, 1882.

34. On a consideration of the above entire material, pleadings, evidence adduced and the impugned judgment, I am convinced in the light of the anlysis above that the learned trial Court has rightly exercised its discretion in granting relief of specific performance and declaration and rightly decreed the suit.

35. In case of **Ram Lal Vs. Jarnail Singh (Now Deceased) through its L.Rs. and Ors.**⁶ Para 37 reads as follows:

“37. The law in the aforesaid context is well settled. The doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point of time. The doctrine of merger applies irrespective of whether the appellate court has affirmed, modified or reversed the decree of the trial court.

.....

43. . The doctrine of merger operates as a principle upon a judgment being rendered by the appellate court. In the present case, once the appellate court affirmed the judgment and decree of the trial court, there was evidently a merger of the judgment of the trial court with the decision of the appellate court. Once the appellate court renders its judgment, it is the decree of the appellate court which becomes executable. “

36. In the light of the judgment if the plaintiff fails to pay the balance sale consideration before filing of these appeals the doctrine of merger applies once the appellate Court renders its judgment, it is the decree of the



appellate Court, which becomes executable and comply the direction herein under. Having reached the conclusion that the Judgment of the learned trial Court is the result of proper appreciation of evidence, I find no illegality or arbitrariness, the learned judge granted decree for specific performance and declaration, directing the plaintiff to pay the balance sale consideration within two months, learned trial Court ought to have granted interest on the balance sale consideration @ 12 per annum from 17.07.2010.

37. The findings of learned trial Court are accurate and there is no need for interference except for awarding interest on the balance sale consideration amount as stated (supra), accordingly, the points answered.

38. Under such circumstances, having regard to the above discussions and in view of the settled proposition of law discussed (supra), this Court does not find any grounds to interfere with the well articulated judgment and decree of the learned trial Court. Therefore, there is no merit in these appeals and the same are liable to be dismissed.

39. (i). **In the result**, both the Appeals i.e. FA No.428/2022 and 477/2022 are dismissed. The judgment and decree dated 08.02.2022 passed in Civil Suit No.267-A/2010 by the learned V District Judge, Ratlam, is confirmed to the relief of specific performance and declaration, and

(ii) Directed the plaintiff / respondent No.1 (Pritesh) to deposit the balance sale consideration of Rs.11,50,000/- (Eleven Lakhs and Fifty Thousand only) within two months from the date of this judgment, (if not already deposited or paid), and the plaintiff is further directed to deposit amount towards interest at the rate of 12% per annum on the balance sale consideration of Rs.11,50,000/- from 17.07.2010 till the deposit of such amount in the Court, and

(iii). On such deposit, defendant No.1 (Manju Bala) shall execute a sale deed in favour of the plaintiff within one month, failing which, the



Court shall execute a sale deed in favour of plaintiff in respect of the plaint schedule property (covered under agreement of sale) and delivered the possession, and

(iv). After execution of the sale deed, the defenant No.1 (Manju Bala) / appellant is entitled to withdraw the amount deposited in the Court, and

(v). In the facts and circumstances, the parties have to bear their own costs in the appeals.

40. Misc. application pending, if any, in these appeals stand closed.

**(DUPPALA VENKATA RAMANA)
JUDGE**

Anushree