

HIGH COURT OF ANDHRA PRADESH :: AMARAVATIMAIN CASE: **S.A.No.270 of 2022****PROCEEDING SHEET**

SL. No.	DATE	ORDER	OFFICE NOTE
2.	04.07.2022	<p><u>KSR,J</u></p> <p>Defendant No.1 in O.S.No.500 of 2010 on the file of the Court of I Additional Junior Civil Judge, Guntur, is the appellant herein. The 1st respondent/plaintiff filed the above suit against the appellant and defendant No.2 for recovery of Rs.1,00,000/-towards the advance amount under an Agreement of Sale, dated 13.04.2007 with subsequent interest @ 24% per annum and for costs.</p> <p>2. It is the case of the 1st respondent /plaintiff that the appellant/defendant No.1 approached him stating that the property in an extent of 404 square yards of site was ready for sale and stated that one Boyapati Madana Mohanrao and Boyapati Sambasiva Rao are the owners of the said property. On believing his words, 1st respondent/plaintiff visited the said house site along with the appellant and agreed to purchase the suit schedule property. He also verified in the office of the Sub-Registrar,Guntur and came to know that Boyapati Madana Mohanrao and Boyapati Sambasiva Rao are the owners of the said house site. When plaintiff expressed his willingness to purchase the said property, the appellant set up two persons as Boyapati Madana Mohanrao and Boyapati Sambasiva Rao and took the 1st respondent/plaintiff to their house, which is situated at Door No.5-89-27, Lakshmipuram, 3rd road, Abhyudaya Mahila College, Guntur and showed them as they are the owners of the said property. Then, the 2nd defendant wrote an Agreement of Sale on 13.04.2007 in favour of</p>	

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		<p>the plaintiff for total sale consideration of Rs.3,73,700/-.</p> <p>3. On the same day, an amount of Rs.1,00,116/- was paid towards advance to the 1st defendant. As the 1st defendant is not taking any interest to get registered a sale deed in favour of the plaintiff, he suspected the 1st defendant and on verification, he came to know that Boyapati Madana Mohanrao died about 10 years back and Boyapati Sambasiva Rao died about 2 or 3 years back. On coming know about the cheating committed by the 1st defendant, plaintiff requested him to refund the advance amount, but he did not choose to return. On that, he lodged a report before I-Town Police Station, Chirala on 01.09.2009 against the 1st defendant. As the police did not take any action against the defendants, he filed a private complaint before the Additional Munsif Magistrate, Chirala, for the offences punishable under Sections 181, 199, 406, 417, 419, 420 r/w 34 IPC, which culminated into C.C.No.222 of 2010 on the file of the Court of Additional Munsif Magistrate, Chirala, and the same ended in acquittal.</p> <p>4. After receipt of notice, the defendants 1 & 2 filed separate written statements. It is contended by the 1st defendant that he has nothing to do with the suit schedule property and he is not the owner of the suit schedule property. He only signed on the Agreement of Sale as a witness. After elaborate trial, the trial Court decreed the suit against the 1st defendant, vide, Judgment and Decree, dated 10.07.2013. Aggrieved by the same, the 1st defendant filed appeal suit in A.S.No.252 of 2015 on the file of the Court II Additional District Judge, Guntur. After hearing both sides, the appellate Court dismissed the appeal on 30.11.2021 by confirming the Judgment and</p>	

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		<p>Decree passed by the trial Court. Aggrieved by the same, the appellant/1st defendant filed the present second appeal.</p> <p>5. In view of the facts and circumstances of the case and the following substantial questions of law :</p> <ol style="list-style-type: none"> <i>1. Whether in the facts and circumstances of the case, the findings of the Courts below granting decree in favour of Plaintiff on the sole basis of the non-examination of the appellant / 1st Defendant is legally sustainable ?</i> <i>2. Whether in the facts and circumstances of the case, the approach of the Courts below placing the burden of proof wrongly on the appellant / 1st defendant to establish that he did not receive any amount from the plaintiff and that he did not introduce any persons as owners of the plaintiff, is legally sustainable as the same amounts to insisting the appellant / 1st defendant to adduce negative proof contrary to Sections 101 to 103 of Evidence Act ?</i> <i>3. Whether in the facts and circumstances of the case, an attesting witness can be presumed to have known or acquainted with the contents of the document and identity of the executants compared to the identifying witness ?</i> <p>Admit the Second Appeal.</p> <p style="text-align: right;">KSR,J</p> <p style="text-align: center;"><u>I.A.No.1 of 2022</u></p> <p>This application is filed under Section 151 of CPC seeking stay of execution of decree and Judgment in O.S.No.500 of 2010 on the file</p>	

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		<p>of the Court of the I Additional Junior Civil Judge, Guntur, pursuant to the judgment and decree, dated 30.11.2021 passed in A.S.No.252 of 2021 on the file of the Court of the II Additional District Judge, Guntur, pending disposal of the second appeal.</p> <p>2. Heard learned counsel for the petitioner/appellant.</p> <p>3. Having regard to the facts and circumstances of the case and for the reasons mentioned in the memorandum of grounds, there shall be interim stay of execution of Judgment and decree, dated 10.07.2013 in O.S.No.500 of 2010 on the file of the Court of the I Additional Junior Civil Judge, Guntur, subject to the condition that the petitioner has to deposit 50% of the decretal amount along with costs, within a period of six (06) weeks, from the date of receipt of a copy of the order.</p> <p style="text-align: right;">KSR,J RPD</p>	

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