
(2013) 11 AP CK 0156
In the Andhra Pradesh High Court
Case No : L.P.A. No. 82 of 1992

Abdul Jaleel (died) and Others

APPELLANT

Vs

Col. Denyl Winston Ferries and Others

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2014) 3 ALD 84 : (2014) 2 ALT 478

Hon'ble Judges : M.S.K. Jaiswal, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : Mirza Safiulla Baig, for the Appellant; Jagan Mohan Reddy for Respondant 1, for the Respondent

Final Decision : Partly Allowed

Judgement

L. Narasimha Reddy, J.—The legal representatives of the sole plaintiff in O.S. No. 520 of 1983 on the file of the Additional Subordinate Judge, Ranga Reddy District, are the appellants. For the sake of convenience, the parties are referred to, as arrayed in the suit.

2. The suit was filed for the relief of specific performance of an Agreement of Sale, dated 07.12.1979. The 1st defendant (for short "the defendant") in the suit i.e., the 1st respondent herein, agreed to sell an extent of Acs. 12.35 guntas of land in Survey Nos. 14 to 16 of Sikenderguda Village of Rajendranagar Taluk, R.R. District, for a sum of Rs. 39,000/-. On the date of the agreement, advance of Rs. 2,000/- was paid, and thereafter, a sum of Rs. 5,000/- is said to have been paid to the wife of the defendant. Alleging that the defendant is not executing a sale deed in spite of repeated demands, the plaintiff got issued a notice. Thereupon, the defendant got issued a reply, stating that after the agreement was entered into, the provisions of the Urban Land (Ceiling And Regulation) Act, 1976 (for short "the Act") were extended to Sikenderguda village, and that he submitted an application to the competent authority for permission, as required under the Act. The permission is said to have been denied and, accordingly, he expressed inability to execute the sale deed. Not

satisfied with that reply, the plaintiff filed the suit.

3. The defendant opposed the suit, by filing a written statement. He did not dispute the execution of the Agreement of Sale. However, he pleaded that on account of the extension of the provisions of the Act to Sikenderguda village, he is incapacitated from executing the sale deed. Other grounds were also pleaded.

4. The trial Court decreed the suit through judgment, dated 28.07.1988. Aggrieved by the judgment and decree passed by the trial Court, the defendant filed A.S. No. 817 of 1989 before this Court. A learned Single Judge of this Court allowed the appeal through judgment, dated 21.01.1992, and set aside the judgment and decree passed by the trial Court. Hence, this Letters Patent Appeal.

5. Sri Mirza Safiulla Baig, learned counsel for the plaintiff/appellants submits that though the provisions of the Act were extended to Sikenderguda village, there was no impediment for the defendant to execute the sale deed. He contends that had the plaintiff taken proper guidance at the relevant point of time, he could have obtained the permission. He submits that the trial Court decreed the suit, after taking into account, the evidence on record and the relevant provisions of law, but the same was reversed by the learned Single Judge, without any basis. He further submits that even if there was any justification for setting aside the decree passed by the trial Court, on the ground that the provisions of the Act were extended to the concerned village, the same does not exist now, in view of the fact that the Act has been repealed, during the pendency of the L.P.A.

6. Sri Jagan Mohan Reddy, learned counsel for the defendant, on the other hand, submits that left to himself, the defendant was ready to proceed with the transaction, but the extension of the provisions of the Act to the concerned village, made it impossible for him to execute the sale deed. He submits that the decree of the trial Court has the effect of flouting and violating the provisions of the Act, and the error committed by the trial Court was corrected by the learned Single Judge. He further submits that though the Act was repealed, the state of affairs obtaining as on the date of filing of the suit must be taken into account. He contends that even otherwise, the relief of specific performance cannot be granted, at this stage.

7. The suit was filed for the relief of specific performance of the Agreement of Sale (Ex. A. 1). The defendant did not dispute the execution thereof. However, he pleaded certain events that have taken place, subsequent to the agreement. Taking the pleadings before it into account, the trial Court framed the following issues and additional issue, for consideration:

1) ISSUES:

2) Whether the plaintiff is entitled for specific performance of suit contract, dated 07.12.1979?

3) Whether the cancellation of suit contract by the defendant is legal and valid?

4) Whether the permission of the competent authority of Urban Land (Ceiling and Regulation) Act, 1976 is necessary for transfer of agricultural land for agricultural purpose?

5) Whether the suit contract has become impossible of performance?

6) Whether the suit contract is violative of provisions of the Urban Land (Ceiling and Regulation) Act, 1976, if so void?

7) To what relief?

ADDITIONAL ISSUE:

Whether the plaintiff is entitled for recovery of possession of the suit land as prayed for?

8. Except that the plaintiff deposed as P.W. 1, he did not adduce the oral evidence of any other witness. He filed Exs. A. 1 to A. 22. Similarly, the defendant deposed as D.W. 1 and no other witness was examined. He filed Exs. B. 1 to B. 3.

9. The trial Court decreed the suit. In A.S. No. 817 of 1989 filed by the defendant, this Court framed the following points for consideration:

1) Whether Ex. A. 1 agreement is hit by the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (Act 33 of 1976)?

2) Whether the contract has become impossible of performance as it is void and is opposed to public policy?

and answered both the points in favour of the defendant. In the present appeal, the questions, that arise for consideration, are:

1) Whether the plaintiff is entitled for the relief of specific performance in the facts and circumstances of the case?

2) Whether any alternative relief can be granted to the plaintiff?

POINTS 1 & 2:

10. Once the execution of the Agreement of Sale (Ex. A. 1) was not disputed, the controversy revolves around the basis for non-execution of the sale deed. The only plea raised by the defendant was that he was disabled from executing the sale deed, on account of the extension of the provisions of the Act to the concerned village. It is a matter of record and even the plaintiff did not dispute the factum of the extension of the provisions of the Act.

11. Once the suit land is covered by the provisions of the Act, the right or freedom of the plaintiff to execute the sale deed gets substantially restricted. Prior permission from the Special Officer or competent authority becomes necessary. It is not as if the defendant remained silent, after the Act was extended to his village. He has submitted an application to the competent

authority, for permission and the latter, in turn, rejected the same.

12. The plea of the plaintiff was that a different procedure ought to have been followed. While considering this very aspect under issue No. 3, the trial Court took the view that the provisions of the Act do not apply to the land in question, and it has also taken into account the purport of various Government orders that were issued in this behalf. In our view, it was not at all competent for the trial Court to interpret the provision of the Act, that in the manner it did. Once a circumstance referable to a provision of law has intervened, it is for the parties to work out the remedies and the Court cannot substitute its opinion. The learned Single Judge has taken into account, the purport of various provisions, including the definition of "vacant land", and took the view that the defendant was certainly handicapped from executing the sale deed, without obtaining permission from the competent authority.

13. Even otherwise, the very framing of the suit was not proper. Once the plaintiff was informed that the competent authority has rejected the application of the defendant for permission to alienate the land, he ought to have claimed the relief in that behalf. Though the authorities under the Act were impleaded as the defendants 2 and 3, no relief in the form of declaration, injunction or direction to them was sought. A serious infirmity has crept into the suit itself. We are, therefore, not in agreement with the findings of the trial Court on the issues 3 and 5. The learned Single Judge has taken the correct view of the matter.

14. It is pleaded that during the pendency of the L.P.A., the Act has been repealed, and that the only plea raised by the defendant taking shelter under the Act, gets weakened. Though this argument may be attractive enough, the phenomenal changes over the past 3? decades in the field of real estate cannot be ignored. The lands in and around Hyderabad city have recorded geometrical progression, in terms of their prices. What used to be the price for an acre of land in 1980"s is almost the price for a square yard of that very land, at present. The Hon"ble Supreme Court has taken judicial notice of this, and held that such factors need to be taken into account, in the context of dealing with the suits for specific performance.

15. We are of the view that while the plaintiff cannot be said to be entitled for the relief of specific performance, as desired by him, equities demand that they be extended the benefit, proportionate to the amount of advance paid by him. A balancing act, contemplated under Sections 21 and 22 of the Specific Relief Act, can be performed. After taking into account the present cost of the land and the amount of advance paid by the plaintiff, we are of the view that the decree to an extent of 2000 square yards be there, so that each of the four legal representatives of the original plaintiff would get a plot of 500 square yards, instead of granting relief of compensation in terms of money.

16. The Letters Patent Appeal is, accordingly, allowed in part, granting a decree for an extent of 2000 square yards, from out of the land in Survey Nos. 14 to 16

duly ensuring that the plot has proper access, without any necessity of payment of further consideration. The defendant shall be entitled to withdraw the amount deposited into the Court, together with accrued interest, if any. Two months' time is stipulated for execution of the sale deeds in this behalf. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in the appeal shall stand disposed of.