

(1997) 09 AP CK 0022

In the Andhra Pradesh High Court

Case No : Second Appeal No. 458 of 1990

Agguna Suramma and Another

APPELLANT

Vs

Pariga Komalo and Another

RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

Specific Relief Act, 1963 — Section 16

Citation : (1997) 6 ALT 370

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : N.V. Ranganadhan, for the Appellant; B. Vijaya Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Krishna Saran Shrivastav, J.—This Second Appeal arises out of the judgment and decree passed by the Additional District Judge, Srikakulam, in A.S.No.79/1985, confirming the judgment and decree for specific performance and possession passed by the Subordinate Judge, Sompeta in O.S.No.86/83, dated 23-8-1985.

2. The facts giving rise to this appeal, in brief, are that, on 15-2-1977, the first defendant had entered into an agreement with the plaintiff to sell the suit land at the rate of Rs. 16/- per cent and had received an advance of Rs. 1,500/- on the same day. It was agreed between them that the sale deed would be executed within two months therefrom and in the meantime the land would be measured to ascertain the actual consideration to be paid by the plaintiff to the first defendant before the Sub-Registrar at the time of registration of the sale deed. The possession remained with the first defendant. The plaintiff laid a suit for specific performance of the contract and possession alleging that he approached the first defendant many times to get the land measured and to get the sale deed executed and registered after taking the balance amount of consideration, but he evaded the same on some pretext or the other. The first defendant entered into an agreement to sell the suit land to the second defendant

whereupon the plaintiff sent a registered notice on 2-1-1978 to the first and the second defendants. The first defendant evaded receipt of the notice, but notice was served on the second defendant but he did not comply or reply the same. The plaintiff arranged the balance amount of consideration and had requested the first defendant to take the balance amount of consideration and get the suit land measured and execute the sale deed, but as the first defendant had not done so, he was entitled to obtain a decree for specific performance of the contract as also a decree for possession of the suit land. During the pendency of the suit, the first defendant had sold the suit land to the third and the fourth defendants and had also delivered the possession of the suit land to them. The first defendant through his written statement denied the claim of the plaintiff alleging that time was the essence of the contract, but the plaintiff was not ready with money and he could not pay the balance amount of consideration to him in spite of demands and, therefore, as per the terms of the agreement, the earnest money of Rs. 1,500/- was forfeited and he had agreed to sell the suit land to the second defendant and later sold it to the third and the fourth defendants through a registered sale deed and had delivered the possession of the suit land to them. The other defendants have taken almost similar pleas as have been taken by the first defendant.

3. The trial Court, on assessment of the evidence on record, found that the plaintiff was ready and willing to perform his part of the contract, but the first defendant had committed breach of the contract and that the other defendants had knowledge about the agreement of sale and, therefore, they were bound by the agreement. Holding so, the trial Court decreed the suit as prayed for.

4. The first and the 2nd defendants did not prefer any appeal, but the third and the fourth defendants, being aggrieved by the judgment and decree passed by the trial Court, preferred the first appeal.

5. The first appellate Court, on assessment of the evidence on record, agreed with the trial Court and dismissed the first appeal.

6. Feeling aggrieved by the impugned judgment and decree, the third and the fourth defendants have preferred this appeal.

7. The second appeal has been admitted on the following substantial question of law.

"Whether having pleaded in the plaint that the plaintiff has issued a registered notice dated 2-1-1978 expressing his readiness and willingness to perform his part of the contract, the plaintiff should be non-suited for not further making a specific averment in the plaint that he was ready and willing to perform his part of the contract even on the date of filing of the suit?"

8. In the case of Panduranga Ganpat Tanawade v. Ganpat Bhairu Kcidam and Ors. 1996 ssc 51, the plaintiff has averred in the plaint that he had sent a notice to the defendant asking her to execute the sale deed, but she neither complied

nor replied the same. It was also pleaded in the plaint that as per the agreement he was willing to pay the fees required for the sale deed, cost of registration and the balance amount of Rs. 3,200/-, On these averments the Apex Court held that the pleadings contained a statement about the readiness and willingness on the part of the plaintiff to perform his part of the contract under the agreement of sale. 1 Pandurang Ganpat Tanawade Vs. Ganapat Bhairu Kadam and others, .

9. Again, in the case of Sukhbir Singh and others Vs. Brij Pal Singh and others, . it has been held by the Apex Court that, what requires to be considered is whether the essential facts constituting the ingredients in Section 16(l)(c) of the Specific Relief Act, 1963, were pleaded and that found mentioned in Forms 47 and 48 prescribed in Appendix AA of the CPC do in substance point to those facts. The procedure is the handmaid to the substantive rights of the parties.

10. On perusal of the record, I find that in Para 32 of the plaint, it has been specifically mentioned that the plaintiff had arranged the money within the prescribed time and had asked the first defendant to come to Mandasa after getting the land measured for ascertaining the balance amount of consideration to be paid before the Sub-Registrar, that he has personally visited with co-villagers the defendant for getting the sale deed executed and registered in his favour, that he has sent a registered notice on 2-1-1978 which was managed to be returned by the first defendant. Both the Courts below have found that the plaintiff had visited the first defendant with the balance amount of consideration and had requested him to execute and register the sale deed in his favour, but he has declined and thereafter he has sent registered notices to the first and the second defendants, that while the first defendant evaded service of notice, the second defendant was served with notice. From it, it can be safely inferred that the first defendant had knowledge about the notice because he had later sold the suit land to the wife of the second defendant and one another. It is also noteworthy that the first defendant did not enter into the witness box. Therefore, it is a fit case in which adverse inference could be drawn against him. The allegations made by him in the written statement remain unproved.

11. From what is discussed above, on the principles laid down in the cases of Panduranga Ganpat Tanawade (1 supra) and Sukhbir Singh and others Vs. Brij Pal Singh and others, , I hold that the suit is on essence and substance properly instituted in terms of Forms 47 and 48 of the First Schedule to the Code of Civil Procedure. Although the plaint has not been in strict conformity with these forms, there is substantial compliance with their requirements and there is also evidence on record that the plaintiff was ever ready and willing to perform his part of the contract and, therefore, no fault can be found either with the approach or in the eventful conclusions drawn by the Courts below in holding that the plaintiff was entitled to enforce the contract and the agreement is binding on the third and the fourth defendants because they have purchased the suit property during the pendency of the suit.

12. In result, the appeal fails and is hereby dismissed. The judgment and decree

passed by both the Courts below are hereby confirmed. The parties are left to bear their own costs of appeal.