
(2006) 07 AP CK 0029

In the Andhra Pradesh High Court

Case No : Second Appeal No. 286 of 2006

Alla Bhavanarayana

APPELLANT

Vs

Katragadda Vijaya Lakshmi and Others

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Limitation Act, 1963 — Article 54

Citation : (2006) 5 ALD 758

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P.R. Prasad, for the Appellant; P. Radhakrishna, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The sole defendant in O.S. No. 22 of 1993, on the file of the I Additional Junior Civil Judge, Machilipatnam, is the appellant. The respondent filed the suit for specific performance of an agreement of sale, dated 14.8.1983. The trial court decreed the suit, and the appeal preferred by the appellant herein, in the Court of I Additional District Judge, Krishna at Machilipatnam, was dismissed.

2. The respondent filed the suit for specific performance of agreement of sale, with the following averments. The appellant offered to sell a plot of 449 sq. yards in Ward No. 6, Javarupet of Machilipatnam Municipality, at the rate of Rs. 40/- per square yard. A sum of Rs. 3,900/- was paid as advance, on the date of agreement itself. The entire consideration was to be paid within one month from the date of agreement, and the appellant in turn was under obligation, to get the plot measured and to execute a sale deed. The appellant was not ready to get the land measured, but received a sum of Rs. 2,000/- on 10.10.1983, Rs. 3,000/- on 24.4.1984 and a similar sum on 6.6.1984. A further sum of Rs. 4,100/- was paid on 25.9.1987. All the payments were endorsed on the agreement of sale. The respondent got issued a notice, dated 29.6.1992, to the appellant, through her counsel, and that the latter refused to receive the same.

Expressing her readiness and willingness to perform her part of the contract, she prayed for the relief of specific performance of the agreement of sale, or in the alternative, for a decree for a sum of Rs. 16,000/-, with interest at 12% per annum, and for a sum of Rs. 5,000/- towards damages, with the same rate of interest.

3. The appellant filed written statement. He admitted the execution of agreement of sale, and receipt of various amounts up to 25.9.1987, as pleaded by the respondent. He denied the allegation of his refusal to receive the notice. A specific plea was raised that the suit was barred by limitation. Alleging that the time was essence of the contract, the appellant pleaded that the respondent has no enforceable right against him. He also pleaded that on account of the delay in payment of the balance of consideration by the respondent, he has suffered great hardship.

4. Through its judgment, dated 18.4.1996, the trial court decreed the suit for specific performance. The appeal preferred by the respondent was dismissed on 25.2.2003.

5. Sri P.R. Prasad, learned Counsel for the appellant, submits that the suit was clearly barred by limitation, and both the courts erred in holding otherwise. He submits that the very fact that small amounts were paid at intervals spread over years, discloses that the respondent was not ready with the balance of consideration. Learned Counsel points out that due to lapse of several years, from the date of agreement, the equitable relief of specific performance cannot be granted in favour of the respondent.

6. Sri P.Radakrishna, learned Counsel for the respondent, on the other hand, submits that the appellant went on dodging the execution of sale deed, ever since the lapse of one month, from the date of agreement, and that the actual refusal came to be inferred only with the non-receipt of notice, dated 29.6.1992. He submits that the suit was filed within few months, from the date of return of the notice. As regards the passage of time, ever since the date of agreement, learned Counsel submits that it is the respondent who had suffered prejudice, since that he parted with almost the entire consideration.

7. Both the learned Counsel relied upon several judgments in support of their contentions.

8. On the basis of the pleadings before it, the trial court framed the following issues:

- 1) Whether the contract of sale dated 14.8.1983 is true, valid and binding on the defendant?
- 2) Whether the contract of sale is barred by limitation?
- 3) Whether the plaintiff is entitled to the relief as prayed for?
- 4) To what relief

9. The respondent deposed as PW-1. Ex.A-1 is the agreement of sale, dated 14.8.1983. Exs.A-2 to A-5 are the endorsements made by the appellant, between 10.10.1983 and 25.9.1987, upon Ex.A-1, about receipt of various amounts. Ex.A-6 is the registered notice and Ex.A-7 is the returned cover. The appellant deposed as DW-1, and he did not file any documents. The principal relief claimed in the suit, i.e. decree for specific performance, was granted. The appellate court had virtually affirmed the issues framed by the trial court, and affirmed the judgment.

10. In the written statement, the appellant did not dispute the factum of execution of the agreement of sale and receipt of various amounts, summing up to Rs. 16,000/-, till 3.9.1987. Therefore, the Issue No. 1, as framed by the trial court, and Point No. 1, as framed by the lower appellate court, were framed, without any necessity.

11. The suit was resisted by the appellant, mainly on the ground of limitation and lack of bonafides, on the part of the respondent. Therefore, it needs to be seen as to; a) whether the suit is barred by limitation; and b) whether there exist any factors, to disentitle the respondent for the equitable relief of specific performance.

12. While dealing with the issue of limitation, the courts below have mixed up the same, with the principle of, time being the essence of the contract. It was concluded that the time was not essence of contract in the suit, and therefore, it cannot be said to be barred by limitation. For instance, the trial court held as under:

...Ex.A-2 to A-5 clearly show that there is no refusal on the part of the defendant to execute the sale deed in order to compute the limitation and it clearly shows that the time is not the essence of the contract. Therefore, I hold the contract of sale is not barred by imitation.

The approach of the lower appellate court was similar, though slightly on different lines. It must be clarified that the question as to whether the time was essence of the contract in a transaction, is totally different and distinct, from the question as to whether the suit filed for specific performance of the said contract, is barred by limitation. The former depends upon terms of contract, and acts and omissions of the parties, whereas, the latter is totally regulated by the operation of law of Limitation. Even where time is not essence of contract, the suit filed for its specific performance, may not become barred by limitation, if it is not filed within limitation, under Article 54 of the Schedule to Limitation Act. Conversely, a suit would not be barred by limitation, if it was filed within the prescribed period, notwithstanding the fact that time was found to be essence of contract. Thus, there does not exist any overlapping or interrelation, between these two. The question of limitation must be decided, independently, by verification of fact as to whether it was filed within three years from the date of refusal to perform the contract by the other party.

13. A plea was raised by the appellant to the effect that time was the essence of the contract. Obviously because he did not press it seriously, no issue was framed on it. The fact remains that the consideration was payable within one month from the date of Ex.A-1, and in default, the balance was to carry interest at 12% per annum, till the date of payment. Such a facility totally excludes the essence of time, in the contract. Even assuming that the stipulation of one month time for payment of balance consideration was so important as to invite the application of the said principle, the receipt of substantial portion of the consideration at various points of time, spread over four years, rendered it inapplicable.

14. Coming to the question of limitation proper, there is serious dispute among the parties, as to the starting point. The respondent pleaded that the payments up to 25.9.1987, were received by the appellant, without any demur, and having waited sufficiently, she got issued a notice on 29.6.1992, marked as Ex.A-6. It was returned with an endorsement. According to her, the date of return of the starting point, since it connoted the refusal by the appellant, to perform his part of contract. The suit was filed on 4.2.1993, i.e. less than one year, from the date of Ex.A-6. The appellant was not clear as to the starting point of limitation.

15. The appellant could have neutralized the plea of the respondent on this aspect, if only he pleaded that the refusal by him to perform his part of the contract, emerged on a day beyond three years from the date of presentation of the suit. From a perusal of the written statement, or the deposition of the appellant herein, it is not evident that he had ever refused to perform his part of the contract. The effort, on the other hand, was to throw the blame on the respondent. Undoubtedly, the starting point for computation of limitation, under Article 54, is the date of refusal by the defendant, to perform his part of contract. Therefore, unless it was specifically pleaded by the appellant herein that there was a refusal on his part, be it through a cancellation of the agreement of sale, or through a procedure known to law, it would be to identify the specific starting point; except the date of return of Ex.A-6. Therefore, there was no basis for the appellant to substantiate the plea of limitation. In *Dutta Seethamahalakshamma and Others Vs. Yamadala Balaramaiah and Another*, : a Division Bench of this Court held that in applying Article 54 of Schedule to the Limitation Act, the starting point of limitation would be the date of the notice issued by the plaintiff, requiring the defendant calling upon him to execute the sale deed. Similarly, in *Naidu Adikeshava Reddy Vs. Remella Venkata Rayanam and Another*, :another Division Bench took the same view. Though the authorities, on this aspect, can be multiplied, they are not referred to, since the principle of law and the facts for application thereof are clear.

16. Coming to the second question, learned Counsel for the appellant submits that even if the suit was not barred by limitation, the relief of specific performance cannot be extended to the respondent, on account of the factors, like failure to pay the consideration within the stipulated time, escalation of

prices, hardship to the appellant, delay in seeking the remedy, etc. Reliance was placed upon several judgments.

17. The Specific Relief Act itself indicates that the court can refuse the relief of specific performance, if it is of the view that such a course would result in hardship to the defendant, or would place the plaintiff in an unduly advantageous position. Escalation of prices ever since the date of contract was recognised in some cases, as one of the factors to be taken into account. However, this is subject to a rider that only a small fraction of the consideration must have been paid under the contract. Secondly, there must be a specific plea and evidence to establish the nature of escalation, the impact thereof on the parties, etc. In the instant case, the appellant did not raise any plea, much less, adduced any evidence, to the effect that there was escalation of price ever since the date of agreement, and that he would be subjected to hardship, if he is required to execute the sale deed. Further, as against the total consideration of Rs. 17,960/-, the appellant received Rs. 16,000/- without any demur. The left over part of the consideration is very negligible and the non-payment was not at all attributable to any refusal, or inaction, on the part of the respondent.

18. In *Thota Rambabu @ Ramu Vs. Cherukuri Venkateswara Rao @ Pedababu and Others*, : a Division Bench, to which I am a party, it was held that filing of the suit 10 years after the date of execution of the agreement of sale, and 31/2 years from the alleged last date of payment, is barred under Article 54, and that equitable relief of specific performance cannot be granted, particularly when there is denial of the execution of the contract itself. That was a case, where the execution of the very agreement, not to speak of the so-called receipt of the consideration at a subsequent date, was flatly denied, and the plaintiff was unable to prove them.

19. The parameters for examination of the question of limitation, or feasibility to grant the equitable relief in such cases, substantially differ, from the cases, where the execution of the sale deed and subsequent payments are admitted. In the former category of cases, the suit is required to be filed within three years from the date on which the contract is expected to be performed, particularly, when no other date is mentioned, since the very agreement is denied. The reason is that in such cases, the refusal to perform the contract, contemplated under Article 54, can be said to have taken birth, along with the alleged agreement itself. Therefore, the principle laid down in such cases, cannot be made applicable to the instant case, where the appellant had admitted the execution of Ex.A-1 and receipt of payments under Exs.A-2 to A-5, and did not state in the written statement that he has ever refused to perform his part of the contract.

20. The judgment of the Supreme Court in *Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs.*, : has no application to the facts of the case, because there was not even an allegation that the respondent has refused to pay the balance consideration, when demanded by the appellant. The other decisions

relied upon by the learned Counsel for the appellant are about the circumstances, under which equitable relief of specific performance can be denied. Such circumstances do not exist in the instant case.

21. The trial court had amply protected the interest of the appellant, and directed that the respondent shall pay the balance consideration, with interest at 12% from the dates stipulated under Ex.A-1. This Court does not find any basis to interfere with the concurrent findings recorded by the trial court and the lower appellate court. The Second Appeal is accordingly dismissed. There shall be no order as to costs.