
(2002) 03 AP CK 0019
In the Andhra Pradesh High Court
Case No : A No. 1195 of 1992

B.R. Koteswara Rao

APPELLANT

Vs

C. Rameswari Bai @ Devi and Another

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Transfer of Property Act, 1882 — Section 53A

Citation : (2002) 3 ALD 337 : (2002) 6 ALT 1 : (2002) 1 APLJ 496

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : N.V. Ranganadham, for the Appellant; A. Anantha Reddy and V. Raghu, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—In this appeal the 1st defendant in OS No.7 of 1983 and OS No.657 of 1983 on the file of the Additional Subordinate Judge, Ranga Reddy District challenges the decree and judgment therein. For the sake of convenience, the parties are referred to as arrayed in the suit OS No.7 of 1983. The 2nd respondent herein appears to be a pro-forma party.

2. The plaintiff filed the suit claiming that she is the absolute owner of the suit schedule property comprising of Ac. 10-36 gts in S.No.101 of Gundla Pochampally Village, Medchal taluk R.R. District having purchased the same through registered sale deed dated 26-10-1965 from Mrs. B. Padmavathi Bai. The said property was being looked after by her husband Sri G. V. Reddy, who expired on 8-8-1981. When she found that the 1st defendant was in occupation of the land, she contacted him through her relative Mr. Pratap Reddy asking him to vacate the same. The defendant insisted on payment of about Rs. 40,000/- towards expenditure incurred by him over the land. When the defendant did not vacate the land, she got issued a legal notice dated 7-12-1981 calling upon him to vacate the same. However, the defendant got issued a reply dated 17-2-1982 wherein he has said that he holds an agreement of sale in the form of a receipt

dated 5-12-1974 in respect of the said land and he paid Rs. 5,000/- to the plaintiffs husband on the date of the agreement and Rs. 13,205/- at a later date and as such he was entitled for a sale deed in respect of the same. The plaintiff disputed the factum of her signing on the receipt dated 5-12-1974 or having received any amount subsequent thereto. She has referred to certain acts touching upon possession as well as mutation of records etc. Ultimately she prayed for a declaration that the receipt dated 5-12-1974 pleaded by the defendant, is a forged one and inoperative against her and consequently a decree for permanent injunction or in the alternative, a decree for possession in respect of the suit schedule property.

3. The 1st defendant filed a written statement disputing the allegations contained in the plaint. He claimed that the receipt dated 5-12-1974 can be treated as an agreement of sale; he paid an amount of Rs. 13,205/- on 14-12-1978 to the husband of the plaintiff; the balance of consideration of Rs. 2,000/- was payable at the time of registration of the document and that he was always willing and ready to pay the same. He has also taken the plea u/s 53-A of the Transfer of Property Act claiming that his possession cannot be disturbed since he was ready and willing to perform his part of the contract. In addition to refuting the allegations contained in the plaint, the 1st defendant has also taken additional plea and filed a counter claim and sought for a decree of specific performance of the said agreement.

4. Almost contemporaneously the 1st defendant filed OS No.657 of 1983 against the plaintiff seeking the relief of permanent injunction in respect of the land, which is in his occupation. The trial Court clubbed both the suits and separate issues were framed in both the suits.

5. The following are the issues framed in OS No.7 of 1983.

1. Whether the plaintiff is entitled to declaration as prayed for?
2. Whether the plaintiff is entitled for permanent injunction or in the alternative for delivery of the possession of the suit lands?
3. Whether the defendant paid Rs. 5,000/- on 5-12-1974 to the plaintiff and obtained the receipt?
4. Whether the defendant paid Rs. 13,205/- on 14-2-1978 to G.V. Reddy, if so what is its effect?

The following additional issue is framed on 9-2-1990.

1. Whether the defendant is entitled to specific performance as prayed for?
6. On behalf of the plaintiff PWs.1 to 3 were examined and documents Ex.A1 to 6 were marked. On behalf of the defendants DWs.1 and 2 were examined and documents Exs.B1 to B27 marked.
7. On an appreciation of oral and documentary evidence the trial Court held that

the document dated 5-12-1974 marked as Ex.B1 is not enforceable in law, since it was hit by the provisions of the A.P. Agricultural Lands (Prohibition of Alienation) Act, 1972. It has also held that the plaintiff was entitled for the relief of recovery of possession. The trial Court accepted the plea of payment of Rs. 5,000/- by the 1st defendant but did not accept the plea of payment of Rs. 13,205/- by the defendant to the plaintiff and accordingly decreed the suit. Hence this appeal.

8. The trial Court recorded a finding that the defendant has performed his part of contract under Ex.B1. Aggrieved by that finding the plaintiff has filed cross-objections.

9. Having decreed the suit OS No.7 of 1983 the trial Court dismissed OS No.657 of 1983. The 1st defendant has preferred AS No.35 of 1992, on the file of the District Judge, R.R. District at Saroornagar. It appears that he has also taken steps get it transferred. But however, it is not the subject-matter of the present appeal.

10. Sri N.V. Ranganadham, learned senior Counsel appearing for the appellant submits that the finding of the trial Court that Ex.B1 is hit by the provisions of the aforesaid Act cannot be sustained. According to him, the said plea was not raised by the plaintiff at all and at any rate, the period of operation of the said Act has elapsed. He submits that the Act prohibited alienations and entertain into agreement of sale cannot be treated as alienation and as such the suit transaction is not at all attracted by the provisions of the said Act. It is also his contention that the defendant has entered into the agreement way back in the year 1974, paid substantial amounts and was ready and willing to perform his part of the contract. He states that the pleadings and evidence on record have clearly established that the plaintiff was not entitled for the relief and on the other hand the counter claim of the defendant ought to have been decreed.

11. The learned Counsel for the respondent Sri A. Anantha Reddy on the other hand submits that the very document Ex.B1 was forged, the payments said to have been made by the defendant were not proved and at any rate there is nothing on record to show that the defendant was either willing or prepared to perform his part of the contract and on that count alone he was not entitled for the relief of specific performance. Once it was held that the relief of specific performance could not be granted to the 1st defendant, decreeing the suit of the plaintiff was almost consequential. He has also attacked the finding of the trial Court, which is to the effect that the 1st defendant was ready and willing to perform his part of the contract.

12. The suit was for the relief of declaration and injunction or in the alternative for recovery of possession. The counter claim was for specific performance of the contract. The decree of the trial Court is challenged both in the form of an appeal as well as cross-objections. The result is that the entire matter on all the issues is open before this Court for fresh consideration.

13. The plaintiff claimed that she is the absolute owner of the suit schedule property having purchased the same from her vendor under a registered sale deed of 1965 marked as Ex.A1. It was her case that her husband late G.V. Reddy looked after the property till he died in 1981. It was only in 1981 she came to know about the defendant being in possession of the said property. According to her, she sent on Sri Pratap Reddy to the 1st defendant asking him to vacate the same and the 1st defendant demanded certain amount towards the expenses incurred by him for developing the land. When the 1st defendant did not act, she got issued a notice marked as Ex.A2. It is only in Ex.A3 the 1st defendant claimed that the husband of the plaintiff agreed to sell the land and took an amount of Rs. 5,000/- towards advance on 5-12-1974. Accordingly she filed the suit for declaration and recovery of possession as referred to above. The 1st defendant has taken two fold-plea, i.e., u/s 53-A of the Transfer of Property Act as well as relief u/s 20 of the Specific Relief Act.

14. Having regard to the facts of the case for all practical purposes, the suit has to be treated as the one for specific performance. The reason is that if the defendant is entitled for the relief of specific performance the relief prayed for by the plaintiff cannot be granted. On the other hand if it is held that he is not entitled for the same, the plaintiff will be entitled for the relief. The converse however is not the case. That is the reason why it is better that the matter is dealt with as the one for specific performance.

15. The defendant has taken the plea u/s 53-A of the Transfer of Property Act to secure his possession. Simultaneously he has also prayed for a decree of specific performance. In a way the same set of facts give rise to the rights in an agreement holder u/s 53-A of the Transfer of Property Act as well as Section 20 of the Specific Relief Act. The only difference is the former is invoked as matter of defence while the later is invoked to enforce the rights and seek a positive remedy. In either of the cases the agreement holder has to plead and establish that he was always ready and willing to perform his part of the contract. It is only on such proof that either the defence will be accepted or the relief will be granted as the case may be.

16. Coming to the facts of the case, the ownership of the plaintiff over the suit schedule property is not in dispute. In a way that forms the basis of the claim of the defendant. The defendant pleads that the husband of the plaintiff agreed to sell the suit schedule land through agreement of sale Ex.B1 for a consideration of Rs. 18,000/- per acre. He has also pleaded that he paid an amount of Rs. 5,000/- towards part of the sale consideration on that day itself. The plaintiff disputed the very execution of that agreement.

17. The trial Court recorded a finding that Ex.B1 is signed by the plaintiff. It was elicited in the evidence that the words "possession of the land given" and the date of Ex.B1 were added later, and the defendant explained by saying that by the time the said portion was written with ink pen, the ink got exhausted.

18. The trial Court recorded a finding that Ex.B1 is proved. For the present, it will be taken that Ex.B1 has been executed by the plaintiff. In a suit for specific performance or where the same relief is claimed by a counter claim, mere proof of execution of an agreement will not be sufficient. The person claiming the relief has to plead and establish that he has been always ready and willing to perform his part of contract. In the recent past, the Supreme Court has been cautioning that the relief of specific performance being discretionary in nature, the Court should be cautious in granting the relief and the conduct of the person claiming the relief would play a pivotal role. It has also been held that even where time is not essence of the contract and though three years is the period of limitation for filing a suit for specific performance, if it is evident that there was any indifference on the part of the person claiming the relief, the Court should deny the same.

19. Reference may be made in this regard to the judgment of the Supreme Court reported in K.S. Vidyadnam and Others Vs. Vairavan, , in which it was held as follows:

"It has been consistently held by the Court in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the Court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs., :

"It is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?) : (1) from the express terms of the contract; (1) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract."

In other words, the Court should look at all the relevant circumstances including the time limit (s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. Now in the case of urban properties in India, it is well known that their prices have been going up sharply over the few decades -particularly after 1973."

20. In another case the Supreme Court has also laid down that the readiness and willingness of the party should be evident at every stage right from the execution of the agreement. It is in this context that it needs to be examined as to whether the defendant was ready and willing to perform his part of the contract.

21. As observed earlier, Ex.B1 was dated 5-12-1994. According to the defendant the total consideration comes to Rs. 20,205/-. He pleaded and deposed that on the date of Ex.B1 he paid Rs. 5,000/- and thereafter another amount of Rs. 13,205/- was paid to the husband of the plaintiff on 14-12-1978. The said payment, even on his admission, is not evidenced by any record. Anyone, who is said to have witnessed the said payment, was not examined. The plea as regards the payment of Rs. 13,205/- is so slippery that in the written statement itself, he has pleaded that in case the Court does not take into account the said payment he is prepared to pay that also. Even according to him an amount of Rs. 2,000/- remained unpaid from 1978 onwards. There is neither any pleading nor evidence, be it in the form of chief examination by him or any suggestions to the witnesses on the other side that the defendant ever made any offer to pay that amount to the plaintiff. Even by the date of the suit, the agreement became 9 years old. The property is situated in a sub-urban area where prices were increasing in geometrical proportions.

22. The trial Court did not accept the plea of the defendant as regards the payment of Rs. 13,205/- and no serious attempt is made to convince this Court to attack that finding. These facts clearly indicate that neither the defendant paid the amount of Rs. 13,205/- nor he ever offered the remaining Rs. 2,000/- much less that amount of Rs. 13,205/- to the plaintiff either before the suit came to be filed or thereafter.

23. One of the circumstances to verify as to the readiness and willingness of the party claiming specific performance is the plea taken before the Court and the steps taken to prove his bona fides. Normally, in addition to taking the plea as to the readiness and willingness the parties also make deposit of the balance of the sale consideration. Though that act by itself will not entitle the party for the relief, it is a circumstance to be taken into account in recording a finding on the issue. Strangely in this case not only the defendant, who sought the relief of specific performance did not deposit the amount of Rs. 2,000/- into the Court but he did not leave any doubt in the mind of the Court or of the plaintiff that he has no means to pay the amount also. As stated earlier in his written statement in addition to refuting the allegations of the plaintiff he has taken additional pleas from paragraphs 13 onwards in support of his claim for specific performance. In para 21 of the written statement he was dealing with the matter relating to Court fee. An amount of Rs. 1,426/- was to be paid towards Court fee. He did not pay the Court fee along with the written statement/counter claim. He stated that following reasons for the same;

"The defendant is not possessed sufficient money to pay this court fee, now this defendant however agrees to pay the same within two months from today i.e.,

well before the commencement of the trial in this case. A separate application in this regard is filed for consideration of this Hon"ble Court."

24. This pleading is sufficient to deny the relief of specific performance to the defendant. A person who was not even in a position to pay the Court fee of Rs. 1,426/- cannot be said to be ready and willing to perform his part of contract which required him to pay Rs. 15,205/-. If this was his attitude after 9 years from the date of agreement, his conduct throughout is not at all difficult to be imagined. In Ex.B1 no time was stipulated for the payment of balance of consideration. It means that time was not essence of contract. All the same, the Supreme Court held that even in such circumstances the period of limitation for seeking relief of specific performance viz., 3 years could be taken to be the permissible time. Here is a case the defendant has sought the relief of specific performance 8 years after the date of Ex.B1. If the law is to the effect that the decree of specific relief cannot be granted to a person even if he comes within the period of limitation of 3 years, it is just unimaginable that the same could be granted to a person who approached the Court after 8 years that too by way of counter claim.

25. There is another aspect of the matter viz., the relief of specific performance is always discretionary. The bona fides of persons claiming the relief should be above board. Lack of bona fides in any of their pleadings, be it as to the contents of the agreement, factum of payment etc., disentitles the relief even if the transaction is within the framework of law on all other aspects.

26. In Kommisetti Venkatasubbayya Vs. Karamsetti Venkateswarlu and Others, , this Court reiterated that

"If a person takes a false plea of payment of amount, that would disentitle him for the relief whether u/s 20 of Specific Relief Act or u/s 53-A of the Transfer of Property Act."

27. In this case the defendant pleaded that he paid Rs. 13,205/-. It constitutes more than two thirds of the sale consideration. Not a scrap of paper was placed before the Court in support of his plea. The strength of the plea has already been referred to in me preceding paragraphs.

28. The result is that the plea of the defendant in this regard has turned out to be false. Equitable remedies are not meant for those who try to mislead the Court or come forward with false pleas.

29. The trial Court though rejected the relief; observed in its judgment that it has no hesitation to hold that the defendant has performed his part of contract under Ex.B1. The said observation is absolutely without any basis and the evidence on record as well as the pleadings, reference to which is made in the preceding paragraphs indicates that the finding of the trial Court cannot be sustained at all.

30. The trial Court also held that Ex.B1 is not enforceable in law on account of its

having been hit by the provisions of A.P. Agricultural Lands (Prohibition of Alienation) Act, 1972.

31. In view of the findings arrived at by this Court that Ex.B1 even if it was held to have been executed by the plaintiff the defendant is not entitled for the relief. The provisions of the said Act are not immediately relevant for the subject-matter of the appeal. The admissions of the defendant as to the interpolations in Ex.B1 are also somewhat significant. However, in view of the discussion above, it is not felt desirable to go into that aspect of the matter.

32. In the result, the appeal is dismissed and the cross objections are allowed. The decree of the trial Court is sustained on, the basis of the findings recorded above. There shall be, however no order as to costs.