
(2003) 04 AP CK 0028
In the Andhra Pradesh High Court
Case No : LPA No. 133 of 2002

B.R. Koteswara Rao

APPELLANT

Vs

G. Rameswari Bai @ G. Rameswari Devi and Another

RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 17, 7
Specific Relief Act, 1963 — Section 16

Citation : AIR 2004 AP 34 : (2003) 4 ALD 662

Hon'ble Judges : G. Bikshapathy, J;C.Y. Somayajulu, J

Bench : Division Bench

Advocate : K. Raghuveer Reddy, for the Appellant; A. Anantha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—This Letters Patent Appeal arises out of the judgment in A.S.No. 1195 of 2002 and cross-objections. For the sake of convenience, the parties would hereinafter be referred to as they are arrayed in the Trial Court.

2. Plaintiff filed the suit for declaration that Ex.B.1 receipt dated 5-12-1974, said to have been executed by her in favour of the 1st defendant, is forged, and hence is void and inoperative, and for the consequential relief of permanent injunction restraining the defendants and their men from interfering with her peaceful possession and enjoyment of the plaint schedule property or in the alternative for possession of the plaint schedule property by evicting the 1st defendant therefrom and consequential reliefs.

3. The case, in brief, of the plaintiff is that she is the absolute owner of the plaint schedule property of 11 acres 9 guntas in S.No. 101 of Gundla Pochampally Village, Medchal Taluq, Ranga Reddy District, having purchased it under a registered sale deed dated 26-10-1965 from B. Padmavathi Bai after obtaining permission from Tahsildar, Medchal, and has been in possession thereof through

her husband G.V. Reddy, After the death of her husband on 8-8-1991, she came to know that 1st defendant is in occupation of the plaint schedule property and raised fencing with barbed wire and stone pillars and also made some constructions therein. Therefore, she, through her relative Pratap Reddy enquired him about his possession over her land. 1st defendant seems to have informed that he would vacate the land provided she pays compensation to him. She agreed to get an estimate of the improvements allegedly made by the 1st defendant, but since the 1st defendant did not turn up till the last week of November, 1981, she got issued a legal notice dated 7-12-1981 calling upon the 1st defendant to vacate the plaint schedule property, for which she received a reply through an Advocate alleging that 1st defendant is in possession of the plaint schedule property in pursuance of an agreement of sale referred to in the receipt dated 5-12-1974 executed by her for Rs. 5,000/- received as advance. Since she never executed any receipt, or received any consideration, much less Rs. 5,000/- as alleged by the 1st defendant in the reply notice got issued by him, she filed the suit for declaration, etc., as mentioned above.

4. The case, in brief, of the 1st defendant is that G. V.Reddy, the husband of the plaintiff informed him on 5-12-1974 that he would sell the plaint schedule property at the rate of Rs. 1,800/- per acre and he having agreed to purchase the same at that rate, paid an advance of Rs. 5,000/- to the plaintiff in the presence of her husband and obtained a receipt for that amount from her and subsequently paid a sum of Rs. 13,205/- to her husband but did not obtain a receipt for that amount and is always ready and willing to pay the balance of Rs. 2,000/- subsequently and is always ready and willing to pay the same. In case the payment of Rs. 13,205/- is not believed, he is also ready to pay the same to the plaintiff again, and by way of counter claim, he sought a decree for specific performance of the agreement in respect of the plaint schedule property.

5. 1st defendant also filed O.S.No. 62 of 1982 on the file of the Court of the District Munsif, Medchal, (later renumbered as O.S.No. 657 of 1983) seeking an injunction restraining the plaintiff and her men from interfering with his possession over the plaint schedule property.

6. The suit filed by the plaintiff and the suit filed by the 1st defendant were tried together by the Court of the Additional Subordinate Judge, Ranga Reddy District, and by common judgment dated 25-3-1992 it was held that the receipt dated 5-12-1974 was signed by the plaintiff, but since the agreement between the parties is in violation of the provisions of A.P. Agricultural Lands (Prohibition of Alienation) Act, 1972 (1972 Act), the same is void and so it was held that the plaintiff is entitled to seek delivery of possession of the plaint schedule property and accordingly a decree for delivery of possession in favour of the plaintiff was passed and 1st defendant's suit O.S. No. 657 of 1983 seeking an injunction against the plaintiff was dismissed. Aggrieved by the decree in O.S. No. 7 of 1983, 1st defendant filed A.S.No. 1195 of 1992. In respect of the adverse findings given against her by the Trial Court, in that suit plaintiff filed cross-

objections. Against the decree of dismissal of O.S.No. 657 of 1983, 1st defendant filed A.S.No. 35 of 1992 in the Court of the District Judge, Ranga Reddy District. It is stated that steps were taken to get the said appeal transferred to this Court, and that that appeal was transferred to this Court and that fact was brought to the notice of the learned Single Judge, but the learned Single Judge heard the appeal filed by the 1st defendant independently, on the ground that the other appeal was not listed before him. The learned Single Judge by his judgment under appeal dismissed the appeal of 1st defendant and allowed the cross-objections of the plaintiff. Hence this Letters Patent Appeal.

7. Since decree for possession of the plaint schedule property passed by the Trial Court in favour of the plaintiff is confirmed by the learned Single Judge and since the 1st defendant, by way of counter claim is seeking specific performance of the agreement of sale in his favour, the point for consideration is whether 1st defendant is entitled to seek specific performance of the alleged agreement of sale in his favour.

8. The learned Single Judge on the ground that the 1st defendant set up a false plea of payment of Rs. 13,205/- and had sought time for payment of Court fee on the counter claim, and had not adduced evidence to show that he was ready and willing to pay balance of Rs. 2,000/-admittedly due from him, held that the 1st defendant was not ready and willing to perform his part of the contract and hence is not entitled to the equitable relief of specific performance. He did not consider the question as to whether the agreement of sale, relied on by the 1st defendant, is hit by the provisions of 1972 Act or the provisions of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (1973 Act).

9. The contention of the learned Counsel for the 1st defendant is that the learned Single Judge was in error in observing that the 1st defendant is not ready and willing to perform his part of the contract, because a party in order to prove his readiness and willingness need not produce or deposit the money into Court and can establish his readiness and, willingness by other modes or by showing that he has the capacity to raise the money due and payable under the agreement. It is his contention that since 1972 Act and 1973 Act are intended to determine and fix the ceiling area of individuals and to make them surrender the land held by them in excess of the prescribed ceiling area, Section 7(2) of the 1973 Act and Section 5 of the 1972 Act have to be applied only for considering the declarations of parties filed under the 1973 Act and cannot be applied to cases like this. He relied on Yedida Chandra Sekhara Rao v. State of A.P., and State of A.P. v. Mohd. Ashrafuddin, He contends that since admittedly the plaint schedule property is not shown in the declaration filed by the husband of plaintiff, it is clear that possession of the 1st defendant over the plaint schedule property, in pursuance of the agreement, has to be taken as admitted, and that fact also establishes that plaintiff is not claiming title over the plaint schedule property. It is his contention that since 1st defendant averred in his written statement that he is ready and willing to pay the amount of Rs. 13,205/- also, in the event of Court

disbelieving his version of payment of that amount to the husband of the plaintiff on behalf of the plaintiff, the learned Single Judge ought to have accepted the said contention and decreed the counter claim for specific performance. The contention of the learned Counsel for the plaintiff is that the well-reasoned judgment of the learned Single Judge referring to the various instances as to how 1st defendant failed to establish his readiness and willingness needs no interference. He contends that since the transaction set up by the 1st defendant is also hit by the provisions of the 1972 and the 1973 Acts, the judgment under appeal needs no interference.

10. Before dealing with the question of readiness and willingness of the 1st defendant to perform his part of the contract we would like to consider the question of applicability of the 1972 and the 1973 Acts in the first instance. Section 5 of the 1972 Act read:

"Prohibition of alienation of holding by certain persons :--(1) No person whose holding as on the date of commencement of this Act, or at any time thereafter exceeds the specified limit shall alienate such holding or any part thereof by way of sale, lease for a period exceeding six years, gift, exchange, usufructuary mortgage or otherwise or effect a partition or create a trust of such holding or any part thereof; and any alienation made or partition effected or trust created in contravention of this section shall be null and void.

(2) No member of a family, the holdings of all the members of which in the aggregate as on the date of commencement of this Act, or at any time thereafter exceed the specified limit, shall alienate his holding or any part thereof by way of sale, lease for a period exceeding six years, gift, exchange, usufructuary mortgage or otherwise or effect a partition or create trust of such holding or any part thereof; and any alienation made or partition effected or trust created in contravention of this section shall be null and void.

(3) The provisions of Sub-sections (1) and (2) shall apply to any transaction of the nature referred to therein in execution of a decree or order of a Civil Court or of any award or order of any other authority."

The 1973 Act came into force on 1.1.1975. Section 7 of the 1973 Act reads:

"Special provision in respect of certain transfers, etc., already made:--(1) Where on or after the 24th January, 1971 but before the notified date, any person has transferred whether by way of sale, gift, usufructuary mortgage, exchange, settlement, surrender or in any other manner whatsoever, any land held by him or created a trust of any land held by him, then the burden of proving that such transfer or creation of trust has not been effected in anticipation of, and with a view to avoiding or defeating the objects of any law relating to a reduction in the ceiling on agricultural holdings, shall be on such person, and where he has not so proved, such transfer or creation of trust, shall be disregarded for the purpose of the computation of the ceiling area of such person.

(2) Notwithstanding anything in Sub-section (1), any alienation made by way of sale, lease for a period exceeding six years, gift, exchange, usufructuary mortgage or otherwise, any partition effected or trust created of a holding or any part thereof, or any such transaction effected in execution of a decree or order of a Civil Court or any award or order of any other authority, on or after the 2nd May, 1972 and before the notified date, in contravention of the provisions of the Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Act, 1972 shall be null and void.

(3) x x x x

(4) x x x x

(7) If any question arises,--

a. whether any transfer or creation of a trust effected on or after the 24th January, 1971 had been effected in anticipation of, and with a view to avoiding or defeating the objects of, any law relating to a reduction in the ceiling on agricultural holdings;

b. whether any alienation made, partition effected or trust created on or after the 2nd May, 1972 is null and void;

c. x x x x

d. x x x x

e. x x x x

such question shall be determined by the Tribunal, after giving an opportunity of being heard to the affected parties, and its decision thereon shall, subject to an appeal and a revision under this Act, be final.

(8) If the Tribunal decides that any transfer, or creation of trust had been effected in anticipation of, and with a view to avoiding or defeating the objects of any law relating to a reduction in the ceiling on agricultural holdings or that any alienation made or partition effected or trust created is null and void and if as a result of such transfer, alienation or creation of trust, the holding of the person or the family unit, that remains on the notified date does not exceed the extent of land that he or that family unit is liable to surrender, then the Tribunal shall treat the entire holding thus leftover as the extent of land to be surrendered under the provisions of this Act by the person or the family unit, as the case may be:

Provided that the balance of extent of land that remains liable to be surrendered by the person or family unit shall, subject to such rules as may be prescribed, be surrendered by the alienee who is in possession of such holding by virtue of any transaction effected in contravention of the provisions of the Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Act, 1972" (Sub-sections which are not relevant are omitted)

Section 17 of the 1973 Act reads:

17. Prohibition of alienation of holding :--

(1) No person whose holding, and no member of a family unit, the holding of all the members of which in the aggregate, is in excess of the ceiling area as on the 24th January, 1971 or at any time thereafter, shall on or after the notified date, alienate his holding or any part thereof by way of sale, lease, gift, exchange, settlement, surrender, usufructuary mortgage or otherwise, or effect a partition thereof, or create a trust or convert on agricultural land into non-agricultural land, until he or the family unit, as the case may be, has furnished a declaration u/s 8, and the extent of land, if any, to be surrendered in respect of his holding or that of his family unit has been determined by the Tribunal and an order has been passed by the Revenue Divisional Officer under this Act taking possession of the land in excess of the ceiling area and a notification is published u/s 16; and any alienation made or partition effected or trust created in contravention of this Section shall be null and void and any conversion so made be disregarded.

(2) For the purpose of determining whether any transaction of the nature referred to in Sub-section (1) in relation to a land situated in this State, took place on or after the notified date, the date on which the document relating to such transaction was registered shall, notwithstanding anything in Section 47 of the Registration Act, 1908, be deemed to be the date on which the transaction took place, whether such document was registered within or outside the State.

(3) The provisions of Sub-section (1) shall apply to any transaction of the nature referred to therein in execution of a decree or order of a Civil Court or of any award or order of any other authority.

11. Since the case of the 1st defendant is that he entered into an agreement of sale in respect of the plaint schedule property with the plaintiff on 5-1-1974, it is beyond doubt that the transaction alleged took place before coming into force of the 1973 Act. So the provisions of the 1972 and Sections 7 (2) and 17 of the 1973 Act apply to the said transaction. It is no doubt true that an "agreement of sale" is not the same as "sale" and the title to the property, agreed to be sold, still vests with the vendor (in the case of an agreement of sale) but in the case of sale title to the property vests with the purchaser. An "agreement of sale" is an executory contract, whereas "sale" is an executed contract. Since the dates of the transaction which are the subject-matter of Mohd. Ashrafuddin Case (supra) relied on by the learned Counsel for the 1st defendant and are not found in the said judgment and since the said judgment was rendered in an appeal against the order passed in C.R.P. No. 743 of 1976 of this Court, we sent for the file relating to C.R.P.No. 743 of 1976 and found that the declarant in that case relied on unregistered sales of the year 1968 and 1969 i.e., an unregistered sale deed dated 12-6-1968 in respect of 11 acres 19 guntas in S.No. 41 and another unregistered sale deed is dated 3-12-1969 in respect of 17 acres in S.No. 36. On the basis that those sale deeds, though unregistered, are long prior to 24-1-1971, i.e., the date mentioned in Section 7(1) of 1973 Act, a learned Judge of this Court, relying on Section 53A of Transfer of Property Act, held that those

lands cannot be computed to the holding of the declarant. The Supreme Court disagreeing with the said finding and relying on the definition of "holding" held that as per the definition both the persons i.e., person having title though not in possession and the person who is in actual physical possession should be deemed to be holding the land and since an unregistered document does not confer ownership on the transferee, lands covered by those unregistered sale - deeds have to be computed to the holding of both the declarant, and the purchaser.

12. The observations in Para 5 of the Yedida Chakradhara Rao (supra) cannot be taken to mean that the 1972 Act and the 1973 Act can be utilised only for fixing of the ceiling of a declarant and for taking surrender of the area held to be in excess of his "holding", but cannot be taken in aid, for deciding the question whether 1st defendant is entitled to seek specific performance of the agreement of sale in his favour or not. Though both those enactments were made in the State's endeavour to bring in agrarian reforms as contemplated by the Constitution, the provisions of those enactments are not confined to determination of the ceiling area of the declarants. The provisions contained in Sections 7 and 17 of the 1973 Act clearly show that they have relevance for deciding the title of a person who purchased property from a person who is covered by the provisions of the 1972 Act. In fact Section 19 of the 1973 Act also contemplates a declaration, in duplicate, being furnished by the executant of any document presented for registration after the notified date (i.e., 1-1-1975) that he or the other members of his family unit, of which he is a member does not or do not possess land in excess of the ceiling area, and the Registering Officer's sending information thereof to the concerned Revenue Divisional Officer for verification etc. In fact a Division Bench of this Court in *D. Mallayya v. Government of Andhra Pradesh* 1986 (1) APLJ 25, had an occasion to consider the question of the validity of sale of land held under the Revenue Recovery Act after 2-5-1972. In that case agricultural land of a defaulter, who held land in excess of the ceiling area fixed under 1973 Act, was attached and was sold in auction subsequent to 2-5-1972. Taking into consideration the language employed in Section 7(2) of the 1972 Act and Section 17(1) read with Section 17(3) of the 1973 Act, the Division Bench held that Section 7(2) of the 1973 Act is intended to set-at-naught the alienations made by volition or by intervention of the Court or "otherwise". From the said decision, and also the language employed in Section 7(2) of the 1973 Act, it is clear that any alienation made after 2-5-1972 and before 1-1-1975, in contravention of the Provisions of the 1973 Act, is null and void. Plaintiff in this case is a member of a family unit whose holding admittedly is more than the area prescribed by the 1973 Act. Even as per the case of the 1st defendant, husband of the plaintiff filed a declaration, and was directed to surrender some land. It is also the case of 1st defendant that husband of 1st defendant did not disclose the plaintiff schedule land in his declaration. Therefore, it is easy to see that had the husband of plaintiff disclosed the plaintiff schedule land also in his declaration, he would have had the

necessity to surrender an extent of land equivalent to that of the plaint schedule land. Only then would the plaintiff be able to execute a sale deed in favour of the 1st defendant in respect of the plaint schedule property. If plaintiff were to execute a- sale deed in respect of the plaint schedule property without surrendering the land equivalent to that, extent such sale would be null and void as per Section 17 of the 1973 Act. Though aware of the declaration filed by the husband of plaintiff under the 1973 Act, 1st defendant does not seems to have filed objections. Very significantly 1st defendant in Para 6 of his written statement averred as follows:-

"As can be seen now, late G. V.Reddy became apprehensive that the excess agricultural lands held by him and the plaintiff would be taken over by the Government through the then impending legislation of the Agricultural Land Ceiling Act, 1976 (Sic). That with a view to outwit the incoming legislative measures late G. V.Reddy managed to sell the said land to this defendant and also ensured....."

From the said averment it is clear that even according to the 1st defendant the transaction in respect of the plaint schedule property, allegedly entered into with him, was intended to defeat the provisions of the 1973 Act. So the question of this Court enforcing such a contract, even if it is true and valid, does not arise, because Courts do not enforce contracts entered into with a view to defeat the provisions of an enactment.

13. On the question of entitlement of the 1st defendant to seek specific performance of the agreement of sale in his favour, the learned Single Judge relying on K.S. Vidyanadam and Others Vs. Vairavan, , observed that the fact that no time limit is fixed for performance of the contract by itself would not enure to the benefit of 1st defendant for seeking specific performance, after a long time without paying the amount due under the agreement, on the basis that he has three years time for filing a suit to enforce the agreement. The plaint schedule property is situated in a semi-urban area outside the city limits of Hyderabad. Court can take judicial notice of the fact that the prices of lands outside the city limits of Hyderabad are also increasing sharply after 1975. In this case, the alleged oral agreement, which is denied by the plaintiff, is said to have been entered into on 5-12-1974. Pausing here, we have to say something about Ex.B.1 receipt, which is in English.

14. The evidence of DW1, 1st defendant, who is he scribe of Ex.B.1 shows that the plaintiff does not know English. When signature in a document is admitted, the document can be presumed to have been executed by the signatory. But in case of documents, which are in a language not known to the executant, the above presumption does not apply, and so mere proof of signature would not suffice for establishing execution of a document in a language unknown to the signatory. In such cases there should be evidence to show that the contents of the documents were explained to the executant and the executant, being aware of the contents of the document, affixed his or her signature thereto. There is no

such evidence in this case. So strictly speaking mere fact of Ex.B-1 containing the signature plaintiff does not prove the due execution of Ex.B-1 by the plaintiff. Be that as it may, since it is concurrently held that plaintiff executed Ex.B1, we proceed on the basis that Ex.B.1 was executed by the plaintiff with the knowledge of its contents.

15. In all agreements to sell the two most important conditions would be the date of payment of price and date of delivery of possession of the property agreed to be sold. There is nothing in the pleadings, nor is there evidence on record, to show as to when the balance amount of sale consideration apart from the amount covered by Ex.B-1, has to be paid by the 1st defendant to the plaintiff and when possession has to be delivered and when sale deed has to be executed. It is essential because by the date of agreement i.e., 5.12.1974 the provisions of the 1973 Act are known and that Act was to come into force on 1.1.1975. Here we feel it relevant to mention that the last line in Ex.B1 reading. "The possession of the land given" is in an ink different from the ink in which the other part of Ex.B1. is written. The possibility of 1st defendant incorporating that sentence, taking advantage of his being the scribe thereof, after the plaintiff got issued notice through there Counsel, to buttress his case that he has an agreement in his favour cannot be ruled out, because the explanation of the 1st defendant that while writing Ex.B1 since the ink got exhausted, he used another pen for completion of Ex.B1 is difficult to believe. In writings made with fountain pens, before they stop writing due to lack of ink, there would be gradual fading of ink. Pen does not abruptly stop writing due to lack of ink. The traces of ink getting exhausted while writing Ex.B-1 are not found in Ex.B-1. Except the sentence regarding delivery of possession the rest of Ex.B.1 is in the same shade of ink. This apart no ordinary prudent person would deliver possession of the land agreed to be sold to the intending purchaser, without fixing the time for payment of balance amount due and without receiving a substantial portion of the price agreed upon. So the contention of the 1st defendant that plaintiff schedule property was delivered possession of to him on receipt of merely 1/4th of the price allegedly fixed is unbelievable. Neither in his written statement nor during evidence did the 1st defendant say as to when he agreed to pay the balance amount of sale consideration due and payable under the agreement. His contention is that he paid Rs. 13,205/- "subsequently" without obtaining a receipt. A person, who had taken care to obtain a receipt for Rs. 5,000/- would not normally pay Rs. 13,205/- without obtaining a receipt either from the plaintiff or her husband. The contention of the learned Counsel for 1st defendant is that since 1st defendant offered to pay the amount of Rs. 13,205/- again, in case the Court were to disbelieve the payment alleged by him, it cannot be said that 1st defendant set up a false plea or that he is not willing to perform his part of the contract. The mere fact that the 1st defendant offered to pay the amount over and again does not wipe out of the stigma that is to be attached to the 1st defendant of coming to Court with unclean hands by setting up a false plea of payment, and tampering with Ex.B.1 receipt. It is well known that a person who

seeks the equitable relief of specific performance should come to Court with clean hands and any false case set up by him would disentitle him to the equitable relief of specific performance. In this case the learned Single Judge, while coming to a conclusion that 1st defendant set up a false plea of payment, and was not ready and willing to perform his part of the contract took into consideration of the 1st defendant, while making a counter claim for specific performance, not paying the Court fee payable and seeking two months time for payment of Court fees, on the ground he does not have sufficient money to pay the Court fee. The contention of the learned Counsel for the 1st defendant that since 1st defendant is an agriculturist, at that particular point of time, he was not having money with him to pay the Court fees and in any event since time is not the essence of contract 1st defendants inability to pay Court fee and deposit the balance amount due into Court cannot be used against him, cannot be accepted by us. It is not the case of the 1st defendant that he, at any time, had the entire balance amount of sale consideration payable under the contract with him, and that he offered to pay the same to the plaintiff. Significantly it is the plaintiff that issued the notice in the first instance, and in reply to that notice only, 1st defendant set up Ex.B1 receipt and took a plea that he is entitled to continue in possession of the plaint schedule property in his capacity as purchaser and failed to establish the terms of the contract. Therefore, viewed from any angle, the 1st defendant is not entitled to the equitable relief of specific performance.

16. The fact that the plaint schedule land is not included in the declaration of the plaintiff, by itself is not a ground to non-suit the plaintiff. When plaintiff is the owner of the plaint schedule property and when 1st defendant is not entitled to the relief of specific performance sought by him, she is entitled to seek recovery of possession of the plaint schedule property from the 1st defendant. If plaintiff did not declare the plaint schedule land in her declaration filed under the 1973 Act, or has not intimated the concerned authorities under the 1973 Act about her entitlement to possession of the plaint schedule land, as per Section 18 of the 1973 Act, it is for the authorities under the 1973 Act to initiate appropriate proceedings or take action against the plaintiffs as per the provisions of the 1973 Act. Therefore, a copy of this order is to be marked to Collector, Rangareddy District and the Additional Revenue Divisional Officer, Medchal appointed for looking after implementation of 1973 Act, for taking necessary steps.

17. For the above reasons we hold that the 1st defendant is not entitled to the relief of specific performance sought against the plaintiff and that the plaintiff is entitled to recover possession of the plaint scheduled property from the 1st defendant. The point is answered accordingly.

18. In view of the finding on the point for consideration. We find no merits in the appeal and therefore the same is dismissed but in the circumstances without costs.