

(1999) 06 AP CK 0023

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No"s. 39 and 53 of 1999

C. Panduranga Rao

APPELLANT

Vs

V. Shyamala Rao and Another

RESPONDENT

Date of Decision : 14-06-1999

Acts Referred:

Contract Act, 1872 — Section 46, 46(16), 55
Specific Relief Act, 1963 — Section 20

Citation : (1999) 4 ALD 204 : (1999) 4 ALT 270 : (1999) 2 APLJ 51 : (1994) 4 RCR(Civil) 427

Hon'ble Judges : T.Ch. Surya Rao, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : P. Vijaya Bhaskar Reddy, for the Appellant; M.V. Jagannath, for the Respondent

Final Decision : Dismissed

Judgement

T.Ch. Surya Rao, J.—These two Appeals arise out of a common Judgment dated 16-2-1996 passed by the learned single Judge of this Court in CCCA No. 115/1987 and CCCA No. 106/1985. Those Appeals inturn have been filed against the Common Judgment and Decree passed by the trial Court in O.S. Nos. 16/83 and 17/83, dated 29-6-1985.

2. The appellant herein Sri C Panduranga Rao filed the suit O.S. No. 17/83 for specific performance of the suit agreement of sale against Sri V. Syamala Rao and T. Chandra Mouli the respondents herein. It is better to refer the respondents by names to avoid any confusion. Sri T. Chandra Mouli filed the second suit O.S. No. 16/83 for eviction and damages for use and occupation against the appellant. The said Syamala Rao, the original owner of the suit house, is the 1st defendant in O.S. No. 17/83 and the 2nd defendant in O.S. No. 16/83 and 1st and 2nd respondent respectively in the corresponding Appeals. The appellant filed the suit O.S. No. 17/83 for specific performance of the suit agreement of sale dated 22-1-1977 executed by the said V. Syamala Rao in his

favour on the premise that the said Syamala Rao executed the suit agreement of sale dated 22-1-1977 for a consideration of Rs. 60,000/- and received an amount of Rs. 5,000/- as advance while agreeing to receive the balance sale consideration at the time of registration of the sale deed, and that subsequently the appellant paid some amounts in piecemeal, all put together to an amount of Rs. 43,000/- and that he was ready and willing to perform his part of the contract by paying the balance sale consideration. Sri T. Chandramouli filed the suit O.S. No. 16/83 on the premise that he purchased the suit property which is a house property from Sri C. Syamala Rao under a registered sale deed dated 31-7-1979 and that the appellant herein was the tenant attorned to him and committed default in paying the rents. Both the suits had been tried together and evidence was recorded in O.S. No. 17/83. Upon considering the oral and documentary evidence adduced on either side, the learned trial Judge dismissed the suit O.S. No. 16/83 of the appellant and decreed the suit O.S. No. 17/83. While dismissing the suit it was found by the trial Court that the appellant was not ready and willing to perform his part of the contract and his contention that he paid an amount of Rs. 43,000/- in all is not proved except to the extent of the payment of Rs. 5,000/- as advance. In the other suit, he found that Sri T. Chandra Mouli who is the plaintiff therein was the owner of the suit premises and the appellant committed default in payment of rents.

3. In the appeals the learned single Judge of this Court on an overall appreciation of the evidence both oral and documentary adduced in the suit has come to the conclusion that the appellant was never ready and willing to perform his part of the contract and thus concurred with the finding of the lower Court. However, on the issue of the payment of various amounts, the learned Judge accepted the payment of Rs, 8,000/- subsequently while disbelieving the version of the appellant with regard to the payment of other amounts and thus, modified the Judgment of the trial Court by granting a decree for the refund of an amount of Rs. 13,000/- while dismissing the suit for the relief of specific performance of the contract. The decree in other suit O.S. 16/83 was confirmed on the ground that the 2nd respondent was the owner of the house under the sale deed while disbelieving the tenancy. Aggrieved by the said Judgment and Decree, the present Appeals have been sought to be filed as aforesaid.

4. Now, in these appeals the learned Counsel for the appellant submitted that the time is not the essence of the contract, and that therefore, the Appellate Court went wrong in not having considered the same. It is his other contention that the appellant paid in all Rs. 43,000/- and merely because of time lag of two years and ten months in filing the suit after the execution of the agreement of sale, it cannot be said that the appellant was not ready and willing to perform his part of the contract and on that score the relief of specific performance cannot be refused.

5. There is no dispute in regard to the execution of Ex.A-1 suit agreement of sale dated 22-1-1977. We have gone through the contents of the document. There

has been no stipulation in the agreement for payment of the balance sale consideration on or before a particular date. It is not the case of Sri V. Syamala Rao that he issued any notice to the appellant demanding the payment of the sale consideration on or before a particular date, thereby making the time as an essence of the contract as ordained in Section 55 of the Contract Act. All this is not germane for consideration, inasmuch as the material issue of fact in this case is as to whether the appellant was ready and willing to perform his part of the contract, which issue can be disposed of without adverting to the fact whether time being essence of the contract or not.

6. The appellant claims that he paid several amounts in piecemeal from time to time making in all an amount of Rs. 43,000/-. Except the advance amount of Rs. 5,000/- paid under Ex.A-1 agreement of sale the other payments are not supported by any receipts or by necessary endorsements on the overleaf of the agreement of sale-Ex.A-1. In regard to the subsequent payments, there is any amount of discrepancy emanating from the evidence on record. The appellant has not given the details with reference to the dates of these payments in the plaint. But, in his evidence as P.W.1 for the first time, he has given the break-up for the amount of Rs. 43,000/-. In Ex. B-12 letter written by the appellant to the 1st respondent it has been mentioned that the appellant in all paid an amount of Rs. 52,000/-. There has been no whisper about the alleged piecemeal payments at any point of time; as can be seen from the letters written by the appellant. The entire episode has been set up for the first time after the appellant received Ex.A-3 notice. Generally the payments said to have been made by the appellant which are not supported by any receipts, nor any endorsements on the suit agreement of sale cannot validly be accepted. Now in view of the discrepancy in regard to these payments and the total amount even, it becomes much more difficult for any reasonable and prudent man to accept the same. On an over-all appreciation of the evidence, the trial Court has come to the conclusion that the appellant did not pay any amounts except the advance amount of Rs. 5,000/- But in the appeal the learned single Judge of this Court has come to the conclusion that in addition to the amount of Rs. 5,000/- as advance, the appellant did pay an amount of Rs. 8,000/- subsequently under Ex. A-66 voucher. The fact remains that as regards the other payments, both the Courts have concurrently held that the appellant could not prove the payment of the other amounts and that he was not having necessary wherewithal to pay the alleged payments. We have also gone through the evidence, oral and documentary, and we see no compelling reasons to come to a different conclusion than what has been arrived at concurrently by the trial Court as well as the appellate Court.

7. The learned Counsel for the appellant submitted that it is not a case of making false statement by the appellant in regard to the payments as alleged, but it is a case at best of not proving the said fact. If it is a case of making a false statement in regard to the payments, it has its own consequences inasmuch as the appellant cannot seek the equitable relief of specific performance on account

of his own conduct in making such false statement. Any way it is not the finding of the trial Court, nor that of the 1st appellate Court that the appellant made false statement with regard to the subsequent payments. Whatever it may be, the fact ultimately remains that the appellant failed to show that he paid the amounts time to time to the 1st respondent as alleged by him by any test of preponderance of probability and that takes away the validity of the plea that he was always ready and willing to perform his part of the contract.

8. By now it is well settled that in a suit for specific performance the plaintiff should plead and prove that he was always ready and willing to perform his part of the contract. Section 46 (16?) of the Indian Contract Act also ordains the same. Mere taking of a plea in the plaint is not sufficient, the plaintiff should prove with cogent evidence his readiness and willingness to perform his part of the contract at all material times i.e., from the date of the contract till the date of the suit. The evidence on record negates such a plea.

9. The relief of specific performance is an equitable relief and it is within the discretion of the Court. Of course, the discretion should be exercised on sound principles of law. The party is not entitled to the relief of specific performance as a matter of course even though the execution of the suit agreement of sale is either admitted or proved. He must, therefore, show the equity in himself before seeking the equitable relief of specific performance. The appellant who stated that he paid several amounts in all making an amount of Rs. 43,000/- at one breadth and Rs. 52,000/- at another breadth at two different stages, cannot be said to have approached the Court with the clean hands, therefore he is not entitled to the equitable relief of specific performance. For the above reasons it is not expedient interfere with the concurrent finding of fact that the appellant was never ready and willing to perform his part of the contract as concluded by the trial Court as well as the learned single judge of this Court.

10. Sri V. Syamala Rao executed a registered sale deed in favour of T. Chandra Mouli, who pleaded in his suit that he is a bona fide purchaser for a valid consideration without the knowledge of the suit agreement of sale in favour of the appellant. When it is concluded against the appellant that he was not entitled to an equitable relief of specific performance, the registered sale deed executed by the 1st respondent in favour of the 2nd respondent, therefore, gets automatically strengthened. The trial Court as well as the appellate Court thus decreed the suit of the 2nd respondent O.S. No. 16/83. We see no compelling reasons to differ with the said findings which are well founded.

11. These Appeals cannot, therefore, be admitted. Accordingly, LPA Nos. 53/99 and 33/99 are dismissed at the stage of admission. No costs.