
(1998) 02 AP CK 0056
In the Andhra Pradesh High Court
Case No : A.S. No. 3326 of 1982

Chakravarthula Venkata Raghavacharyulu and Others	APPELLANT
Vs	
Jeenu Viswanadham and Another	RESPONDENT

Date of Decision : 02-02-1998

Acts Referred:

Limitation Act, 1963 — Article 54
Specific Relief Act, 1963 — Section 16

Citation : (1998) 2 ALD 776 : (1998) 2 ALT 700 : (1998) 2 APLJ 116

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

Advocate : Mr. C. Poornaiah, for the Appellant; Mr. V.L.N. Gopalakrishna Murthy, for the Respondent

Judgement

JUDGMENT

1. This is yet another old appeal where the parties do not survive till the case reached hearing. In this appeal the sole respondent passed away. His wife, who was brought on record as his legal heir, did not choose to appear. Hence she was set ex parte.
2. The brothers of the deceased respondent filed CMP. 1145/96 to be brought on record as legal heirs of deceased respondent but the CMP was dismissed by a separate order dated 23-1-97 and the appeal was taken up for hearing.
3. This appeal is directed against the judgment and decree in O.S.No.137/1979 on the file of the I Additional Subordinate Judge, Kakinada decreeing the suit with costs filed for specific performance, directing the defendants/appellants to execute the registered sale deed conveying the plaint "A" schedule property to the respondent/plaintiff on depositing an amount of Rs.7,572/- into the Court.
4. Defendants are the appellants herein. The suit was filed by the respondent/plaintiff for specific performance of agreement of sale dated 10-4-1974 and to execute the sale deed in respect of the plaint "A" schedule property or in the

alternative for recovery of a sum of Rs. 10,364/- paid by the respondent to the appellants and their creditors out of the sale consideration in pursuance of the suit agreement.

5. The facts of the case are as follows:

Appellants 2 to 5 are the undivided sons of the first appellant and they own the plaint "A" schedule property. For performing the marriage of the daughter of the first appellant, and for discharging the pressing debts, while agreeing to sell plaint "A" schedule property to the respondent at Rs.7,600/- per acre they executed an agreement of sale dated 10-4-1974 Ex.A1 in favour of the respondent. On the date of the agreement, the respondent paid an amount of Rs. 1,500/- and another amount of Rs.1,500/- on 22-4-1974 as advance. As per the agreement, respondent promised to discharge the three mortgage debts in respect of the plaint "A" schedule property and other debts enumerated therein, due by the appellants and the balance of the sale consideration if any, would be paid to the appellants at the time of registration of sale deed. The time for registration was fixed as "Kotha Amavasya" i.e., 11-4-1975. It is the case of the respondent that he was ready and willing to perform the part of the contract, and infact, he discharged the mortgage debt in respect of item 2 of suit schedule on 20-12-1973. But the appellants were neither ready to measure the lands nor to show the documents of title so as to enable the respondent to complete the sale transaction. Complaining that appellants were postponing the execution of the sale deed, the suit was filed for specific performance of Ex. A1 or in the alternative to refund an amount as stated supra. It is the case of the appellants that the respondent has not complied with the conditions stipulated in the agreement of sale Ex.A1. As the agreement was entered into to get the daughter of the 1st appellant married as soon as possible, time was the essence of the agreement. The respondent paid only Rs.3000 and has neither paid any other amounts or discharged the mortgage debts or any debt, that were mentioned in the agreement of sale and was never ready and willing to take sale deed from the appellants. Since the plaintiff/respondent did not pay the amount and obtain the sale deed the defendants/appellants struggled hard to raise money for meeting the marriage expenses of the daughter of the first appellant. The respondent is entitled for compelling registration of sale deed only after the discharge of debts mentioned in The agreement of sale. The discharge of one of the debts does not amount to compliance of the agreement of the sale. Though the defendants/ appellants were eager to finalise the transaction on account of dilatory tactics of the respondents the sale deed was not executed. The question of measurement did not arise, since the respondent has already satisfied himself at the time of entering into agreement with the measurements of the lands. It is further pleaded that the respondent and his brother colluded and got filed O.S.No.321/1976 on the file of the District Munsif Court, Pithapuram and obtained decree against the appellants and that the appellants had to raise the money to satisfy the decree. The value of the lands has gone up by leaps and bounds, and in view of the enormous delay, the equitable relief for specific

performance cannot be granted. The respondent is also not entitled for refund of the amount claimed, as he paid only Rs.3,000/- and the alleged payments made towards discharge of the two mortgages were denied. It was also contended that the suit was barred by limitation.

6. On the basis of the above pleadings the Court below framed the following issues for trial.

"1. Whether the plaintiff is entitled to specific performance of agreement ?

2. Whether suit is within time ?

3. To what relief?

Additional issues were also framed on 26-11-1981:

1. Whether the plaintiff is entitled to the refund of amount alternatively ?

2. Whether the defendant is entitled to any benefits if specific performance is refused?"

The Court below found issue Nos. 1 and 2 and additional issues in favour of the plaintiff and accordingly decreed the suit directing the appellants to execute sale deed as stated supra.

7. Now the points that arise for consideration in this appeal are -

(1) Whether the plaintiff/respondent was entitled for specific performance of the agreement ?

(2) Whether the suit was within time ?

(3) Whether the plaintiff/respondent is entitled for refund of the amounts for Rs. 10,364/- from 1976 with interest ?

8. The suit is filed for specific performance of agreement Ex.A1 dated 10-4-1974 for the sale of agricultural property of an extent of Ac.2.34 cents. Certain conditions were stipulated in the agreement to be complied with by the respondent before execution of the sale deed by the appellants. Before proceeding further, it is necessary to notice the relevant conditions stipulated in the agreement.

9. Three mortgage debts have been enumerated in the agreement which the respondent was to discharge; (1) Mortgage debt dated 3-3-1969 in favour of Konda Mahanti Yegenna, (2) To Discharge the usufructury mortgage dated 11-3-1974 in favour of Konda Mahanti Suryakantham and (3) To discharge the mortgage debt in favour of Chakradhar Kao dated 20-12-1973 which was transferred from Basu Vallayya Dora. A pronote debt dated 23-7-1973 in favour of Devu Nagerathnam. Another amount for Rs. 1,474/- to be discharged due to Pithapuram Co-operative Bank. For the discharge of the above debts the schedule land was agreed to be sold at Rs.7,600/- per acre and an amount of Rs.

1,500/- was agreed to be paid to the appellants on the date of agreement and further a sum of Rs. 1,500/- was to be paid on 20-4-1974, which however has been received on 22-4-1974. The above amounts were to be paid to the mortgagees and others according to the agreement by "Kotha Amavasya". It was further agreed in the agreement that after deducting the advance amount, the amounts paid towards debts, on bearing the expenses of stamps and registration, and on payment of the balance consideration to the appellants at the time of the registration, the appellants should execute the sale deed in favour of respondent. The agreement therefore makes it incumbent upon the respondent to first discharge the above mortgage debts and other debts before compelling the appellants to execute the sale deed. The essential obligation on the part of the respondent is therefore the discharge of all the debts mentioned in the agreement and handing over the property to the appellants. It has therefore to be seen whether the respondent has performed his part of the contract.

10. The plaintiff/respondent has himself examined as PW1. In his evidence he stated that he has paid Rs.3,000/- as advance on the date of agreement, that item No.1 of "A" schedule was in possession of Chakradhara Rao in respect of an extent of Ac. 1.24 cents and item No.2 of "A" schedule in respect of an extent of Ac. 1.12 cents was in possession of Suryakantham and he admits that all the debts were to be discharged by telugu New Year i.e. 10-4-1975. However, it has come in his evidence that it was the first defendant who first issued notice. Ex. A3 dated 9-5-1975 requesting the respondent to discharge the debts and to pay the balance of money. In his evidence the respondent has stated that he has discharged the mortgage debts in favour of Suryakantham and Yeganna and got endorsement on the mortgage bond. The said payment and endorsement was however denied by the appellants. Admittedly the endorsement was written in the house of "Karanam" and only sons of first defendant were present. However, it has come in the evidence that mortgage debts in favour of the above people, with regard to item No.2 of "A" Schedule, were discharged by the respondent. Curiously, however, instead of delivering the properties to the defendants as agreed upon, he stepped into the shoes of mortgagees and has taken possession of the land. Much evidence has been let in on the plea of discharge of the above mortgage debt and alleged endorsement made on the mortgage deed which in my view is not a crucial question to be dealt with in this appeal. Nothing turns upon it. We can proceed on the assumption that the mortgage debt in respect of item 2 stood discharged. Admittedly respondent has not discharged the mortgage in respect of item No. 1 of suit schedule property, the mortgage transferred in favour of the brother of the plaintiff respondent by Busa Vallayya Dora and debt due to Nagarathnam and other debts. PW1 further submits that it was again the 1st defendant/ appellant who had issued notice Ex A11, dated 26-10-1978 stating that the respondent has not discharged all the mortgage debts, as agreed upon in the agreement of sale, and hence it was unlawful on his part to continue in possession of Item No.1 of plaint "A" schedule property, and

that as per the agreement, the appellants are entitled to take possession of the lands under mortgages after the discharge of the mortgage debts. PW1 in his evidence only says that he has issued a reply notice putting the blame on the appellants for the delay because they were not ready with the measurements of the land and that the appellants failed to bring the creditors to him.

11. Now coming to the evidence of the appellants the first defendant in his evidence as DW1 has clearly stated that he has borrowed Rs.3,200/- in 1969 and mortgaged Ac. 1.12 cents, item 2 of "A" Schedule, to Yeganna and he was in possession of the land from 1969 to 1973. In 1973 usufructury mortgage in favour of Suryakantham in respect of same land was executed and received Rs.3,000/-. He borrowed Rs.3,000/- from Basu Vallayya Dora and executed usufructury mortgage in his favour in respect of Ac. 1.24 cents (Item No.1 of the "A" schedule). He again says that he further borrowed Rs. 1,000/- under a pro note from him. He also borrowed Rs. 1000 A from Devu Nagaratnam under a pro note. He also incurred other debts including from Mortgage Bank. But the respondent has paid only Rs.3,000/- in two instalments. He denied delay in execution of the sale deed. The land was already measured in presence of two persons. He denied the payment to Yeganna on 28-2-1976. It has also come in his evidence that mortgage debt in favour of Basu Vallayya Dora was transferred in favour of brother of the respondent, Chakradhara Rao who filed O.S.No.321/1976 on the file of District Munsif Court, Pithapuram and obtained a decree against the appellants. In the said suit respondent had figured as a witness and stated that under the agreement of sale he was to discharge mortgage debt in respect of the land mortgaged by the appellants in favour of Basu Vallayya Dora which was transferred to the plaintiff in that suit. DW3 supports this part of his evidence. DW1 also says that he had to raise money to satisfy the decree in favour of Chakradhara Rao. He himself borrowed money to discharge a pronote which should have been discharged by the respondent.

12. The appellant No. 1 stated that it was he who first asked the respondent to obtain the sale deed, by issuing notice. But the respondent was delaying to discharge the debts for the execution of the sale deed, only to harass him. He denied the suggestion that the land was never measured after the agreement was entered into and stated that in the presence of the respondent himself, the measurements of the lands were made and plan was prepared and was given to the respondent. The mortgages were to be discharged through appellant No. 1, and after they were discharged, the mortgage documents were to be given to the respondent. He denied the suggestion that respondent offered to discharge the debts and that he himself had come in his way on the ground that he would negotiate with the creditors for some concessions. The witness says that respondent has been examined by him in O.S.No.321/76 on the file of the District Munsif Court, Pithapuram, and in his evidence the respondent deposed that he was to discharge the mortgage debt, which has been transferred in favour of his brother, and which was the subject-matter of that suit. The respondent was issued notices Exs. AS, All and A13 by the appellants. The

appellant No. 1 deposed that the suit was barred by limitation.

13. It is manifest from the above evidence that respondent had to discharge the debts enumerated in Ex.A1 before compelling the appellants to comply with the performance of their part of the contract. Admittedly, only two mortgage debts have been discharged i.e. in respect of item No.2, which were executed in favour of Yegganna and Suryakantham. The mortgage debt in favour of Vallaya Dora, which was transferred in favour of the brother of respondent in respect of item No.1 of "A" schedule, was not discharged. Another debt, due to be discharged by the respondent, was to Devu Nagaratnam. The debt due to the mortgage bank was also not discharged. Thus, the respondent had not complied with his obligation under the contract. Discharge of one of the items, cannot be treated as compliance of his part of his obligation under the contract. Two reasons were given by him for not discharging all the debts. The first reason, for not discharging the other debts was that the creditors were not brought to him. The second reason was that the measurement of the lands was not completed by the appellants. Both these reasons, to my mind are wholly baseless.

14. If the above two reasons were to be true, the respondent should have issued notice to the appellants before the prescribed date i.e., 11-4-75, which has been fixed under the agreement, as the date for the respondent to discharge all The debts. It should be kept in mind that the appellants have entered into an agreement of sale of their lands only for the purpose of getting the daughter of appellant No. 1 married and to discharge other pressing debts. Therefore, the date under the agreement was fixed as "kotha amvasya" i.e. 11-4-75. No notice has been given by the respondent. In fact, the appellants have given notice to the respondent asking him to discharge the debts. Subsequent to the issuance of notice Ex.A3, the respondent discharged the debts in respect of item No.2 of "A" schedule property and has come himself into possession of the said property as a vendee under the suit agreement. Even if the appellants have failed to comply with their part of the contract in not bringing the creditors to the respondent or in not completing the measurement of the lands, the respondent should have issued notice to the appellants in that regard. He has not done so. Only in reply to notice Ex. A11, issued by the appellants, the respondent has come forward with the theory that measurement of the lands was not made and that the appellants have not brought the creditors to him. Obviously, this plea is an afterthought, only to explain away the delay in discharging the debts. The respondent should have been satisfied with the measurement of the lands before entering into an agreement. The measurement of lands subsequent to the agreement, appears to be wholly irrelevant since the respondent has to take whatever extent of land that is available with the appellants.

15. With regard to discharge of debts, the following is stated in Telugu in the agreement ExA1 :

16. From the above, it becomes clear that the respondent should himself discharge the debts with the creditors. No condition is put that the appellants

should bring the creditors to the respondent to discharge the debts. There is also no mention in the agreement that the appellants should first complete the measurement so that the respondent can perform his part of the contract. In the above circumstances, the reasons given by the respondent for not discharging the debts and not performing his part of the contract, should be held as baseless and unacceptable.

17. The learned Judge while dealing with the reasons for not discharging the debts by the respondent observed that the brother of the respondent, Chakradhara Rao, in whose favour mortgage was transferred, filed O.S.No.321 of 1976 on the file of the district Munsif Court, Pithapuram, on the basis of mortgage, against the appellants. In the said suit, a plea was taken by the appellants that they were small farmers, and therefore they were entitled for the benefits of Act 7 of 1977. The learned Judge, did not find favour with the above plea and ultimately decreed the suit against the appellants. The learned Judge explains the reason for the respondent in not discharging the debts in these words "it would not be prudent on the part of the plaintiff to pay the other debts especially when the defendants took the stand that they are entitled to the benefit of Act 7 of 1977, and when they resiled from the agreement of sale by issuing notices under Exs.A11 and A13", In my view, this explanation is not relevant for considering the question as to whether the respondent had performed his part of the contract so as to enable him to obtain equitable relief of specific performance.

18. The respondent very well knows that his brother had filed a suit and obtained a decree against the appellant No.1, and to satisfy the decree, the appellants had to borrow the money from other sources. The creditor under the mortgage being his own brother, the question of bringing him to the respondent by the appellants, does not arise. In the circumstances, I have no doubt in my mind that the respondent has not performed his part of the contract to compel the appellants to execute the sale deed.

19. The next point that has to be considered is whether the suit is barred by limitation. It is contended by the learned Counsel for the appellants that the suit having been filed after three years from the date of the agreement, the suit is liable to be dismissed on the ground of limitation. To consider this aspect, it is necessary to notice the relevant dates. Ex.A1 is dated 10-4-1974(agreement), under which the respondent has to discharge the debts by 11-4-1975. It is clearly stated in the agreement that by 11-4-1975, the respondent has to discharge all the debts, and on that premise the appellante agreed to sell their property at Rs.7,600/- per acre. In view of the fact that appellant No. 1 is daughter has to be married they needed the money urgently for meeting the marriage expenses, and therefore, they wanted to sell the lands. There is therefore, significance for fixing the date as 11-4-1975 for performing the part of contract by the respondent. Admittedly, the debts were not discharged by 11-4-1975. The appellants got issued registered notice dated 9-5-75 Ex.A3

requesting the respondent to discharge the debts. The respondent discharged the mortgage in respect of item No.2 of A" schedule on 28-6-1976. Ex. A11 dated 26-10-1978 is second registered notice, issued by the appellants to the respondent stating that the agreement was barred by limitation, and it cannot be enforced. Hence, they requested the respondent to give possession of item No.2 of "A" schedule property to the appellants. Ex,A13 dated 7-11-1978 is another notice, issued by the appellants. In this notice, it was again clearly stated that the agreement was vitiated by delay and it cannot be enforced. The suit was filed on 13-7-1979. The suit was therefore, filed five years from the date of the suit agreement. The learned Judge, while dealing with the issue of limitation took into consideration the dates of depositions given by appellant No.1 in OS No.321 of 1976 on the file of the District Munsif, Pithapuram, i.e. 20-7-1978, 20-3-1978,21-6-1977 and 15-3-1977, as the starting point of limitation. The learned Judge in para 27 of the impugned judgment observed as follows:

"..... I am of the opinion, that the 1st defendant has not only admitted the jural relationship between the plaintiff in the previous suit but also maintained that the plaintiff has to discharge the debts due by him including the one due to his brother which is subject matter of the said suit (OS No.321 of 1976 on the file of the District Munsif s Court, Pithapuram). If the 1 st defendant went to that extent, it is not a mere case of admitting the jural relationship but also claiming some relief in the said suit on the ground that the plaintiff herein has to discharge that debt as well, thus absolving himself of any liability. I am, therefore, of the opinion that the 1st defendant made these acknowledgments consciously knowing about the rights of the plaintiff and also the obligations on his part under the agreement of sale."

20. I am unable to follow the reasoning. The said suit was filed by the brother of the respondent on the basis of mortgage debt, against the appellant No. 1. No doubt, in the said suit it was deposed by appellant No. 1 that the respondent was liable to discharge the mortgage debts under the agreement. That deposition was given in defence of his case as to why the debt was not discharged. It was his case that the debt was to be discharged long back by the respondent, but it was not done so. It was nobody's case in that suit that the agreement was in force as on the date of deposition. The deposition was made in an entirely different context Moreover, it was not a his between the respondent and the appellants. The agreement was not marked in the above case and it was not put in evidence either to the appellant No.1 or the respondent. Hence, I am of the view that the suit was based by limitation as it was filed beyond 3 years from the date of the agreement.

21. It is also contended by the learned Counsel for the appellants that the equitable relief of specific performance cannot be granted as the respondent has not approached this Court promptly after discharging his part of the contract. It is true that there is long delay in filing the suit. If the respondent was aggrieved by the conduct of the appellants in not performing their part of the contract, the

respondent should have filed the suit within one year from the date of the agreement or immediately thereafter. Even assuming that there are good reasons for not performing his part of the contract, the respondent should have approached the Court within a reasonable time. The suit filed after five years, deprives the right of the respondent to obtain equitable relief of specific performance. It is true that in AIR 1968 AP 190, it was held that mere delay would not deprive the plaintiff the equitable relief, but it was decided therein that if there are good reasons for approaching the Court with delay or if there are supervening circumstances which altered the situation and created, right title and interest in the third parties validity, the Court would not deprive the person of equitable relief- But in the instant case, as seen supra, there are absolutely no grounds for the respondent for not approaching this Court immediately after one year from the date of the agreement. It is well settled that specific performance of a contract is not a matter of right, but is only a relief to be granted by the Court in equity. In order to obtain such a relief, the party should approach the Court with clean hands and with utmost expedience.

22. In view of the above, the suit is also liable to be dismissed on the ground of delay.

23. The next point that falls for consideration is whether the respondent is entitled for refund of the amount paid by him in discharging the mortgage debt in favour of item No.2 of "A" schedule property. It is stated in the plaint that a total amount of Rs. 10,634/-has been paid by the respondent, and that the respondent is entitled to refund of the same along with interest at 12 per cent per annum from the respective dates of payment. The learned Counsel for the appellants does not dispute the payment of the above amounts. In the circumstances, the respondent is entitled for refund of the same. Since the respondent was in possession of item No.2 of "A" schedule property from 1976 as vendee under the agreement, which he was not entitled to under the agreement at all, and had benefited by cultivation of the said land, the respondent is not entitled for any interest on the above amount.

24. In the circumstances, the appeal is partly allowed. The suit for specific performance of the contract is dismissed with costs. However there shall be a decree in favour of respondent for refund of the amount of Rs. 10,364/- from the appellants.

25. No order as to costs.