
(2003) 04 AP CK 0040
In the Andhra Pradesh High Court
Case No : A.S. No. 919 of 1997

Dutta Seethamahalakshmamma and Others	APPELLANT
Vs	
Yamadala Balaramaiah and Another	RESPONDENT

Date of Decision : 18-04-2003

Acts Referred:

Limitation Act, 1963 — Article 54
Specific Relief Act, 1963 — Section 22

Citation : AIR 2003 AP 430 : (2003) 4 ALD 381 : (2003) 6 ALT 151 : (2003) 2 APLJ 75

Hon'ble Judges : G. Rohini, J; Bilal Nazki, J

Bench : Division Bench

Advocate : M. Ravindranath Reddy, for the Appellant; K. Narasimham, for the Respondent

Final Decision : Partly Allowed

Judgement

G. Rohini, J.—The unsuccessful plaintiffs in O.S. No. 21 of 1988 on the file of the Court of the Subordinate Judge, Nuzivedu preferred in this appeal.

2. The suit is filed for specific performance of contract of sale dated 21.6.1970 or in the alternative for recovery of damages of Rs.4,08,000/- from the defendants. According to the appellants/plaintiffs the defendants are the absolute owners of the plaint schedule land and they agreed to sell the same to the plaintiffs 1 and 2 and the wife of the 3rd plaintiff under an agreement of sale dated 21.6.1970. The plaint averments are as follows:

Under the agreement dated 21.6.1970 the defendants agreed to sell the said land for a total sale consideration of Rs.28,560/- at the rate of Rs.3,500/- per acre and on the date of the agreement itself the defendants received a sum of Rs.2,500/- as advance. It was agreed between the parties that the balance of sale consideration of Rs.26.060/- shall be paid on or before 2.8.1970, failing which the amount paid as advance shall be forfeited. Thereafter, the plaintiffs paid a sum of Rs.8,000/- on 25.11.1970. The defendants having acknowledged

the same by way of an endorsement agreed that the balance of sale consideration shall be paid and the registered sale deed shall be obtained before the end of December, 1970. Subsequently, the plaintiffs paid a sum of Rs.6,000/- on 20.1.1971. The defendants accepted the said amount though the same was paid beyond the time fixed and they have also delivered the possession of the suit schedule land to the plaintiffs. The plaintiffs contended that they have been in uninterrupted possession and enjoyment of the suit schedule property and they have also leased out the same to one S. Venkateswara Rao on 26.4.1972, who has been paying the rent of Rs.1,000/- per year to the plaintiffs. The plaintiffs contended that during the period from 14.1.1971 to 14.12.1972 the plaintiffs and the defendants had a running account and as per the said account a sum of Rs.5,490.70 Ps is due from the defendants which has to be adjusted towards the sale consideration as agreed between the parties. Thus, according to the plaintiffs the balance payable to the defendants towards the sale consideration is only Rs.6,560.30 Ps which was deposited in the Office of Revenue Divisional Officer, Nuzvid as per the interim orders in W.P. No. 5411 of 1985. Though the plaintiffs are always ready and willing to perform their part of the contract, the defendants did not register the sale deed. When the plaintiffs issued notice dated 21.9.1987, the defendants issued reply dated 6.10.1987 refusing specific performance. Therefore they are constrained to file the suit seeking the reliefs stated supra.

3. It is the case of the plaintiffs that the 3rd purchaser under the agreement Smt. D. Lakshmiddevamma died even prior to institution of the suit. The 3rd plaintiff is her only legal heir. However, the 3d plaintiff also died pending the suit and the plaintiffs 7 & 8 were brought on record. That apart, the 2nd plaintiff died on 18.11.1989 pending the suit and consequently plaintiffs 9 to 17 were brought on record as the legal representatives of the deceased 2nd plaintiff. Similarly, on the death of the 1st plaintiff the plaintiffs 4 to 6 are added to the suit being the legal representatives of the deceased 1st plaintiff.

4. The suit was contested by the defendants. They filed written statement denying the plea of the plaintiffs that the possession of the suit schedule property was delivered to them. It is also contended that the parties always intended that time is the essence of the contract and as per the terms of the contract the balance of sale consideration should be paid on or before 2.8.1970, which could not be complied with by the plaintiffs. It is also pleaded that the plaintiffs are not entitled to raise the plea of part performance of the contract and that the suit is barred by limitation. The defendants also denied the alleged lease by the plaintiffs in favour of S. Venkateswara Rao and alleged that the recitals under the agreement have been interpolated and the endorsements have been tampered with by the plaintiffs. It is the further case of the defendants that the 1st defendant was recognized as pattedar in respect of Ac.4.08 cents of land and the 2nd defendant was recognized as pattedar in respect of Ac.4.09 cents of land and that they have been paying the land revenue and they are being shown as owners in occupation of the schedule land in all the revenue records. There is

absolutely no cause of action for the plaintiffs to file the suit and they are not entitled to any decree as prayed for.

5. Basing on the above pleadings, the trial Court settled the following issues for trial:

1. Whether the plaintiffs are in possession of the suit land?
2. Whether the Court fee paid is correct?
3. Whether the suit is barred by time?
4. Whether time was the essence of the contract in the agreement dated 21.6.1970?
5. Whether the plaintiffs have been ready and willing to perform their part of the contract?
6. Whether the plaintiffs are entitled to the relief of specific performance as prayed for?
7. Whether the plaintiffs are entitled to the alternative relief of damages together with interest as prayed for?
8. Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for?
9. To what relief?

6. The following additional issue was also framed subsequently.

1. Whether the payment of Rs.5,490.70 Ps as pleaded by the plaintiffs is true?
7. The plaintiffs examined five witnesses and got marked Exs.A.1 to A18 documents to substantiate the suit claim. On behalf of the defendants two witnesses were examined and Exs.B1 to B58 documents were marked.
8. The learned trial Judge on appreciation of the evidence on record, both oral and documentary, answered all the issues against the plaintiffs and dismissed the suit with costs.
9. Aggrieved by the said judgment the plaintiffs preferred this appeal.
10. We have heard the learned counsel for the appellants Sri M. Ravindranadh Reddy, as well as the learned counsel for the respondents Sri Krovvidi Narasimham.
11. The learned counsel for the appellants contended that the conclusions of the Court below are erroneous and cannot be sustained. He vehemently contended that on proper appreciation of the evidence on record the Court below ought to have decreed the suit as prayed for. On the other hand, the learned counsel for the respondents while supporting the judgment under appeal submitted that the same does not warrant any interference.

12. As can be seen from the material on record the case of the plaintiffs is that in terms of Ex.A1 agreement of sale dated 21.6.1970 they paid a sum of Rs.2,500/- on 21.6.1970 i.e., on the date of the agreement itself. Thereafter they paid Rs.8,000/- under Ex.A2 endorsement dated 2.11.1970 and Rs.6,000/- under Ex.A3 endorsement dated 20.1.1971. Though as per the terms agreed under Ex.A1 the balance of sale consideration shall be paid by 2.8.1970, the plaintiffs contended that under Ex.A2 endorsement the defendants agreed for payment of balance by 31st December, 1970. In spite of that the plaintiffs paid Rs.6,000/- on 20.1.1971, which was accepted by the defendants under Ex.A3 endorsement, where under no time was fixed for payment of the balance of sale consideration. The plaintiffs also claimed that on 20.1.1971 the defendants have handed over the possession of the suit schedule land. Their further case is that as per the running account maintained between the plaintiffs and defendants during the period from 14.1.1971 to 14.12.1972 a sum of Rs.5490/- was due from the defendants and after adjusting the same the plaintiffs are liable to pay only a sum of Rs.6,560/- towards the balance of sale consideration and that though they are ready and willing to perform their part of the contract the defendants failed to execute the registered sale deed in their favour.

13. It is also pertinent to note that in the meanwhile the defendants filed an application on 22.3.1985 before the Revenue Officials seeking amendment of entries in the revenue records which was objected to by the plaintiffs. However, the Revenue Divisional Officer allowed the amendment as sought by the defendants and disallowed the objections raised by the plaintiffs. The said action was challenged by the plaintiffs by filing W.P. No. 5411 of 1985 and by virtue of the interim orders granted by this Court the plaintiffs deposited in the office of the Revenue Divisional Officer, Nuzvidu, a sum of Rs.6,560/- towards the balance of sale consideration. However, the Writ Petition was ultimately dismissed by this Court on 30.10.1985. Subsequently the plaintiffs got issued Ex.A5 notice dated 21.9.1987 calling upon the defendants to register the sale deed. The defendants issued Ex.A6 reply dated 6.10.1987 refusing the claim of the plaintiffs. Thereafter the suit was filed on 26.12.1987.

14. The main contention of the defendants is that under Ex.A1 agreement time is the essence of the contract and the plaintiffs failed to perform their part of the contract within the time agreed upon. It is also contended that the plaintiffs were never ready and willing to perform their part of the contract and as a matter of fact they have abandoned the transaction under Ex.A1. They also specifically pleaded that possession was never delivered to the plaintiffs and since they approached the Court with unclean hands making false claims they are not entitled to the equitable relief of specific performance. Though the defendants admitted the receipt of part payments under Ex.A2 and Ex.A3, it is contended that the suit filed on 26.12.1987 for the specific performance of Ex.A1 agreement dated 21.6.1970 is barred by limitation.

15. On the basis of the above set of facts and in the light of the rival contentions

raised by either party the following points arise for determination in this appeal.

1. Whether the plaintiffs are not entitled to a decree for specific performance.
2. Whether the suit is barred by limitation?
3. Whether the plaintiffs are entitled to the alternative relief of recovery of damages as prayed for?

Point No. 1: Admittedly Ex.A1 agreement contains a specific clause that the balance of sale consideration shall be paid on or before 2.8.1970. A perusal of Ex.A2 endorsement shows that Rs.8,000/- was paid by the plaintiffs on 2.11.1970 and it was agreed upon between the parties that the balance of sale consideration shall be paid on or before 31.12.1970 failing which the agreement stands cancelled. However, under Ex.A3 endorsement dated 20.1.1971, again the defendants accepted a part payment of Rs.6,000/- but there was no stipulation as to payment of balance of sale consideration. Therefore, placing reliance upon Ex.A3 the plaintiffs contended that since no time is stipulated under Ex.A3 for payment of balance, time cannot be held to be the essence of contract.

16. Admittedly, Ex.A3 dated 20.1.1971 under which the plaintiffs paid a sum of Rs.6,000/- does not prescribe any time limit for payment of the balance of sale consideration. Therefore, the plaintiffs contend that the parties never intended that time is the essence of the contract. The material on record shows that after the payment under Ex.A3 there was a long gap and in the year 1985 the plaintiffs in pursuance of the interim orders granted in W.P. No. 5411 of 1985 deposited a sum of Rs.6,000/- purported to be towards the balance of sale consideration. Admittedly, the said amount was not withdrawn by the defendants. Thereafter Ex.A5 notice was issued by the plaintiffs on calling upon the defendants to execute a registered sale deed in their favour which was refused by the defendants in their reply dated .

17. On the basis of the above said facts the first question that falls for our consideration is whether the parties have agreed the time to be the essence of the contract. It is now well-settled that even in the absence of an express covenant, the intention of the parties to make the time as the essence of the contract can be gathered from the surrounding circumstances and the object of making the contract itself vide Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs., . In P. Purushotamreddy Vs. Pratap Steels Limited , a Division Bench of this Court while relying to the aforesaid two decisions held as follows:

It is clear from the reading of the judgment of the Supreme Court that the Courts should bear in mind that when the parties agree and prescribe certain time limit for taking steps by one or the other party, it must have some significance and that the said time limit cannot be ignored altogether on the ground that time has not been made the essence of the contract. It is not necessary to state in the agreement itself that time to be the essence of

contract. The express covenants themselves in the contract may disclose the same."

18. In the instant case Ex.A1 agreement prescribed a time limit as 2.8.1969. However, the plaintiffs paid the amounts beyond that date and the defendants accepted the same under Ex.A2 and the time for payment of balance amount was fixed as 31.1.1970. Admittedly the balance was not paid within the time prescribed under Ex.A2 and a sum of Rs.6,000/- was paid on 20.1.1971 under Ex.A3, where under no time limit was prescribed for the balance. The defendants pleaded that the understanding between the parties was that the balance will be paid within a short time thereafter and the sale deed will be duly executed. In view of the assurance given by the plaintiffs the defendants have not incorporated any specific term fixing the date for payment of balance. Both D.W.1 and D.W.2 in their deposition reiterated the same. There is nothing on record to suggest that the parties intended not to make the time as the essence of the contract. Having regard to the facts and circumstances of the case and particularly the time limit prescribed under Exs.A1 and A2, we are of the view that there is absolutely no reason to presume that time is not the essence of the contract. At any rate the deposit made by the plaintiffs in the year 1985 purported to be towards the balance of sale consideration cannot be said to be in a reasonable time and consequently the plea of the plaintiffs that they are always ready and willing to perform their part of contract cannot be accepted. It is well settled that continuous readiness and willingness on the part of the plaintiffs is the condition precedent to grant the relief of specific performance right from the date of execution of the agreement till the date of the decree, the plaintiff must prove that he is ready and willing to perform his part of the contract. On that ground also we are of the view that the plaintiffs are not entitled to a decree for specific performance.

19. It may also be noted that the plea of the plaintiffs that a sum of Rs.5,490.70 Ps is due to them from the defendants as per the running account maintained and the same shall be adjusted towards sale consideration was totally denied by the defendants. The plaintiffs could not produce any evidence to substantiate their plea. On the other hand, P.W.1 in his evidence admitted that they have not filed any account books. He also stated that since the account books are not available he is ready to pay that amount also. Therefore, as rightly concluded by the learned single Judge the plaintiffs failed to prove the payment of Rs.5,490.70 Ps as claimed by them. In the circumstances, the last payment by the plaintiff shall be taken as the payment made under Ex.A3 on 20.1.1971. The plea of the plaintiffs that they deposited a sum of Rs.6,569.30 Ps in the office of Revenue Divisional Officer, Nuzvid on 19.7.1985 towards balance of sale consideration in pursuance of the interim order in W.P. No. 5411 of 1985 is of no consequence since the said amount was admittedly not withdrawn by the defendants and ultimately the writ petition itself was dismissed on 30.10.1985. Thereafter the plaintiffs issued Ex.A5 notice dated 21.9.1987 demanding execution of sale deed to which the defendants gave Ex.A6 reply stating that time is the essence of the

contract and the agreement itself stood cancelled and the amount paid is forfeited.

20. On the basis of the above said facts the 1st question that falls for our consideration is whether the parties have agreed the time to be the essence of the contract.

21. Admittedly Ex.A1 agreement dated 21.6.1970 contains a specific clause that the balance of sale consideration shall be paid on or before 2.8.1970. However, the defendants made a part payment of Rs.8,000/- on 25.11.1970 under Ex.A2 endorsement. It was accepted by the defendants and it was agreed upon between the parties that the balance shall be paid on or before 31.12.1970 failing which the agreement stands cancelled. Admittedly the plaintiffs could not stick on to the time limit prescribed and they made another part payment of Rs.6,000/- on 20.1.1971. The receipt of the said amount was admitted by the defendants under Ex.A3 endorsement, however, no time is stipulated for payment of balance. In the circumstances the contention of the plaintiffs is that time cannot be held to be the essence of the contract. The defendants pleaded that the understanding between the parties was that the balance will be paid within a short time and in view of the said assurance given by the plaintiffs no specific term fixing time for payment of balance was incorporated in Ex.A3. The 2nd defendant who deposed as D.W.1 reiterated the same in his evidence.

22. The crucial question is whether since no time is stipulated under Ex.A3 for payment of balance can it be concluded that time is not the essence of the contract.

23. It is now well-settled that even in the absence of an express covenant the Court may infer that it is to be performed in a reasonable time basing on the express terms of contract, nature of the property and from the surrounding circumstances and the object of making the contract vide K.S. Vidyanadam and Others Vs. Vairavan, . In the instant case Ex.A1 agreement is dated 21.6.1970 and the time prescribed for payment of balance is 2.8.1970 i.e., about six weeks. It also contains a specific clause that in case the payment was not made the earnest money of Rs.2,500/- stood forfeited. However, when the plaintiffs made a part payment of Rs.8,000/- on 25.11.1970 an endorsement to that effect was made under Ex.A2 on the reverse of Ex.A1. It is pertinent to note that under Ex.A2 it is specifically mentioned that the balance shall be paid by 31.12.1970 and the register document shall be obtained failing which the agreement stands cancelled. The above said terms under Exs.A1 and A2 clearly shows that intention of the defendants to complete the sale transaction at the earliest point of time. It is also relevant to note that even according to the plaint averments there is rapid increase in the price of the schedule lands and therefore it can be reasonably presumed that the parties intended time is the essence of the contract. The fact that a default clause is incorporated both under Ex.A1 and Ex.A2 for cancellation of the agreement as well as for forfeiture of the earnest money paid lends support to conclude that the parties intended that time is the

essence of the contract.

24. The next question that falls for our consideration is whether the plaintiffs are ready and willing to perform their part of the contract. The law is well-settled that continuous readiness and willingness on the part of the plaintiffs is the condition precedent to grant the relief of specific performance. Right from the date of the execution of the agreement till the date of the decree the plaintiffs must prove that they are ready and willing to perform their part of the contract.

25. In the instant case, in spite of the fact that Ex.A1 agreement stipulated that the sale consideration shall be paid by 2.8.1970 the plaintiffs could not stick on to the said time limit and certain part payments were made by 20.1.1971. Admittedly the total amount paid was only Rs.16,500/-. There is absolutely no explanation from the plaintiffs for non-payment of the sale consideration within the time prescribed. It is also pertinent to note that the original purchasers under Ex.A1 are no more and the only legal representatives of the purchasers are claiming enforcement of Ex.A1 agreement. Another circumstance that has to be taken into consideration is that though the plaintiffs claimed that possession was delivered to them on 20.1.1971 they failed to include the suit schedule land in their declarations. Exs.B7, B9 and B13 are the declarations filed under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act. Exs.B13, B18 B11 and B14 are the verification reports. Exs.B9, B12 and B15 are the orders of the Tribunal. The aforesaid documents show that the plaintiffs 1 to 3 did not include the suit schedule land in their declarations, which fact shows that they are not ready and willing to perform their part and they never intended to proceed with Ex.A1 agreement. In the circumstances, we find force in the contention raised by the defendants that since the plaintiffs are in possession of excess lands they abandoned Ex.A1 agreement and never intended to proceed with the same.

26. It is also relevant to note that W.P. No. 5411 of 1985 filed by the plaintiffs was dismissed on 30.10.1985 observing that it is open to them to work out their remedies for specific performance of the contract. However, they waited for about two years and issued Ex.A5 notice only on 21.9.1987. It is pertinent to note that in W.P. No. 5411 of 1985 the defendants filed a counter stating that Ex.A1 agreement stood cancelled. No prudent man will wait for a long time of two years even after having knowledge of refusal of the specific performance. In the aforesaid facts and circumstances the only conclusion that can be reached is that the plaintiffs failed to establish their readiness and willingness to perform their part of the contract.

27. The further contention of the defendants is that the plaintiffs approached the Court with all false averments and therefore they are not entitled to the equitable relief of specific performance. Admittedly, the plaintiffs having pleaded that the possession of the suit schedule land was delivered to them on 30.1.1971 could not establish the same. As expressed above the failure of the plaintiffs to include the suit schedule land in their declarations before the Land Reforms Tribunal itself shows that they are not in possession of the suit schedule

property. That apart, Exs.B2 to B42 land revenue receipts and Exs.B43 to B54 land revenue receipts clearly establish the fact that defendants 1 and 2 are paying the land revenue in respect of the plaint schedule lands continuously. That apart, the defendants also filed Exs.B24 to B27 title deeds and Ryotiwari Pass Books issued in their favour. Exs.B49 to B56 adangals also establish the possession of the defendants. In view of the aforesaid voluminous documentary evidence it can be safely concluded that the plaintiffs falsely pleaded that the possession was delivered to them under Ex.A3 on 30.1.1971. Similarly, the plea raised by the plaintiffs that a sum of Rs.5,490/- which was found to be due from the defendants under the running account maintained during 14.1.71 to 14.12.1972 is also found to be false. In the circumstances the plaintiffs who approached the Court with unclean hands cannot be granted a decree for specific performance.

28. The contention raised by the defendants that the suit itself is barred by limitation has been accepted by the learned trial Judge holding that the first limb of Article 54 of the Limitation Act applies to the facts and circumstances of the case and thus the suit ought to have been filed within three years from 31.12.1970 i.e., the date prescribed under Ex.A2 for payment of balance of sale consideration. The learned counsel for the respondents assails the said contention of the learned trial Judge and contended that since no date is fixed under Ex.A3 for performance of the suit agreement the second limb of Article 54 is attracted and therefore the plaintiffs are entitled to file the suit within three years from Ex.A6 reply notice issued by the defendants refusing specific performance. We find force in the contention of the learned counsel. Though the conduct of the plaintiffs in filing the suit in the year 1988 for specific performance of the agreement dated 21.6.1970 i.e., after a period of 18 years appears to be unreasonable, it cannot be held that their right to enforce the specific performance is barred by limitation. Admittedly the defendants accepted the part payment made under Ex.A3. It is also not in dispute that no specific time is prescribed under Ex.A3 for payment of balance, however, the defendants pleaded that it was agreed between the parties that the balance shall be paid shortly thereafter. Thus the fact remains that no specific date is fixed for performance of contract. Consequently we are of the view that the said limb of Article 54 is attracted and the plaintiffs are entitled to file the suit within three years from the date of notice of refusal of performance. We are unable to agree with the conclusion of the learned trial Judge that since the terms under Exs.A1 and A2 are not altered the date fixed under Ex.A2 i.e., 31.12.1970 shall be taken as starting point for computing the limitation.

29. Then the question would be whether the plaintiffs are entitled to the alternative relief of recovery of damages of Rs.4,08,000/- which includes the sale price. It is true that u/s 22 of the Specific Relief Act the Court is empowered to grant an alternative relief. However this is a case where the plaintiffs kept quiet for a period of about 17 years. The failure of the defendants to pay the sale consideration within the time agreed under Ex.A1 remained unexplained.

Admittedly the purchasers under Ex.A1 are no more. The plaintiffs are the legal representatives of the purchasers. That apart, this is not a case where the entire sale consideration was paid and as expressed above the plaintiffs could not establish that they are continuously ready and willing to perform their part of the contract. We also found that there are no bona fides on the part of the plaintiffs in filing the suit.

30. Having regard to the facts and circumstances of the case, we are of the view that the plaintiffs are not entitled for any damages as claimed by them, but the only relief that can be granted is to direct refund of the sale consideration of Rs.16,500/- paid by them together with interest at 12% per annum with effect from 31.12.1970. The decree and judgment of the trial Court is accordingly modified to the extent stated above. The appeal is allowed in part. No costs.