
(2002) 01 AP CK 0111

In the Andhra Pradesh High Court

Case No : Second Appeal No. 481 of 1984

G. Brahamananda Rao and Others

APPELLANT

Vs

P. Venkatachalapathi and Others

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Specific Relief Act, 1963 — Section 22

Citation : (2002) 01 AP CK 0111

Hon'ble Judges : G. Yethirjulu, J

Bench : Single Bench

Advocate : A.K. Narasimha Rao, for the Appellant; K. Mallikarjuna Rao, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirjulu, J.—The 1st appellant before this Court is the plaintiff in O.S. No. 47 of 1974 on the file of the Court of District Munsif, Gannavaram. Respondents 1 to 7 are the defendants in the said suit. Respondents 8 and 9 were brought on record as per the court order dated 31-12-1999 in C.M.P. No. 8763 of 1999.

2. The plaintiff filed the suit for specific performance of an agreement of sale dated 01-8-1956 directing the defendants to execute a sale-deed in his favour after receiving the balance of sale consideration and interest thereon and for permanent injunction restraining the defendants and their followers from interfering with the peaceful possession and enjoyment of the suit property.

3. The suit property consists of two items. Item No.1 is 600 sq. yds. of vacant site situated in Krishnapuram Village and Item No.2 is a vacant site of 170 sq. yds. with two tiled houses situated in Krishnapuram Village. According to the plaintiff, the 1st defendant executed an agreement of sale on 01-8-1956 in favour of the plaintiff on behalf of himself and on behalf of his minor sons i.e., defendants 2 and 3. Defendants 4 and 5 are the sons born to the 1st defendant after 1-8-1956. At the time of agreement of sale, the plaintiff paid only Rs.100/-

and it was agreed under the agreement of sale that the plaintiff should pay the balance of sale consideration of Rs.1900/- with interest @ 10 annas per month till the date of registration. The plaintiff further pleaded that the 1st defendant and himself agreed to extend the period of agreement for every three years and the period was extended up to 1974 by making endorsements on the reverse of the agreement by paying Rs.100/- on 26-1-1957, Rs.1,000/- on 1-5-1965, Rs.2,000/- on 25-3-1968, and Rs.5,000/- on 9-2-1971. The plaintiff pleads that he is in continuous possession and enjoyment of the suit sites and when the 7th defendant, a neighbour on eastern side tried to enter the suit site on 3-1-1974 he filed the above suit.

3. The 6th defendant filed a written statement with the following averments in brief:

The averments of the plaint are not true. This defendant purchased the suit property from defendants 1 to 3 on 7-11-1959 under a registered sale-deed for a consideration of Rs.1,000/- and since then he is in continuous possession of the same. On 6-12-1973 he sold away the said property to the 7th defendant under an agreement of sale dated 16-8-1973 and delivered possession of the same on receipt of Rs.4,000/- towards sale consideration and also executed a registered sale-deed dated 3-1-1974. The 6th defendant further pleaded that the plaintiff was never in possession of the suit property, and the plaintiff in collusion brought the suit agreement into existence with the 1st defendant, after the 6th defendant executing the sale-deed in favour of the 7th defendant. He further pleaded that the plaintiff offered a higher amount and asked him to execute a sale-deed in his favour, but since he did not agree for the same, the plaintiff created the suit agreement and the endorsements thereon to defeat the interests of defendants 6 and 7. Hence the suit is liable to be dismissed with costs.

4. The 7th defendant filed a separate written statement and the averments are briefly as follows:

The plaintiff filed O.S. No. 7 of 1974 for permanent injunction against this defendant. During the pendency of the said suit he filed the present suit for specific performance of an agreement of sale. The 6th defendant purchased the suit property from defendants 1 to 3 under a registered sale-deed dated 7-11-1959 and took possession of the same and the 6th defendant in turn sold away the same to this defendant and delivered possession on the date of agreement dated 16-8-1973 and subsequently executed a registered sale-deed. The plaintiff was never in possession of the suit property under the suit agreement and it is a concocted document. The plaintiff is therefore not entitled to any relief as prayed for.

5. The plaintiff in order to prove his case examined P.Ws.1 to 11 and marked Exs.A.1 to A.45. Defendants 6 and 7 examined D.Ws.1 to 9 and marked Exs.B.1 to B.25.

6. The trial court after considering the evidence adduced by both parties held

that Ex.A.1- agreement is a genuine one, the sale-deed in favour of the 6th defendant is without consideration, and the 6th defendant cannot pass any title to the 7th defendant. The trial court further held that the plaintiff is entitled for the specific performance of the agreement of sale and accordingly decreed the suit directing defendants 1 to 7 to execute a sale-deed in favour of the plaintiff.

7. The 6th and 7th defendants being aggrieved by the judgment and decree of the trial court dated 8-1-1979 preferred A.S. No. 22 of 1984 before the Court of the Subordinate Judge, Gudivada. The 1st appellate court, after considering the evidence and the judgment of the trial court, passed a judgment and decree dated 3-5-1984 allowing the appeal by setting aside the judgment and decree of the trial court and dismissing the suit without costs.

8. The plaintiff being aggrieved by the judgment and decree of the 1st appellate court preferred this appeal.

9. During the pendency of the appeal, the appellant died and his Legal Representatives were impleaded as appellants 2 to 6 vide order of this Court dated 31-12-1999 passed in C.M.P. No. 13315 of 1999.

10. The appellants questioned the validity and legality of the judgment of the 1st appellate court on the ground that the said court did not correctly appreciate the substantial question of law and the judgments cited before the court. In view of the grounds pleaded by the appellants in the suit and the issues involved in the matter, the following are the points taken up for consideration by this Court:

1. Whether the plaintiff is entitled for a decree of specific performance of Ex.A.1-agreement of sale?

2. Whether the plaintiff is entitled for perpetual injunction as prayed for?

POINT NO.1:

11. The plaintiff averred that he obtained an agreement of sale covered by Ex.A.1 on 01-8-1956. He further stated that there was mutual understanding between the 1st defendant and himself and the time of the agreement of sale was extended from time to time by making some payments. He has ultimately filed the suit in the year 1974. On 07-11-1959 the 6th defendant purchased the suit property from defendants 1 to 3 under Ex.B.7-registered sale-deed. The 7th defendant in turn purchased the said property from the 6th defendant by entering into an agreement of sale on 6-12-1973 and through Ex.B.9-registered sale-deed dated 3-1-1974.

12. Since Ex.B.7 and B.9 are the registered sale-deeds there is a general presumption that they are supported by consideration. The plaintiff questioned the validity of Exs.B.7 and B.9 on the ground that they are not supported by consideration and obtained by fraud. The burden is on the plaintiff to prove that they are not supported by consideration and they are not valid documents and they do not bind the plaintiff. The plaintiff should also discharge his burden that

defendants 1 to 3 executed Ex.A.1-agreement of sale with an intention to sell the property, the circumstances under which he could not obtain the registered sale-deed for a period of 18 years, that he was always ready and willing to perform his part of contract and obtain the sale-deed from defendants 1 to 3.

13. The trial court as well as the 1st appellate court tested the evidence adduced by both parties. The 1st appellate court did not agree with the reasoning given by the trial court regarding the validity and binding nature of Exs.A.1, B.7 and B.9 on the respective dates.

14. Defendants 1 to 5 remained ex parte. The 1st defendant did not enter the witness box. Whether he executed Ex.A.1-agreement of sale as alleged by the plaintiff and what are the circumstances under which he executed Ex.B.7-registered sale-deed in favour of the 6th defendant remained unanswered.

15. The plaintiff did not give any notice to defendants 1 to 3 to execute the registered sale deed in his favour expressing his willingness to pay the balance amount, if any, and to perform his part of contract. In Ex.A.1 it was recited that the suit property was agreed to be sold for Rs.2,000/- for discharge of debt of Rs.14,000/- covered by a mortgage dated 21-6-1948 due to one Dandamoodi Veerabhadraiah. It was further recited in Ex.A.1 that the plaintiff paid Rs.100/- towards earnest money and he was given possession of the entire property and that defendants 1 to 3 agreed to execute a registered sale-deed as and when demanded by the plaintiff after receipt of the remaining sale consideration of Rs.1900/-.

16. The purpose of the sale was to discharge the mortgage debt. What amount defendants 1 to 3 would get, they would be anxious to pay the said amount to the mortgagee at the earliest possible time to reduce the debt amount and to avoid the interest on the debt. Unless a major portion of the sale consideration is paid, the property will not be delivered to the purchaser under an agreement of sale. Since the sale was for discharge of a debt, the defendants would have definitely insisted for fixing of a date for execution of the sale-deed, but peculiarly the time was not made the essence of the contract. The plaintiff pleaded that the 1st defendant made several endorsements on the reverse of Ex.A.1. The first endorsement was made on 26-1-1957 by making payment of Rs.100/- towards part of sale consideration. On 10-7-1959 another endorsement alleged to be made extending the time of agreement by three years. On 5-6-1962 another endorsement alleged to be made extending the period of agreement by another three years and no payments were made under the above two agreements. Another endorsement alleged to be made on 1-5-1965 evidencing payment of Rs.1,000/- towards part of sale consideration and the period of agreement was said to be extended by three more years. On 5-3-1968 another endorsement alleged to be made evidencing payment of Rs.2,000/- and extending the period of agreement for three more years. On 9-2-1971 another endorsement alleged to be made making payment of Rs.5,000/- and extending the period of agreement of sale by three years.

17. It is for the plaintiff to explain as to what was the necessity for him to obtain various endorsements extending the period of agreement of sale when time was not made the essence of the contract and why he did not express his readiness to obtain the sale-deed after the alleged payment of the sale consideration.

18. Defendants 1 to 3 executed a registered sale-deed covered by Ex.B.7 in favour of the 6th defendant. It is a registered public document. Defendants 1 to 3 did not deny the execution of the said registered sale-deed. When once they execute the sale-deed in favour of the 6th defendant it implies that they are not willing to sell the suit property to the plaintiff and it amounts to denial of executing the sale-deed. When once there is a denial, the limitation starts to run from the date of the said denial and the plaintiff is supposed to file the suit within three years from the date of Ex.B.7-registered sale-deed.

19. Even if we take into consideration that Ex.A.1-agreement of sale is a genuine one, let us test to what extent the plaintiff discharged his burden in proving the agreement of sale.

20. The plaintiff as P.W.1 admits that defendants 1 to 3 agreed to sell the property to discharge the mortgage debt in favour of Dandamoodi Veerabhadraiah, that the suit property was adjoining his own property, the house of defendant No.7 is to the east of the suit property. The 1st defendant is no other than the cousin of the plaintiff. He did not give any notice to the 1st defendant demanding execution of the sale-deed, but he used to make oral demands to that effect.

21. Though P.W.1 deposed that he was always ready and willing to get the sale-deed executed, he did not mention as to why the sale-deed could not be obtained. He even did not take steps to examine the 1st defendant, who remained ex parte. Though the 1st defendant is said to have left the village about 25 years prior to the date of filing the suit, the plaintiff cannot say that the 1st defendant was not available since he was allegedly obtaining endorsements on Ex.A.1 for the alleged payments. In the normal circumstances nobody would prefer to stay away by delivering possession of the property to the agreement holder without receiving the sale consideration mentioned therein. The trial court did not discuss about the aspects mentioned above in respect of which the plaintiff is supposed to discharge his burden.

22. The 1st appellate court observed that the 1st defendant was not examined. No witness was examined to prove the signature of the 1st defendant except stating that defendant No.1 executed Ex.A.1-agreement of sale. The plaintiff could not explain as to why he purchased only 12 annas stamp when he was required to purchase stamp of Rs.1/- and 8 annas. In Ex.B.13-sale deed dated 30-5-1960 executed in favour of the plaintiff the southern boundary is shown as that of the 1st defendant. If really the plaintiff were in possession then he would have been shown as the owner and possessor of the property on the southern side. In Ex.B.16-registered partition deed dated 30-9-1971 the southern

boundary is mentioned as the site belonging to defendant No.6, but as per the recitals of Ex.A.1 the plaintiff's name ought to have been mentioned. The evidence of P.W.4 is varying from the recitals. There is no reasonable explanation from the plaintiff that the delay and laches on the part of the plaintiff would disentitle him from obtaining a decree of specific performance. The 1st appellate court assigned specific reasons as to why the suit is not within time and that the earlier suit filed by the plaintiff and withdrawn by him operates as *res judicata*. I am convinced that there are sufficient reasons for the 1st appellate court to come to a conclusion that the plaintiff is not entitled to enforce the agreement of sale covered by Ex.A.1 without obtaining the decree of specific performance.

23. So far as the laches on the part of the plaintiff is concerned, there is no proper explanation as to why he could not obtain the sale-deed for a considerable period. There is no explanation as to why he obtained so many endorsements on Ex.A.1 when the time was not made the essence of the contract. The plaintiff also did not examine the 1st defendant or defendants 2 and 3 to prove the circumstances under which they could not execute the registered sale-deed in favour of the plaintiff. Except the plaint averment, there is no evidence on behalf of the plaintiff whether he expressed his readiness at any time prior to the date of filing the suit demanding execution of the sale-deed by the 1st defendant.

24. Admittedly there is a delay of 18 years in filing the suit. Regarding the consequences of laches on the agreement holders, I shall refer to the principle laid down by various Courts.

25. In *LAKESINGH v. DWARAKANATH* AIR 1929 LAH 249 the Lahore High Court while referring to Section 22 of the Specific Relief Act observed that even if mere delay does not disentitle the plaintiff to claim specific performance of a contract, nevertheless, delay is one of the factors to be considered in giving the discretionary relief. Inordinate and unexplained delay coupled with the changed conditions is a sufficient ground for refusing specific performance.

26. In *NAWAB BEGUM v. A.H. CREET* ILR 1905 ALL 679 the Allahabad High Court held that great delay on the part of the plaintiff in applying to the Court for specific performance of a contract of which he claims the benefit is of itself sufficient reason for the court in the exercise of its discretion to refuse the relief.

27. In *LACHMANDAS v. KHARAK SINGH* AIR 1919 LAHORE 393 the Lahore High Court held that where a person allows a period of more than three years to elapse from the failure of the defendant to complete a contract of sale before bringing a suit for specific performance of the contract, the inordinate delay, apart from any other act of the plaintiff which would amount to a waiver of his right to issue any specific performance, is sufficient to disentitle him to any relief, and the case is not the one in which the discretion given by Section 22 should be exercised in favour of the plaintiff.

28. In *Babu Rameshwar Prasad Sahi Vs. Mst. Anandi Devi and Another*, the Patna

High Court held that mere delay in bringing the suit for specific performance will not disentitle the plaintiff to a decree for specific performance, but if there is complete inaction for a long time without any adequate explanation, that inaction debars the plaintiff to the equitable relief by way of specific performance. It was also observed therein that if the executant of a document has made-over the document duly executed by him to the buyer, it is for the buyer to take steps for the registration of the document, and one of the steps he should take immediately within the time provided by law is to get that document registered under the provisions of the Registration Act. If he sits tight in the matter and takes no steps, which is open to him to be taken in law and waits without assigning any reason for the delay, then that delay may disentitle him to specific performance, which is a discretionary relief. The inaction of the buyer for about 12 months amounts to abandonment of the contract and waiver of his right to sue for specific performance.

29. In ABDUL AZEEZ v. NARAYANDAS TIWARI, 1913 INDIAN CASES (Vol.21) 35 (ALLAHABAD), the Allahabad High Court held that in a suit for specific performance where continuous delay and laches are found on the part of the plaintiff, the plaintiff is not entitled to a decree.

30. In the present case I have observed that there was inaction on the part of the plaintiff in obtaining the sale-deed. He did not assign sufficient reasons for the delay, though initially the time was not the essence of the contract, the limitation started running from the date of Ex.B.7-registered sale-deed executed in favour of defendant No. 6. In pursuance of the above legal position I am of the view that the 1st appellate court was right in disallowing the relief of the plaintiff. Therefore I am inclined to confirm the judgment and decree of the 1st appellate court. This point is accordingly answered.

POINT NO. 2:

31. Since there is a specific finding under Point No.1 that the plaintiff is not entitled for the relief of the specific performance, he is not entitled for the relief of injunction.

32. In the result, the appeal is dismissed with costs confirming the judgment and decree of the 1st appellate court dated 3-5-1984 passed in A.S. No. 22 of 1984 and the plaintiff is not entitled for the relief of specific performance and an injunction as prayed for.