

(2007) 06 AP CK 0087
In the Andhra Pradesh High Court
Case No : SA No. 451 of 1998

Gonnuri Ramachandra Rao and Others	APPELLANT
Vs	
Gorrela Suryachandra Rao	RESPONDENT

Date of Decision : 20-06-2007

Acts Referred:

Hindu Succession Act, 1956 — Section 29A, 29B

Citation : (2008) 1 ALD 596

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Subhash Chandra Bose, for the Appellant; H.S. Dora, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri Subhash Chandra Bose, learned Counsel representing the appellants and Sri H.S. Dora, learned Counsel representing the respondent.

2.This Court on 22.6.1998 made the following order:

Admit in view of the substantial question of law raised in ground No. 9 of Memorandum of Grounds of Appeal. Notice.

This Court also granted interim stay as prayed for in CMP No. 11123 of 1998.

3. Under ground No. 9, the following substantial questions of law have been specified:

1. Whether after having confirmed the finding of the trial Court that the plaintiffs case he made payments, under A-2 to A-4 is false, the Court has jurisdiction to decree the suit, as it positively shows he was not ready and tried to prove readiness and willingness by way of A-2 to A-4 which were rejected and his whole case is false?

2. Whether specific performance of an agreement of sale can be granted to a plaintiff, who on the findings of both the Courts below, is that he come with a

false case of payment of consideration under A-2 to A-4.

3. Whether the plaintiff case he was ready and willing to perform his part of the contract can be accepted in the face of the judgment of both the Courts that the alleged payments under A2- to A-4 are not true?

4. Sri Subhash Chandra Bose, learned Counsel representing the appellants had pointed out to the substantial questions of law specified supra and also in addition thereto would submit that by virtue of the subsequent event, the daughters, who are not the parties to the agreement of sale, would also become sharers and this would be an additional substantial question of law to be considered in the present second appeal. The learned Counsel also pointed out that when the subsequent payments made under Exs.A2 to A4 were disbelieved and were held to be false, the Courts below had totally erred in decreeing the suit for specific performance since the discretionary relief for specific performance cannot be granted in favour of such a party approaching the Court with unclean hands. The learned Counsel pointed out to the relevant portions of the findings recorded in this regard and further placed reliance on certain decisions.

5. Per contra, Sri H.S. Dora, learned Counsel representing the respondents/ plaintiff would maintain that the agreement of sale in question is not in serious controversy. The learned Counsel in all fairness would submit that no doubt certain findings had been recorded relating to the subsequent payments, but in view of the fact that the concurrent findings had been recorded by both the Court of first instance and also the appellate Court, in a second appeal this Court to be slow in disturbing such findings. The learned Counsel also would point out that as on the date of entering into the agreement of sale in question, the daughters had no shares and this plea was never put forth nor at least a ground had been raised in the second appeal and such a ground not to be permitted at this stage since the respondent-plaintiff is being taken by surprise at the stage of second appeal.

6. The unsuccessful defendants in OS No. 396 of 1985 on the file of Principal District Munsif, Tadepalligudem and in AS No. 20 of 1991 on the file of Senior Civil Judge, Tadepalligudem are the appellants. The plaintiff is the respondent in the second appeal. For the purpose of convenience the parties hereinafter would be referred to as plaintiff and defendants as shown in the suit OS No. 396 of 1985 on the file of Principal District Munsif, Tadepalligudem.

7. The suit was filed for the relief of specific performance of agreement of sale dated 25.6.1982 with possession directing the defendants to perform their part of the contract by receiving the rest of the sale consideration by executing the registered sale deed or in the alternative for refund of the sale price paid with interest at 12% with charge on the plaint schedule property and for costs.

8. It was pleaded in the plaint as hereunder:

The plaintiff and 1st defendant's father and 1st defendant agreed on 25.6.1982 and executed an agreement for sale in favour of the plaintiff on terms and conditions mentioned in the agreement. Late G. Basavayya and 1st defendant have duly executed a stamped agreement and received Rs. 2,550/- in cash which was acknowledged. The plaintiff is ready and willing to perform his part of contract and did all such necessary acts in furtherance of the performance of the contract and offered the rest of the sale consideration and mentioned that he is ready with money for stamp and registration and requested the 1st defendant and father of the 1st defendant to measure the schedule property, but they were putting of some pretext or other and were receiving part payments of Rs. 1,000/- on 10.7.1982, Rs. 1,500/- on 15.8.1982 and Rs.700/- on 18.9.1982 and the endorsements were made on the agreement by late Basavayya. The total consideration of Rs. 5,760/- is paid. Late Basavayya delivered possession of the property on the date of agreement to the plaintiff after its execution and mutually agreed by him and 1st defendant and plaintiff and the plaintiff cultivating the schedule land by paying taxes. Along with the plaint on 12.12.1985 an application for grant of temporary injunction was filed as IA No. 1625/1985 and injunction was granted and on enquiry on 6.7.1987 the injunction was vacated and the defendants are in possession of the plaint schedule land, and transplanted Paddy crop. The plaintiff has not preferred any appeal against the orders in IA No. 1625/1985 dated 6.7.1987. The plaintiff was offering to pay the rest of the sale consideration, but Basavayya fell sick and died on 13.9.1985 in the night. 1st defendant is his son, 2nd defendant is his wife and defendants 3 to 8 are the daughters and the plaintiff has informed them about the aforesaid agreement and they informed the plaintiff to approach after the final obsequies of Basavayya. Time is not essence of the contract but the plaintiff sent a registered notice dated 25.9.1985. Later, the plaintiff requested the defendants to present at the site on 29.9.1985 and measure the land and also requested to be present at Tadepalligudem Sub-Registrar's Office on 30.9.1985 to execute the sale deed after receiving the rest of the sale consideration. Defendants 1 to 3 and 5 and 6 refused to take notice, but defendants 4, 7 and 8 received the same but did not give any reply. The defendants are proclaiming to trespass into the plaint schedule property and make forcible dispossession of plaintiff. Hence the plaintiff filed the suit.

9. The 1st defendant filed written statement and defendants 2 to 8 filed Memo of Adoption adopting the written statement of 1 st defendant, wherein it was pleaded as hereunder:

The suit is barred by limitation. Defendants admitted the execution of sale agreement and also advance amount of Rs. 2,550/- at the time of agreement of sale. The defendants denied Para 6 of the plaint allegations that the plaintiff paid Rs. 1,000/- on 10.7.1982, Rs. 1,500/- on 15.8.1982 and Rs.700/- on 18.9.1982 to the father of the 1st defendant. The defendants father stated that the above payment endorsements are rank forgery and created with the connivance of Karripoddi Sri Ramamurthy and Paluri Ramachandraiah. After the death of 1st

defendant's father, the plaintiff got issued a notice on 25.9.1985 to the defendants mentioning about the payments and also delivered possession at the time of sale agreement. The defendants stated that the possession pleaded by the plaintiff is against the recitals of sale agreement and the plaintiff never in possession of the properties. As per the terms of agreement it was agreed to deliver possession of the property at the time of registration of the sale deed. The plaintiff is not entitled for specific performance as the agreement of sale is barred by limitation. Since the plaintiff not able to perform his part of contract and committed default, he is not entitled for the relief of specific performance or in the alternative for the refund of the amount. Since the plaintiff committed default, the defendants are entitled to forfeit the advance of Rs. 2,550/-. The defendants, therefore, prays to dismiss the suit with costs.

10. On the strength of the respective pleadings of the parties, the following issues were settled before the Court of first instance:

1. Whether the plaintiff paid amounts other than Rs. 2,550/- to late Basavayya?
2. Whether the suit land was delivered to the plaintiff?
3. Whether the suit is within time?
4. Whether the plaintiff is entitled to the relief of specific performance?
5. To what relief?

11. The learned Judge recorded the evidence of PWs. 1 to 3 and DW. 1, marked Exs.A1 to A14, recorded certain findings and ultimately came to the conclusion that the plaintiff is entitled to the relief of specific performance and accordingly decreed the suit. Aggrieved by the same, the matter was carried by way of appeal AS No. 20 of 1991 on the file of Senior Civil Judge, Tadepalligudem and the respondent-plaintiff also filed cross-objections and the appellate Court, after framing the point for consideration at paragraph 9, proceeded to discuss with the oral and documentary evidence available on record commencing from paragraphs 10 to 20 and came to the conclusion that the appeal as well as the cross-objections being devoid of merit, they are liable to be dismissed and thus confirmed the decree and judgment of the Court of first instance. Aggrieved by the same, the present second appeal is preferred.

12. Several of the facts appear to be not in serious controversy and it is needless to say that when concurrent findings had been recorded by both the Courts below on factual controversies, in a second appeal this Court to be slow in disturbing such factual findings unless otherwise any serious legal infirmity or perversity as such pointed out.

13. The evidence of PWs. 1 to 3 and also the evidence of DW. 1 had been appreciated at length by both the Court of first instance and also the appellate Court. Ex. A1 is the sale agreement, dated 25.6.1982; Exs.A2 to A4 are the payment endorsements for Rs. 1,000/-, Rs. 1,500/- and Rs. 700/- respectively

dated 10.7.1982, 15.7.1982 and 18.9.1982; Exs. A5 and A6 are the land revenue receipts and Ex. A7 the registered notice; Exs. A8 and A9 are the postal acknowledgements and Exs. A10 to A14 are the refused registered covers.

14. There is the evidence of PW.1, who deposed that on 10.7.1982 he paid Rs. 1,000/- to Basavayya and got an endorsement on Ex. A1, again on 15.8.1982 he paid Rs. 1,500/- and got the said payment also endorsed on Ex. A1 and the endorsement is Ex.A3. Again in September, 1982 he paid Rs.700/- to Basavayya and the endorsement is Ex. A4. It was suggested to PW. 1 that the signatures of Basavayya under Exs. A2 to A4 were forged to save the agreement from limitation. PW. 2 is the attestor of Exs. A3 and A4 and no doubt this witness deposed about these endorsements and also deposed that he signed Ex. A2 endorsement also. This witness also deposed in cross-examination that no other attestors signed in his presence. PW. 3 deposed about the possession of the property.

The 1st defendant was examined as DW. 1, who had deposed that during the life time of his father the plaintiff never issued any notice alleging the payments under Exs. A2 to A4 and he specifically deposed that his father or himself had not received any payments and that too under Exs. A2 to A4 and the signatures under Exs. A2 to A4 are not that of his father. He specifically denied the suggestions to the effect that his father received Rs. 1,000/- on 10.7.1982, Rs. 1,500/- on 15.8.1982 and Rs.700/- on 18.9.1982 and got these endorsements under Exs. A2 to A4.

15. The Court of first instance had appreciated the evidence available on record at length and disbelieved the payments said to have been made under Exs. A2 to A4. It appears that aggrieved by that portion cross- objections had been filed in the appeal preferred AS No. 20 of 1991 on the file of Senior Civil Judge, Tadepalligudem. It is needless to say that inasmuch as both the appeals and cross-objections had been dismissed in a way the finding recorded by the Court of first instance relating to the endorsements Exs. A2 to A4 and the alleged payments made thereunder attained finality. In that view of the matter, here is a case where concurrent findings had been recorded by the Court of first instance and also the appellate Court to the effect that under the endorsements Exs. A2 to A4 the payments said to have been made by the plaintiff in fact were not made and this being a finding of fact, the same cannot be disturbed in a second appeal. In the light of the same, the question to be decided is whether on these facts, the respondent-plaintiff would be entitled to the principal relief of specific performance as decreed by both the Courts below.

16. Strong reliance was placed on the Division Bench decision of this Court in Sri P. Purushotham Reddy and Another Vs. Pratap Steels Limited, , wherein it was held that where the plaintiff had not approached the Court with clean hands and had taken false pleas, such party is not entitled to the equitable relief of specific performance. Reliance also was placed on the decision in Vanimisatti Anil Kumar and Others Vs. Jayavarapu Krishna Murty and Others, , where the learned Judge

of this Court had dealt with the provisions of Hindu Succession Act (30 of 1956) and Sections 29A and 29B of Hindu Succession Act (as inserted by the A.P. Act 13 of 1986) and observed that in a suit for specific performance based on agreement of sale, A.P. Amendment to the Hindu Succession Act coming into force, during pendency of suit, rights of daughters of vendor getting share in the suit property according to the Amending Act would depend upon the result of the suit and their rights would be subject to the agreement of sale.

17. As can be seen from the concurrent findings recorded by both the Courts below, the agreement of sale in question, Ex. A1, as such dated 25.6.1982 had been duly proved. The evidence of PW. 1 is clear and categorical. Further, specific stand is taken that the plaintiff paid Rs. 2,550/- to the 1st defendant and his father as well. This being a finding of fact, this Court is not inclined to disturb the said finding also. Hence, the receipt of consideration of Rs. 2,550/- by the father of the 1st defendant under Ex. A1 cannot be seriously controverted.

18. In the light of the peculiar facts and circumstances, this Court is of the considered opinion that inasmuch as Exs. A2 to A4 had been disbelieved and concurrent findings had been recorded by both the Courts below, instead of decreeing the suit for specific performance, the refund of the advance amount of Rs. 2,550/- with interest of 12% per annum from the date of agreement of sale dated 25.6.1982 till the institution of the suit and 6% thereafter from the date of the institution of the suit till the date of realization is being granted. In the peculiar facts and circumstances, this Court is of the considered opinion that this modification of the decrees and judgments of the Courts below would be just and proper.

19. Accordingly the second appeal is partly allowed negating the relief of specific performance, but in the alternative the suit is decreed for refund of consideration of Rs. 2,550/- (Rupees two thousand five hundred and fifty only) with interest at 12% per annum from the date of agreement of sale-Ex. A1, dated 25.6.1982, till the date of institution of the suit and 6% per annum thereafter from the date of institution of the suit till the date of realization, and a charge is being created for the said amount on the plaint schedule property. The parties to the litigation to bear their own costs.