
(2005) 09 AP CK 0056

In the Andhra Pradesh High Court

Case No : Second Appeal No. 925 of 2005

Gounipuram Krishna Moorthy Raju and Another

APPELLANT

Vs

Yerragudi Narasimha Raju

RESPONDENT

Date of Decision : 26-09-2005

Acts Referred:

Limitation Act, 1963 — Article 54, 10, 11, 12, 13

Citation : AIR 2006 AP 52

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

Bench : Single Bench

Advocate : Veera Reddy, for the Appellant; D. Sudershan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This Court ordered notice before admission on 12-8-2005. Sri D. Sudershan Reddy, the learned Counsel entered appearance. Sri Veera Reddy, the learned Counsel representing the appellants had raised two substantial questions of law : 1) The relief of specific performance being discretionary in the facts and circumstances both the Courts erred in granting the said relief in the peculiar facts and circumstances of the case, and 2) the suit filed after a long lapse of time is barred by limitation.

2. Sri Sudershan Reddy, the learned Counsel representing the respondent -- plaintiff would submit that as per the recitals in the Agreement of Sale in question nothing more had been left to be performed except the execution of a registered Sale Deed when a demand was made and inasmuch as at a particular point of time the refusal to execute the document had been detected by the plaintiff, from the said date within time the suit was instituted. The learned Counsel also would submit that in view of the close relationship between the parties and the understanding between the parties, the agreement in question was executed and the respondent-plaintiff was put in possession of the property.

3. Heard the Counsel.

4. The parties hereinafter would be referred to as plaintiff and defendants as arrayed in O.S. No. 896/95 on the file of Junior Civil Judge, Badvel.

5. It was pleaded in the plaint as here-under :--

The factual matrix of plaintiff's case is the defendants, owners of the suit lands, agreed to sell the suit lands for a valuable consideration of Rs. 10,000/- after receiving the entire sale consideration on 22-11-1982. They have executed an agreement of sale in respect of the suit lands in favour of the plaintiff and also delivered the possession of the suit lands on the same day. It was agreed that the defendants who executed a registered sale deed whenever required by the plaintiff with his expenses. Ever since the date of execution of suit agreement plaintiff has been in possession and enjoyment of the suit lands. He also raised crops in the suit lands. While so, recently the revenue authorities here conducting enquiries for issuance of pattadar pass books. Having come to know of it, the defendants started proclaiming in the village that they still continue to be the owners of the suit lands. The plaintiff then demanded the defendants to register sale deed but the defendants were postponing it from time to time under one pretext or another. The plaintiff being a close relative of defendants had utmost confidence on them and took it for granted that they would execute a registered sale deed one day or other. The intention of the defendants to grab the property became clear gradually.

6. The 2nd defendant filed a written statement denying the allegations as hereunder :--

The suit property is a joint family property of Gounipuram family. The genealogical tree of which is arrived (genealogical tree of Gounipuram family is enclosed). One Raghavaraju and Venkatama Raju are the owners of the suit lands and also other lands during the survey and resettlement, the revenue authorities have entered the names of Raghava Raju and Venkama Raju who are the paternal grandfathers of the defendants 1 and 2 respectively and also in the names of Subbaraju, Venkata Subbaraju, Bhoja Raju, Venkatapathi Raju and Subramanyam Raju who are the other defendants. Though all the members of Gounipuram joint family were residing separately they kept the ancestral properties including the suit property as joint. After the death of Raghava Raju and Venkama Raju, their next generation has got hereditary right on behalf of Raghava Raju this defendant Sivarama Raju (8), Srinivasa Raju (9), Krishna Murthy Raju (10), Rama Mohan Raju (11), Styamurthy, Raju (12), Subhamanyam Raju (13), and Raghavaraju (14) remained. On behalf of Venkama Raju his defendants Chalapathi Raju (16), Venkatapathi Raju (17), Lakshmipathi Raju (18), Bhoja Raju (21), Subbaraju (23), Ravi Varma (24), Venkateswara Raju (25), Venkata Rama Raju (26), Kumara Raju (27), Sivaji Raju (28) Rama Mohan Raju (29), Srinivasa Raju (30), Subba Raju (31), Srinivasa Raju (32) and Sudhakar Raju (33) remained and they have been in possession

and enjoyment of the joint family properties. The other ascendants Subba Raju (22) died issueless. As such his share of properties also is being enjoyed by the aforesaid persons. It is further contended that the suit agreement is a forged document. It is created by the plaintiff only to get wrongful gain. There is no demand for execution of sale deed prior to filing of the suit. The plaintiff by making false representations obtained pattadar pass book and other revenue records. He was never in possession and enjoyment of the suit lands.

7. The 1st defendant adopted the written statement of the 2nd defendant.

8. The Court of first instance settled the following issues :--

- (1) Whether the plaintiff is entitled for the specific performance of agreement to sale dated 22-11-1982?
- (2) Whether the plaintiff is in possession of the suit land ?
- (3) Whether the suit is bad for non-joinder of necessary parties ?
- (4) To what relief ?

9. The evidence of P.W. 1 to P.W. 4, D.W. 1 to D.W. 4 had been recorded and Ex. A. 1 to Ex. A.12 were marked. The learned Judge on appreciation of evidence decreed the suit for specific performance and aggrieved by the same, the defendants carried the matter by way of appeal A.S. No. 43/2000 on the file of the Addl. Senior Civil Judge (Fast Track Court), Rajampet at Badvel, and the learned Judge at para 9 framed the following points for consideration :--

- (1) Whether the plaintiff is entitled for specific performance of the agreement of sale dated 22-11-1982?
- (2) Whether the judgment and decree passed by the trial Court is liable to be set aside ?

10. The learned Judge recorded reasons in detail commencing from paras 12 to 23 and ultimately dismissed the appeal with costs. Aggrieved by the same, the present Second Appeal is preferred. It is no doubt true that relating to the respective shares of the sharers and the nature of property, some evidence is available on record, but however on appreciation of evidence both the Courts recorded concurrent findings in relation thereto and it is needless to say that these findings are factual findings. As far as the question of limitation is concerned, there is no specific issue framed in this regard. However, by virtue of Section 3 of the Limitation Act, 1963 the Court is bound to consider the question of limitation when the same is raised. As can be seen from the facts of the case, the question of time being the essence of the contract was argued in elaboration and certain findings had been recorded in relation to Ex. A.8 and the recitals made in Ex. A.8 had been taken into consideration. In the light of the controversy which arose in relation to the enquiry for issuance of pattadar pass books in view of the fact that respondent-plaintiff thought that there was denial on the part of appellants-defendants to execute the document, the present suit

had been thought of and the same is within the period of limitation. The learned Counsel representing the respondent plaintiff relied upon several decisions in this regard :--

Shrikrishna Keshav Kulkarni v. Balaji Ganesh Kulkarni AIR 1976 Bombay 342; Usman Koya Vs. Santha, ; Shakuntala (Smt) Vs. Narayan Gundoji Chavan and Others, ; Sri Babu Ram Alias Durga Prasad Vs. Sri Indra Pal Singh (Dead) by Lrs., ; K. Kallaiah v. V. Ningegowda AIR 1982 Kar 93; Gomathinayagam Opillai v. Palaniswami Nadar AIR 1967 SC 864; Jonnalagadda Suryakantham v. R. Sathiyamma 1994 (1) APLJ 44 ; C. Bala Subba Reddy Vs. Lakshmi Narasamma and Others, and Ragam Yellaiah and Others Vs. Chintha Shankaraiah, .

11. Section 3 of the Limitation Act, 1963, deals with bar of limitation. Sub-section (1) of Section 3 of the aforesaid Act specifies subject to the provisions contained in Sections 4 - 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Certain submissions were made that the question of limitation is a pure question of law and on the other hand contending that the said question is a mixed question of fact and law. Though no specific issue had been framed, on admitted facts, the question of limitation is raised and argued the said question may have to be considered. Article 54 of the Limitation Act, 1963, specifies as here-under :--

For specific Three The date fixed for performance years the performance, of a contract or, if no such date is fixed, when the plaintiff has notice that performance is refused.

Thus, the 3rd column specifies where time is fixed for the specific performance, the 1st parts could be applicable and in the other cases the 2nd part. The period of limitation in a suit for specific performance will be 3 years from the date fixed for performance and in a case where no such time is fixed, the date when the plaintiff has notice regarding refusal thereof. On facts, it is clear that the suit was brought within the period of 3 years, from the time when the plaintiff came to know about the refusal of the performance. Hence, in this view of the matter the submissions made on behalf of the appellants in this regard cannot be sustained.

12. Except these questions, no other questions had been urged before this Court and in the light of the concurrent findings recorded by the Court of first instance and also the Appellate Court, this Court does not see any reason to interfere with the concurrent findings and accordingly, the Second Appeal shall stand dismissed at the stage of admission. In view of the close relationship between the parties, this Court makes no order as to costs.