
(2002) 04 AP CK 0087
In the Andhra Pradesh High Court
Case No : SA No. 292 of 1992

Gudisa Satyanarayana and Others	Vs	APPELLANT
Mithireddy Musalinaidu and Another		RESPONDENT

Date of Decision : 18-04-2002

Acts Referred:

Specific Relief Act, 1963 — Section 16(1)

Citation : (2002) 5 ALD 76

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : P. Rajagopalaraao, for the Appellant; M.V. Suresh, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This appeal is directed against the judgment and decree in AS No. 34 of 1997 on the file of the Additional District Judge, Vizianagaram, preferred against the judgment and decree in OS No. 31 of 1983 on the file of the District Munsif, Cheepurupally.

2. The appellants are the defendants 1 to 4 and the respondents are the plaintiffs and the 5th defendant in the suit. The plaintiff filed the suit for specific performance of an agreement of sale against the defendants 1 to 4 to execute a Registered Sale Deed in favour of the plaintiff after receipt of the balance of sale consideration. According to the plaintiff, the first defendant agreed to sell the suit schedule lands of an extent of Ac.1-50 cents to the plaintiff for a sum of Rs. 1,800/- and executed an agreement of sale dated 28-3-1983 by taking an advance of Rs. 800/- towards part of sale consideration. Defendants 2 to 4 are the minor sons of the first defendant. The first defendant executed the agreement of sale on behalf the minor sons. As per the terms of the agreement, the plaintiff after securing the money, requested the defendant to execute the sale deed, after receipt of the balance of the sale consideration, but the defendant failed to do so. Therefore, the suit for the above relief.

3. The first defendant filed a written statement contending that the agreement of sale is not enforceable under law. The plaintiff cheated the defendant and obtained his signature on the sale agreement. The defendant never agreed for the terms of the agreement. He has only 0.84 cents of land in the suit schedule. The plaintiff did not come forward with the money inspite of several demands made by the defendant and was postponing the same on the pretext that he has no money. The plaintiff is not ready to perform his part of contract under the agreement. Hence the suit is liable to be dismissed with costs.

4. On behalf of the defendants 2 to 4 a separate written statement has been filed contending that the first defendant never executed the agreement of sale in favour of the plaintiff. There was no legal necessity for the first defendant to sell the land. The plaintiff must prove that he paid the sale consideration under the sale agreement. Hence the suit is not maintainable and it is liable to be dismissed with costs.

5. On the basis of the above pleadings, the trial Court framed appropriate issues. The plaintiff in order to prove his claim examined plaintiffs 1 and 2 as PWs. 1 and 2 and marked Exs. A1 to A4. The defendant got himself examined as DW1 and no Exs. were marked.

6. The trial Court after considering the oral and documentary evidence adduced by both parties came to a conclusion that the plaintiff is not entitled for the relief of specific performance of agreement of sale. Accordingly, the trial Court dismissed the suit through its judgment dated 20th January, 1987. The plaintiff being aggrieved by the judgment and decree of the trial Court preferred AS No.34 of 1987 on the file of the Addl. District Judge, Vizianagaram. After considering the evidence available on record and after going through the judgment of the trial Court the first appellate Court differed with the findings given by the trial Court and reversed those findings by allowing the appeal and by decreeing the suit for specific performance of agreement of sale to an extent of 84 cents of land after deleting the land of 5th defendant, who is no other than the mother of the first defendant through its judgment dated 27th April, 1982.

7. The defendants 1 to 4 being aggrieved by the judgment and the decree of the first appellate Court preferred this appeal challenging its validity and legality. On verifying the memorandum of appeal it is found that the following are the substantial questions of law to be considered by this Court.

1. "Whether the time is the essence of the contract between the plaintiff and the first defendant for the enforcement of the suit agreement.

2. Whether the findings of the first appellate Court are not on the basis of the evidence available on record and whether those findings are liable to be interfered."

8. Point No. 1: The sum and substance of the evidence adduced by both parties is that the first defendant executed an agreement of sale covered by Ex.A1

agreeing to sell the suit schedule properties to the plaintiff for a consideration of Rs. 1,800/-. It is an undisputed fact that on the date of agreement of sale the plaintiff received a sum of Rs. 800/- towards part of the sale consideration and the first defendant delivered possession of the suit property to the plaintiff on the date of agreement of sale. As per the terms of Ex.A1 agreement of sale both parties agreed that the balance of sale consideration shall be paid within two months and the plaintiff shall obtain a registered Sale Deed from the first defendant. The plaintiff did not pay the balance of sale consideration and did not obtain the sale deed within two months from the date of Ex.A1. The first defendant issued Ex.A2, Registered notice on 27-5-1980 i.e., two months three days after the date of Ex.A1 Agreement of sale informing the plaintiff that since he failed to pay the balance of sale consideration and obtain this sale deed within the period of two months mentioned in the agreement of sale, the agreement may be treated as cancelled and demanded that the plaintiff shall re-deliver the property to the first defendant within four days from the date of receipt of the notice. But the plaintiff issued a reply notice, which is the original of Ex. A3 on 3-7-1980 informing that he is ready with the money and he is ready to perform his part of contract, and requested the first defendant to execute the sale deed by receiving the balance of sale consideration. In Ex. A3 reply notice, the plaintiff mentioned that when he orally requested the first defendant to receive the sale consideration and execute the sale deed, he postponed the execution of sale deed on some pretext or other. Subsequently the plaintiff filed the suit for specific performance of the agreement of sale. There is a specific averment in the plaint that the plaintiff is ready with the money and he is ready and willing to perform his part of contract and requested the Court to direct the first respondent to receive the balance of sale consideration and execute the sale deed in his favour.

9. In order to find whether the time is the essence of the contract in this transaction, it is essential to refer to the relevant provisions of the Specific Relief Act and the decisions cited by the learned Counsel for both parties.

10. Section 16(c) of the Specific Relief Act, 1963 reads as follows:

""""Section 16. Personal bars to relief-Specific performance of a Contract cannot be enforced in favour of a person-

(a)

(b)

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant."

Explanation: For the purposes of Clause (c):-

(i) where a contract involved the payment of money, it is not essential for the

plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

As per the explanation to Clause C of Section 16, the plaintiff averred in the plaint that he is ready and willing to perform his part of contract and ready to pay the balance of sale consideration.

11. It is not essential for the plaintiff to actually tender to the defendant or to deposit any Court any money except when he was directed by the Court.

12. The learned Counsel for the appellant relied on judgment of the Supreme Court in Pushparani S. Sundaram and Others Vs. Pauline Manomani James (Deceased) and Others, , wherein the Supreme Court observed that Section 16, Clause (C) of the Specific Relief Act makes it clear that mere plea that the plaintiff is ready and willing to perform his part of contract is not sufficient and it has to be proved. In the case covered by the above decision, the plaintiff agreed to purchase the property from the defendant. The agreement was stipulating the plaintiff should obtain the necessary permission from the Land Ceiling authorities arrange for valuation of super structure situated on the suit property.

But the plaintiff did not discharge those obligations. Therefore, the Supreme Court held that the plaintiff having not performed his part of obligation under the terms of agreement is not entitled to a decree for specific performance and further observed that since the plaintiff did not enter the witness box to depose about his willingness to perform his part of contract, he is not entitled for the relief of specific performance by mere pleading in the plaint that he is ready and willing to perform his part of contract. The facts of the present case are different from the facts of the above decision except that the plaintiff should pay the balance of sale consideration. There is no other obligation imposed on the plaintiff in this case to perform his part of contract, therefore, the principle laid down in the above decision is not applicable to the facts of the present case.

13. The learned Counsel for the appellant also cited a judgment of the Supreme Court in Ram Awadh (Dead) by Lrs. and Others Vs. Achhaibar Dubey and Another, wherein the Supreme Court while considering Section 16-C of the Specific Relief Act, held that:

"Para-6: The obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of Clauses (a) (b) and (c) thereof. A Court may not therefore, grant to a plaintiff who has failed to aver and prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16C has not been complied

with and it is for the Court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit."

14. In the case covered by the above decision the Supreme Court held that it is open for the defendant to contend and establish that the mandatory requirement of Section 16(C) has not been complied with and it is for the Court to determine whether it has or not has been complied with depending upon the facts and circumstances of the case. In the case covered by the above decision through plea in the plaint that the plaintiff was not ready and willing to perform his part of contract, therefore, the Supreme Court made the above observation. Since there is a specific plea in the plaint of the present case, the principle laid down in the above judgment is not applicable to this case.

15. Against the above legal position the learned Counsel for the respondents cited a judgment of the Supreme Court in K.S. Vidyanadam and Others Vs. Vairavan, . The Supreme Court while dealing with certain time limit prescribed for taking steps by one or other party to the agreement of sale held as follows:-

"it cannot be said that any or every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time limits prescribed by the parties in the agreement have no significance or value and that they mean nothing.

It was further observed by the Supreme Court as follows:-

"the rigor of the rule evolved by Courts that time is not of the essence of the contract in the case of immovable properties- evolved in times when prices and values were stable and inflation was unknown- requires to be relaxed, if modified, particularly in the case of urban immovable properties."

It was further observed as follows:-

"the Court while exercising its discretion should also bear in mind that when the parties prescribe certain time limit(s) for taking steps by one or the other party, it must have some significance and that the said time-limits cannot be ignored altogether on the ground that the time has not been made the essence of the contract (relating to immovable properties)."

In the case covered by the above decision, the Supreme Court held that since there was total inaction on the part of the purchaser for 2 1/2 years in clear violation of terms of agreement and when there was delay coupled with substantial rise in prices of properties - it would be inequitable to give relief of specific performance to purchaser.

16. The gist of the above decision is that the discretion is given to the Court to take a decision from the facts and circumstances of the case whether the time is

the essence of the contract.

17. The learned Counsel for the appellant cited a decision reported in Gobind Ram Vs. Gian Chand, , wherein the Supreme Court held that the escalation of real estate prices - is no ground to deny for specific relief and the specific performance of the agreement for sale of immovable property may be granted where vendor attempts but wriggle out of the contract only because of escalation of real estate prices.

18. The Supreme Court in Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs., , held that in the case of sale of immovable property, there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are:

1. from the express terms of the contract;
2. from the nature of the property;
3. from the surrounding circumstances, for example the object of making the contract.

19. The Court further held that if the purchaser is not willing to make part payment of amount within the specified time without fulfilment of same conditions, which was contrary to the agreement, it was held that the purchaser was not entitled to specific performance of the contract.

20. In the case on hand, the plaintiff through his reply notice covered by Ex.A3 expressed his readiness to pay the sale consideration and there is no evidence to prove that the plaintiff was not willing to make payment of balance of sale consideration. In the present state of circumstances it can be safely concluded that the plaintiff after the stipulated time expressed his readiness to pay the balance of sale consideration and to obtain the sale deed and he also pleaded that he was orally asking the first defendant to execute the sale deed after the receipt of the sale consideration. But the first defendant was postponing the same on some pretext or the other. Had there been long lapse of time without any action on the part of the plaintiff in offering to perform his part of contract, the position would have been different.

21. In the present case the evidence adduced by both parties indicate that the plaintiff was ready and willing to perform his part of contract. On the other hand, the defendant taken a plea that he did not execute an agreement at all. At similar point of time he pleaded that the agreement is not enforceable. At another point he pleaded that his mother has a share in the property. The first appellate Court after taking into consideration the circumstances, came to a conclusion that the time was not the essence of the contract and that the plaintiff was ready and is willing to perform his part of contract. It was also further observed by the first appellate Court that a portion of the suit schedule land belongs to the mother of the first defendant to an extent of 66 cents and rightly

denied the relief to the plaintiff by holding that the first defendant is not entitled to sell the property of his mother.

22. In the light of the above discussion, I hold that there was a specific plea by the plaintiff that he was ready and willing to perform his part of contract. He expressed his readiness to pay the balance sale consideration and get the sale deed executed, in reply to the notice given by the first defendant, that the defendant was not coming forward to execute the sale deed on receipt of the sale consideration and he was not willing to part with the land for the reasons best known to him. It is not the plea of the defendant that the plaintiff committed any breach of any other conditions of the agreement of sale and it is not the plea that there is any escalation of prices. He was not inclined to execute the sale deed on the mere ground that there was three days delay on the part of the plaintiff in getting the sale deed executed.

23. In the light of the above circumstances, I hold that the time is not the essence of the contract in the present case and the first appellate Court was right in holding that the first defendant is liable to execute the sale deed in respect of 84 cents of land after the receipt of proportionate balance of sale consideration and this point is accordingly held against the appellant.

Point No.2:

24. The learned Counsel for the appellant submitted that the first appellate Court reversed the findings without considering the evidence available on record, therefore, those findings are liable to be set aside. The plaintiff as well as the defendant did not adduce much evidence. The plaintiff examined only two witnesses and the first defendant got himself examined and he did not file any documents in support of his evidence.

25. After going through the judgment of the first appellate Court, I am convinced that the first appellate Court after considering the evidence available on record, gave findings and those findings are supported by sufficient reasons. I do not find any perversity in those findings and they do not deserve any interference of this Court. In the light of the above discussion, I do not find any force in the grounds of appeal and the appeal must fail.

In the result, the appeal is dismissed with costs by confirming the judgment and decree of the first appellate Court.