
(1954) 12 AP CK 0002

In the Andhra Pradesh High Court

Case No : Second Appeal No. 588 of 1950

K. Lakshmikantayya and Another

APPELLANT

Vs

M. Nagayya (Died) and Others

RESPONDENT

Date of Decision : 23-12-1954

Acts Referred:

Specific Relief Act, 1877 — Section 14, 15, 16, 17

Citation : AIR 1955 AP 188

Hon'ble Judges : Chandra Reddy, J

Bench : Single Bench

Advocate : P.V. Chelapati Rao, for the Appellant; A.G. and N. Chandramouli, for the Respondent

Judgement

(1) The Second Appeal is brought by the defendants against the judgment of the Subordinate Judge of Guntur confirming that of the District Munsif of Guntur in O. S. No. 365 of 1946, granting specific performance of a part of suit contract.

(2) The plaint contained the following allegations : Defendant 1 entered into a contract with the plaintiff by writing dated 24.6.1943 for the sale of 4 acres 3 cents for a sum of Rs. 2,438-0-0 at the rate of Rs. 605/- per acre. On the date of the agreement, Rs. 250/- was paid by way of advance and the balance was to be paid within a year. Subsequently, defendant 1 failed to execute a sale deed and receive the balance of consideration in spite of repeated demands, and allowed a portion of the subject-matter viz., 2 acres and 38 cents to be sold in execution of a decree obtained against him.

This property was purchased by the plaintiff in court auction for Rs. 1,000/-. Later on the plaintiff required defendant 1 to fulfil the terms of the contract in regard to the 1 acre and 65 cents left unsold, and the defendants refused to comply with this demand. It was prayed in the plaint that the defendants should be directed to execute a conveyance in respect of 1 acre 65 cents mentioned in A schedule for a price of Rs. 998-4-0.

(3) The suit was resisted by the defendants, inter alia, on the ground that the agreement relied upon was a forgery, and that the plaintiff was not entitled to "split the contract for a execution of a deed for a portion of the property for a portion of the consideration".

(4) The trial Court gave a decree as prayed for, which was confirmed in appeal by the Subordinate Judge. Both the courts took the view that the case is governed by S. 16, Specific Relief Act.

(5) In this Second Appeal by the aggrieved defendants the view of the Courts below as regards the applicability of S. 10, Specific Relief Act is canvased. The main point for consideration, therefore, is whether the plaintiff could invoke S. 16, Specific Relief Act.

(6) The law bearing on the grant of specific relief in regard to a part of the contract is enacted in Ss. 14 to 17, Specific Relief Act which constitute a complete code in that regard, and relief in that behalf could be granted only within the terms of these sections. Sections 14 - 17 are in the following terms :

"Section 14 : Where a party to a contract is unable to perform the whole of his part of it and the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the court may at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money to the deficiency."

"Section 15 : Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the court may at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

"Section 16 : When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

"Section 17 : The court shall not direct specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections".

(7) It is clear from S. 17 that there can be no specific performance of a part of the contract unless it comes under Ss. 14, 15, or 16.

(8) Section 14 is inapplicable to this case, nor has the plaintiff relied on it. As

stated above, reliance was placed only on S. 16 on the ground that the contract relating to 1 acre 65 cents stands on a separate and independent footing from the other part concerning 2 acres and 38 cents purchased by him in the court auction. The applicability of S. 15 will be considered at a later stage.

(9) The lower Appellate Court based its decision, that S. 10, Specific Relief Act governs this case on a ruling of the Bench of the Madras High Court reported in *Gade Rosi Reddi and Another Vs. Gade Kristna Reddi and Others*, I do not think that the principle of that ruling could be attracted to the instant case. In that case, in one contract, two vendors agreed to sell two distinct items of property of an equal extent, viz., 1 acre and 25 cents severally belonging to them, each for half the amount specified in the contract.

In that situation, the learned Judges held that the part of the contract in respect of which specific performance was claimed was severable and independent of the other part.

(b) But the facts of this case are altogether different. 8 acres and 3 cents were contracted to be sold for a total consideration of Rs. 2,438/- for all the lands together. No distinction was drawn between the two plots as regards the terms of the contract or requisitions. In fact the land in question consists of several bits included in different survey and demarcation numbers. In every respect, the lands were dealt with together as a whole. The mere fact that the basis of the calculation of the sale price is mentioned and the lands in respect of which specific performance is claimed bear different demarcation numbers does not, in my opinion, make the contract as two distinct and several ones and independent of each other.

(10) Reliance was placed on behalf of the respondent on -- *Radha Kamal Vs. Puri Municipality and Others*, (B). That again is inapplicable to this case. There a contract for leasing out some land belonging to the Municipality was divided into four contracts, not by unilateral action, but by consensual authority, and one lease was split up into four leases, each of them standing on a separate and independent footing from the rest.

Neither of the two cases cited for the respondent advances the case. In this connection, the remarks of the Privy Council in -- AIR 1925 45 (Privy Council) , at p. 47 are very apt.

"It may be that in the estimation of the parties at the time of the agreement one was more valuable than the other, bigha for bigha, or one was made more valuable than it would otherwise have been by the simultaneous acquisition of the other, apart from their respective areas. Nothing is stated about the quality or amenities of the land. It may be that, because both were sold together, the total price was less than the aggregate prices would have been, if both had been sold apart.

(11) In that case, two plots of land of an equal area with definite boundaries

were agreed to be sold for a price of both together. The vendor failed to make out a title to one of the plots and the purchaser sued for specific performance of the other part or for damages in the alternative declining to make, under S. 15, a conveyance of one of plot only. Their Lordships of the Judicial Committee held that specific performance could not be decreed as to the other plot with an abatement of price as S. 16 was inapplicable to the case. The doctrine of that case applies with great force to the present one.

(12) It may be that, if the contract was in respect of the suit property alone, the vendor would have demanded a higher price and this plot is of superior quality, and has better amenities than the other one sold in court auction. In fact, it is seen that the plaintiff himself bought 2 acres and 38 cents only for Rs. 1,000/-, which indicates that it was of an inferior quality. There is nothing here to indicate that the parties intended to deal with each plot separately.

(13) Mr. Chelapathi Rao for the appellant called in aid -- *Hiralal Lachmiram Pardeshi Vs. Janardan Govind Nerlekar and Another*, (D). In that case A, owner of 4 plots (a) (b) (c) and (d) agreed to sell plot (d) to B for Rs. 2,000/-. The latter paid Rs. 200/- by way of advance and the contract was to be completed within about a fortnight. Later on, A agreed to sell all the plots including (d) to P for Rs. 7,000/-. In the second contract the prior one in favour of B was referred to. B filed a suit against A claiming specific performance in respect of plot (d) and P also filed a suit claiming specific performance of the agreement in his favour or for damages.

In the former suit, a consent decree was passed under which P received Rs. 1,600/- and executed a sale deed of plot (d) in favour of B. P. was not willing to pay the whole agreed price for plots (a), (b) and (c). The plaintiff filed a suit to enforce the contract in respect of plots (a), (b) and (c) basing it on S. 16, Specific Relief Act. It was argued on his behalf that the contract in respect of (a), (b) and (c) stood on an independent footing and that the price to be fixed in respect of this could be arrived at by deducting Rs. 2,000/- for which plot (d) was agreed to be sold.

This was repelled by the Bombay High Court following AIR 1925 45 (Privy Council) , and the suit was dismissed, as in the opinion of the learned Judge, that part of the contract which was sought to be enforced could not be severed from the rest of it and did not stand on an independent footing. They observed that the ordinary presumption is that it was an entire contract intended to be dealt with as a whole and not piecemeal unless and until the contrary is shown. The principle of that case applies with equal force to the present one.

(14) It follows that the plaintiff cannot rely on S. 16, Specific Relief Act.

(15) The Advocate General next invoked S. 15, Specific Relief Act in favour of the respondent, but without being willing to pay the total consideration. It was contended by him that the respondent was under no obligation to pay the whole purchase price for the reason that already a sum of Rs. 1,000/- was spent by

him for acquiring Ac. 2--38 cents of land which originally belonged to the first appellant.

According to him price paid by the respondent for 2 acres 38 cents in the court auction must be deemed to have been paid to the defendant. I find it a little difficult to accede to this proposition. If this contention is to be accepted, it would amount to granting specific performance of the whole contract treating the sale certificate granted in respect of 2 acres 38 cents as a conveyance by the vendor and the money paid by the plaintiff as a deposit on his behalf.

To such a situation S. 15 cannot apply. If the purchaser wants to exercise his option under S. 15, he must be prepared to pay the whole purchase price for getting the conveyance in respect of the remaining land. I do not think that the payment made by the plaintiff for the acquisition of this land could be treated as a payment made to the defendant, and much less in respect of that part of the contract, specific performance of which is sought in this suit.

(16) That apart, the conduct of the plaintiff throughout would negative such an assumption. The suit was for enforcement of the contract only in regard to Ac. 1--65 Cents for a price of Rs. 900/-, and odd and not for the full price minus the amount already paid by him in the court auction. This itself implies that he regarded the court sale as an independent transaction, having nothing to do with the defendant. Further, it must be stated that in the courts below he was not willing to proceed on the basis of S. 15.

He only wanted the specific performance of a part of the contract on the terms of S. 16. It follows that he is not entitled to rely on S. 15.

(17) For the reasons mentioned above, the decree of the lower appellate Court is set aside and the appeal allowed. The respondent will pay the costs of the appellants in this appeal, but in the courts below the parties will bear their own costs. No leave.

(18) Appeal allowed.