
(2011) 11 AP CK 0034
In the Andhra Pradesh High Court
Case No : Second Appeal No. 49 of 2011

K. Vijaya Lakshmi

APPELLANT

Vs

G. Venkatewara Prasad Murthy

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Contract Act, 1872 — Section 55

Citation : (2012) 2 ALD 18 : (2012) 2 ALT 491

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Ramachandra Murthy, for the Appellant; K. Neelakanteshwara Rao, for Sri. S.R. Sanku, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Sri. Justice L. Narasimha Reddy

1. The defendant in O.S.No.59 of 2006 on the file of the Principal Senior Civil Judge, Rajahmundry, is the appellant. The respondent filed the suit, against the appellant, for specific performance of an agreement of sale, dated 20.11.2005. The respondent pleaded that the appellant agreed to sell the suit schedule property for consideration of Rs.3,90,000/- and that on the date of agreement, a sum of Rs.50,000/- was paid, as advance. It was also stated that the parties agreed to conclude the transaction by 20.01.2006 and that he paid a further sum of Rs. 1,00,000/- on 01.01.2006.

2. The respondent got issued a notice (Ex. A.2), on 04.02.2006, alleging that when he approached the appellant on 05.01.2006 and requested to furnish a copy of the link document with the object of preparing the sale deed, the appellant promised to furnish it after ten days, but she did not extend co-operation thereafter. He has also stated that he is ready and willing to perform his part of contract and requested the appellant to execute the sale deed by receiving balance of sale consideration. The appellant got issued a reply, marked

as Ex. A.3, stating that the agreement stood cancelled and that the amount of Rs.50,000/- is forfeited. With these and other pleadings, the respondent prayed for specific performance of agreement of sale by stating that he is ready and willing to perform his part of contract.

3. The appellant filed a written statement, opposing the suit. According to her, time was the essence of the contract and that the respondent did not honour the same. According to her, the property was sold under distressful conditions, and on account of the non-payment of balance of consideration within the stipulated time, she had suffered a lot.

4. Through its judgment, dated 01.09.2008, the trial Court decreed the suit. Aggrieved thereby, the appellant herein filed A.S.No.163 of 2008 in the Court of VI Additional District Judge, (Fast Track Court), East Godavari, Rajahmundry. The appeal was dismissed on 03.11.2010. Hence, this second appeal.

5. Sri S. Sriramchandra Murthy, Learned Counsel for the appellant, submits that the recitals in Ex. A.1, clearly suggest that the time was the essence of contract and once it is clear that the balance of consideration was not paid, before the stipulated date, the clause operated and the respondent lost his right to seek specific performance. Learned Counsel further submits that the lower Appellate Court committed certain errors, which are apparent on the face of the record and that the judgment cannot be sustained in law. Other contentions are also urged.

6. Sri K. Neelakanteshwara Rao, Learned Counsel for the respondent, on the other hand, submits that Ex. A.1 does not contain any clause, which suggests that time is the essence of the contract. Learned Counsel contends that notwithstanding the same, the respondent was ready and willing to perform his part of the contract before 20.01.2006 and it is only the appellant that did not co-operate. He further submits that his client had to sell a valuable item of immovable property to pay the balance of consideration. Learned Counsel contends that the concurrent findings of fact recorded by the trial Court and the lower Appellate Court do not warrant interference.

7. The appellant does not dispute that she executed an agreement of sale in favour of the respondent on 20.11.2005. The dispute is only about the compliance with the conditions stipulated therein by the respondent.

8. On the basis of the-pleadings before it, the trial Court framed the following issues for its consideration:

i) Whether the time is the essence of contract in respect of the agreement of sale dt. 20.11.2005 and 20.01.2006 was specifically fixed for compliance of the terms of the contract?

ii) Whether the plaintiff committed default in payment of balance sale consideration within specified time i.e. by 20.01.2006?

iii) Whether the agreement of sale is duly cancelled by the defendant on the

ground of wilful default committed by plaintiff?

iv) Whether the plaintiff is entitled to seek specific performance of agreement of sale?

v) Whether the defendant is entitled to forfeit the advance amount under the agreement?

vi) Whether the plaintiff is entitled for the alternative relief of claim of Rs. 1,56,220/- from the defendant with a charge over the plaint schedule property?

vii) Whether the plaintiff is entitled for permanent injunction restraining the defendant from alienating the suit schedule property to the third parties?

9. On behalf of the respondent, PWs.1 and 2 were examined and Exs.A.1 to A.6 were filed. On behalf of the appellant, DWs.1 to 3 were examined and Exs.B.1 to B.13 were filed. The suit was decreed and in the appeal filed against it, the lower Appellate Court framed only one point for its consideration, viz., "Whether the judgment and decree passed by the trial Court are sustainable?" The appeal was dismissed.

10. The principal contention urged on behalf of the appellant is that the time was the essence of contract under Ex. A.1 and the contract stood cancelled, on account of non-compliance with the condition. Therefore, it needs to be seen as to whether such a condition existed at all.

11. The stipulation in the contract is to the effect that the parties must complete the transaction between 20.11.2005 and 20.01.2006. In effect, they agreed to complete the transaction within two months. Section 55 of the Contract Act provides that, in case the time is essence of the contract, it is open to a party, who felt the violation of a contract, to avoid it. Much however, would depend upon the text of the contract.

12. One of the tests to verify whether the time is essence under a contract is to see whether the clause itself stipulates that time is essence. Even where such a specific stipulation is not there, its existence can be felt, in case the contract provides for penal consequences, if the steps indicated therefor are not taken within the stipulated time. However, mere stipulation of time, for any steps by itself does not make the time as the essence of the contract. In the instant case, firstly there is no stipulation to the effect that the time is the essence of contract. Secondly, no penal consequences are provided for, in the event of either of the parties not adhering to the time schedule. Therefore, it cannot be said that the time was the essence of contract under Ex. A.1. Even where the time is not essence of the contract, the person, who gets benefit out of the contract, is required to act with promptitude. In case there is undue delay on the part of the person, who gave a meagre amount as advance, the Court would exercise its discretion not to grant the relief.

13. In the present case, the date stipulated for conclusion of the contract was

20.01.2006. It is not in dispute that the respondent paid a sum of Rs. 1,00,000/- , on 01.01.2006. In Ex. A.2, he has clearly stated that when he approached the appellant on 05.01.2006, with a request to furnish copies of some documents, for preparation of the sale deed, and conclusion of the contract, the appellant promised to do so after 10 days. Having waited for that time, he got issued Ex. A.2 on 04.02.2008. It means that the respondent was so prompt in his pursuit of the matter that hardly within two weeks from the date stipulated for conclusion, he got issued a notice, expressing his willingness to perform his part of the contract. In Ex. A.3 - reply, got issued by the appellant, the fact that the respondent approached her was not disputed at all. Further, there was no reference to the receipt of Rs. 1,00,000/- . The trial Court took into account all these aspects and held that the respondent was ready and willing to perform his part of the contract and entitled for a decree of specific performance.

14. It is no doubt true that there is some accidental inaccurate observation in the judgment of the lower Appellate Court that the appellant received Rs. 1,00,000/- , after 20.01.2006. It is only at one place that it was mentioned that the amount was received 10 days after 20.01.2006. However, at other places, the reference to the payment is strictly as per the record. That, however, does not make any difference. Viewed from any angle, this Court does not find any basis to interfere with the concurrent findings of fact.

15. In the context of moulding the relief, this Court feels it necessary to ensure that the appellant is not put to any disadvantage. She received Rs. 1,50,000/- as against Rs.3,90,000/- , by January, 2006. Whatever be the reason she did not have the benefit of balance of consideration viz., Rs.2,40,000/- , the record discloses that the very necessity to sell the immovable property held by her was to meet the expenditure for treatment to her husband. Unfortunately, the husband of the appellant died in the year 2008. Had the amount of Rs.2,00,000/- been deposited along with the plaint, it would have earned not less than Rs. 1,00,000/- , as interest.

16. Hence, the second appeal is dismissed, however, with a modification to the effect that the respondent shall be under obligation to pay a sum of Rs.3,50,000/- as balance of consideration. It shall be open to him to take refund of the amount, if any, deposited by him into the credit of the suit. The appellant shall be entitled for the benefit of the enhanced consideration, if only she executes the sale deed within two months from today, without the necessity of filing of execution petition.

17. There shall be no order as to costs.