
(1995) 08 AP CK 0010

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2031 of 1992

Kanakala Venkata Rao

APPELLANT

Vs

Konda Krishnam Raju and Others

RESPONDENT

Date of Decision : 01-08-1995

Acts Referred:

Citation : (1996) 1 ALT 838

Hon'ble Judges : K.B. Siddappa, J

Bench : Single Bench

Advocate : G. Vasantha Rayudu, for the Appellant; G.P. for Revenue, for the Respondent

Final Decision : Allowed

Judgement

K.B. Siddappa, J.—The revision is filed against the docket order dt. 25.6.92 passed by the learned Subordinate Judge, Kakinada in OSSR No. 1736/92.

2. Defendants 3 to 5 have entered into an agreement of sale with defendants 1 and 2 in respect of a total extent of Acres 43 - 58 cents for a consideration of Rs. 4 lakhs by an agreement dated 3-1-89. Defendants 1 and 2 executed sale deeds for an extent of Ac. 30-54 cents. They failed to execute the sale deed in respect of remaining extent of Ac. 13-04 cents. The plaintiff filed suit for specific performance of agreement in respect of his share which comes to Ac. 3-26 cents out of Ac. 13-04 cents. The plaintiff's suit is in respect of 1/4th share out of the remaining extent. The learned subordinate Judge held that there are no recitals in the agreement that the execution of sale deed would be as per shares. Therefore he directed to pay Court fee on the value of the remaining extent of Ac. 13-04 cents. Against this order the present revision is filed.

3. The learned counsel appearing for the revision petitioner submits that the order of the learned subordinate Judge is erroneous. The plaintiff only sought the relief of specific performance in respect of his share which came to Ac. 3-26 cents out of the total extent of Ac. 13-04 cents. Therefore, he has to pay the

Court fee on the value of Ac. 3-26 cents only and not on the total extent of Ac.13-04 cents. In support of his contention, he relied upon a decision of the Madras High Court in *Jhavar v. Thanicakchala Gramani* (1996 (2) MLJ 38), wherein it was held that the intention of Section 42(a) of the Madras Court-fee and Suits Valuation Act seems to be that, where a party who has entered into a contract to purchase certain properties is able to get conveyance of a portion of the properties only, he can file a suit for specific performance of the unperformed portion of the contract and can pay Court-fee on it, and that he is liable to pay Court fee only on the value of the unperformed portion of the contract of which he seeks specific performance and is not liable to pay Court-fee on the entire value of the properties covered by the original contract. He also relied upon a decision of this Court in *Athili Appalaswamy's case* (1963(1) An.W.R. 118) . In this case it was held that the lower court itself held that the agreement covered not the entire plaint schedule land but only Ac. 4-18 cents, arrived at after excluding from the plaint schedule Ac. 0-80 cents of land and that therefore no question of payment of court fee in respect of lands which were excluded arises, and that the court-fee should be paid on the sum of Rs. 20,900/- being the value of Ac. 4-18 cents decreed and not on Rs. 25,000/- at which the plaint was originally valued on the basis of the value of five acres. Both the above decisions distinguished the ratio in *Gudia Dullabho Sahu Vs. Cinni Adinarayana and Others*, . The ratio of another judgment in *Hiranand Ramsook Firm v. Province of Madras* (AIR 1954 A.P. 6), relied upon by the learned counsel for the petitioner, is also to the same effect.

4. I entirely agree with the submission made by the learned counsel for the petitioner. The plaintiff is seeking specific performance in respect of his share only. It is true that there are no recitals in the agreement that the execution of sale deed would be as per shares. When others did not cooperate the plaintiff can try to enforce the agreement in respect of his share only. Relying upon the ratio laid down in the above decisions, I am of the opinion that the plaintiff has to pay the Court-fee only on the value of Ac. 3-26 cents in respect of which he seeks specific performance of contract. He need not pay the Court fee on the entire extent of Ac.13-04 cents.

5. In the result the revision petition is allowed. In the circumstances there will be no order as to costs.