
(2012) 11 AP CK 0077

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1166 of 2012

Koneru Srinivas Rao and Madugula Krishna Reddy

APPELLANT

Vs

Mrs. G. Sarala Kumari

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Evidence Act, 1872 — Section 63, 66

Citation : (2013) 1 ALD 635

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

**Advocate : C.B. Ram Mohan Reddy for Sri. M. Chalapati Rao, for the Appellant;
Hari Sreedhar, for the Respondent**

Judgement

L. Narasimha Reddy

1. The petitioners filed O.S. No. 739 of 2007 in the Court of X Additional District and Sessions Judge (Fast Track Court) Ranga Reddy District at L.B. Nagar, against the respondent, for the relief of specific performance of an agreement of sale, dated 19.05.2004, and tripartite agreement, dated 11.04.2005. Briefly stated, the case of the petitioners was that, the 1st petitioner entered into an agreement, dated 19.05.2004, with the respondent for purchase of two Flats, bearing Nos. 401 and 402 of NCL Homes, Krishna Apartments, Madhapur, Ranga Reddy District, for a consideration of Rs. 40 lakhs, and out of it, a sum of Rs. 20 lakhs was paid, on the date of agreement itself. It is stated that, on account of certain developments, the parties could not adhere to the commitments and an understanding was arrived at between the 1st petitioner and the respondent to the effect that the latter may sell one flat, and execute the sale deed in respect of the other. Accordingly, the respondent is said to have executed a sale deed, on 05.01.2005, in respect of Flat No. 402, in favour of third parties. Therefore, the 1st petitioner intended to transfer his rights in respect of the other flat in favour of the 2nd petitioner and with the participation of the sole respondent, a tripartite agreement, dated 11.04.2005, is said to have been entered into,

stipulating various conditions. The petitioners submit that, though there is a recital in the agreement, dated 11.04.2005, to the effect that first of them, has handed over the original of the agreement, dated 19.05.2004, and the receipt, to the second of them, those documents were with the respondent, and she did not return them, in spite of repeated demands. Ultimately, the suit was filed for specific performance, as indicated above.

2. The trial of the suit commenced and in the course of evidence on behalf of the petitioners, they intended to bring on record the agreement, dated 19.05.2004. For that purpose, they got issued a notice u/s 66 of the Indian Evidence Act, 1872 (for short "The Act"), to the respondent to produce the original of the agreement, dated 19.05.2004. Alleging that the request was not acceded to, they filed I.A. No. 68 of 2011, with a request to receive the Xerox copy of the said agreement, as secondary evidence. The application was opposed by the respondent. The trial Court dismissed the I.A., through order, dated 18.01.2012. Hence, this revision.

3. Heard Sri B. Ram Mohan Reddy, learned counsel for the petitioners, and Sri Hari Sridhar, learned counsel for the respondent.

4. The petitioners made an effort to file a Xerox copy of the agreement, dated 19.05.2004, as secondary evidence. It is not in dispute that, before they filed that application, they got issued a notice to the respondent, as required u/s 66 of the Act. The trial Court was impressed mostly by the recital in the tripartite agreement, dated 11.04.2005, which is to the effect that the 1st petitioner has handed over the originals of agreement of sale, dated 19.05.2004, and the receipt, to the 2nd petitioner. The petitioners do not dispute about the recital. However, an extensive plea was raised in the affidavit filed in support of I.A., to the effect that, notwithstanding the said recital, the documents remained with the respondent.

5. In the context of dealing with the applications for filing of secondary evidence, what becomes relevant for the Court is as to whether the necessary conditions precedent, were complied with, by the party filing that application. The truth, or otherwise, of the respective pleas, need to be taken into account, at a later stage. If the proposed secondary evidence conforms to the tests u/s 63 of the Act, the application needs to be allowed. Once it is shown that the preliminary steps contemplated u/s 66 are complied with, the question as to whether the document so received can be treated as relevant, or is admissible, can certainly be decided at a subsequent stage. Further, the question pertaining to the custody of the original and the efforts made by the concerned party to procure the same, can be the subject-matter of evidence.

6. At any rate, in the instant case, the respondent does not dispute the existence of the agreement, dated 19.05.2004. The only area of controversy is that, after the agreement was entered into, a Xerox copy was given to her, but at a later stage i.e. on 11.04.2005, certain endorsements were made on the reverse of the

original agreement and that copies of the same were not furnished to her. These and various other aspects are to be dealt with, at the stage of trial and hearing.

7. Therefore, the C.R.P. is allowed, and the order under revision is set aside. As a result, I.A. No. 68 of 2011 is allowed subject to proof and relevance and other conditions of the parties. The trial Court shall endeavour to dispose of the suit, as early as possible, and preferably within a period of three months from the date of receipt of a copy of this order.

8. The miscellaneous petition filed in this civil revision petition shall also stand disposed of. There shall be no order as to costs.