

(1968) 08 AP CK 0005

In the Andhra Pradesh High Court

Case No : Second Appeal No. 796 of 1965

Koppadu Dharma Rao

APPELLANT

Vs

Kovvuru Satyavathi

RESPONDENT

Date of Decision : 06-08-1968

Acts Referred:

Transfer of Property Act, 1882 — Section 53

Citation : AIR 1969 AP 129

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Advocate : N. Ramachandra Rao, for the Appellant; A. Gangadhara Rao, for the Respondent

Judgement

1. The plaintiff, who is the appellant herein, filed the suit O. S. 56 of 1960 in the Court of the District Munsif, Amalapuram, of partition and for separate possession of a half share in a extent of Ac. 2.75 cents described in the plain schedule. for past profits of Rs. 572, for further profits from the date of suit and for delivery of possession in the following circumstances.

An agreement of sale Ex. B.4 was executed with respect to the suit property Ac. 2.75 cents on 8-1-1952 by two brothers, Venkata Reddi and Audinarayana Murthy, in favour of Ramanna for a consideration of Rs. 720. Thereafter, a sale deed, Ex. B. 6 was executed on 15-10-56 in favour of Ramanna by Venkata Reddi, alone reciting that as Audinarayana Murthy's whereabouts were not know, a proper sale deed would be executed by him after he turns up and that a balance of Rs. 25 will be paid at the time of execution of such sale deed by Audinarayana Murthy. But this contingency did not take place. Hence Ramanna Sold away the property purchased by him under Exhibit B-6 in favour of the defendant by a sale deed Ex. B-7 dated 9-4-1957. Subsequently, after Audinarayana Murthy came back, he sold his half share of the property in favour of plaintiff under Ex A-1 dated 22-10-1958. In fact, the plaintiff wanted to purchase the entire Ac. 2.75 cents belonging to the family of Venkata Reddi as

the plaintiff had already purchased the adjoining property belonging to the family of Venkata Reddi. But as Ramanna happened to purchase Venkata Reddi's share under Ex. B-6, the plaintiff purchased only the remaining half share belonging to Audinarayana Murthy.

On the basis of the Sale deed, Ex A-1, the plaintiff filed the above suit for partition and recovery of his share. The defendant contested the suit alleging that by virtue of the sale deed Ex. B-7 executed by Ramanna, he not only acquired the half share of Venkata Reddi but also obtained possession of the half share belonging to Audinarayana and that he is entitled to resist the plaintiff's suit on the plea of part-performance which was available to his vendor Ramanna. Both the Courts below upheld the defence of part-performance and dismissed the plaintiff's suit.

2. The main question for consideration in this second Appeal, therefore, is whether the defendant is entitled to raise the defence of part-performance as against the plaintiff. There is no dispute that the plaintiff is a person who is claiming under his transferor, namely Audinarayana Murthy. Hence if the plea of part-performance is available against Audinarayana Murthy, it is equally available as against the plaintiff. It is also not disputed that the original transferee Ramanna, would have been entitled to raise the defence of part-performance as he was put in possession of the property under the agreement executed by Venkata Reddi and Audinarayana Murthy. It is also not disputed that if the defendant is a person claiming through Ramanna, the original transferee, he is also entitled to raise the defence of part performance. But the main point in controversy is whether the defendant is a person claiming under the original transferee, Ramanna. It is also conceded before me that it is open to a purchaser to assign his rights under an agreement of sale and that in such a case, the assignee is a person claiming under the assignor. Hence the question which falls for consideration is whether the defendant is an assignee from Ramanna of the rights under the agreement of sale, Ex. B 4 in so far as it related to the share of Audinarayana Murthy.

The answer to this question turns upon the true interpretation of Exhibits B 6 and B 7. Ex. B 6 is a sale deed executed by Venkata Reddi who is only one of the vendors under the agreement. Exhibit B 4 and it is specifically stated therein that a sale deed would be later on executed by Audinarayana Murthy for his share. This recital leads to the following conclusions. (i) that Venkata Reddi did not purport to sell the interest of Audinarayana Murthy also as a manager of the family for a binding purpose; and (ii) that under Ex B 6 Ramanna acquired title only in respect of the half share of Venkata Reddi and nothing more. Coming to Ex B 7 dated 9-4-1957 executed by Ramanna in favour of the defendant, the question is what is the interest, which Ramanna conveyed his full title in the entire property of Ac. 2.75 cents along with some other lands. When Ramanna conveyed the property under Ex B 7 he had admittedly a right to convey the half share belonging to Venkata Reddi which he purchased under Ex B 6. Ramanna

had also the right to obtain a conveyance from Audinarayana Murthy with respect to his half share in pursuance of the original agreement. Exhibit B 4 In Ex, B 7 Ramanna does not purport to convey whatever interest he had in the property, but he sold only an absolute title in the property with all the usual covenants of title etc. This clearly indicates that Ramanna conveyed only his absolute interest which he got under Ex b 6.

The learned counsel for the defendant- respondent argued that on a liberal interpretation of the sale deed. Ex B 7 it should be held that Ramanna must have conveyed his rights under the agreement also by implication. On the other hand, it is contended by the learned counsel for the appellant-plaintiff that the terms of Ex B 7 are clear and unambiguous and that there is no room for holding that Ramanna must be deemed to have conveyed his rights under the agreement by way of implication under the sale deed Ex B 7. I agree with the contention of the learned counsel for the appellant-plaintiff. It is a settled rule of construction that the intention of parties should be gathered only from the contents of the document and it is not permissible for the court to add to the contents thereof except by way of interpretation. If the sale deed, Ex B 7 contained a general clause saying that Ramanna purported to have conveyed whatever other rights he had in the property, it may be possible to construe that he assigned his rights under the agreement Ex B 4. In the absence of any such indication, it has to be held that under Ex B 7 Ramanna conveyed only the interest of Venkata Reddi which he obtained under the agreement of Sale Ex. B 4.

It is however argued on behalf of the respondent-defendant that as Ramanna put him in possession of the entire property, including the share of Audinarayana Murthy which he got under the agreement, Ex B 4 he is entitled to raise the defence of part-performance. But on a reading of Section 53A of the Transfer of Property Act, it is not enough if the defendant is somehow or other in possession of the property. It is an essential requisite that such possession must be obtained in pursuance of the agreement. Though it may be said that Ramanna got possession in pursuance of an assignment of the agreement of Sale. Ex B 4. The defendant would be entitled to rely upon his possession and raise the plea of part-performance only if his possession is referable either to the original agreement or sale to an assignment of the rights under the agreement of sale. The contention of the learned counsel for the defendant-respondent is in whose favour the original agreement stands. This contention is obviously untenable cannot sue for the specific performance of the agreement in favour of the defendant. It is therefore not open to the defendant to rely on the doctrine of part-performance as a defence to the plaintiffs suit.

3. The next question is what is the relief which the plaintiff-appellant is entitled to. The trial court found under issue No 7 that the plaintiff is entitled to claim Rs, 572 towards past profits and that this finding is based on sufficient evidence in the case. I do not think there is any ground for interference with this finding, though the appellate court has not given its findings on this point. As regards

future profits from the date of the plaint, the plaintiff can file an application for determining the same.

4. For the above reason, I set aside the judgment of the lower court and decree the plaintiff's suit as prayed for. This second appeal is accordingly allowed with costs throughout.

5. Leave granted.

6. Appeal allowed.