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**(2010) 07 AP CK 0033**  
**In the Andhra Pradesh High Court**  
**Case No : A.S. No. 20 of 2006**

Korada Sanyasamma

APPELLANT

Vs

Smt. Mandadi Adilakshmi and Another

RESPONDENT

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**Date of Decision :** 14-07-2010

**Acts Referred:**

Evidence Act, 1872 — Section 92  
Specific Relief Act, 1963 — Section 22

**Citation :** (2010) 5 ALD 599 : (2010) 3 APLJ 165

**Hon'ble Judges :** L. Narasimha Reddy, J

**Bench :** Single Bench

**Advocate :** C. Hanumantha Rao, for the Appellant; S. Srinivas Reddy, for R-1, for the Respondent

**Final Decision :** Dismissed

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## Judgement

L. Narasimha Reddy, J.—The 1st respondent filed O.S. No. 160 of 1999 in the Court of IX Additional District and Sessions Judge (Fast Track Court), at Visakhapatnam, against the 2nd respondent for the relief of specific performance of an agreement of sale, dated 21-09-1997, in respect of 44 cents of land in Sy. No. 98/1 of Vemulavalasa Village, Anandapuram Mandal, Visakhapatnam District. Subsequently, she added the appellant herein as 2nd defendant. It was pleaded that the 2nd respondent executed an agreement of sale, promising to sell the suit schedule property for a consideration of Rs. 50,000/-, i.e. @ Rs. 12,500/- per cent, and that she paid an advance of Rs. 1 lakh on the date of agreement. The 1st respondent stated that she is willing to perform her part of contract, and in spite of repeated requests, the 2nd respondent did not execute the sale deed. Reference was made to the notices, that were exchanged, as well as to the effort made by the 2nd respondent to give an impression that the agreement was only in respect of 17 cents.

2. The plaint was amended by incorporating a paragraph to the effect that the appellant herein started making construction on the suit schedule property, and

that she has no right to make any construction upon it. The prayer in the suit was also amended by claiming it against the appellant also, in the context of delivery of possession. The 2nd respondent filed a written-statement. He did not dispute the fact that he executed an agreement of sale. However, according to him, the agreement was only in respect of 17 cents, and the extent was mentioned by mistake, as 44 cents. He further pleaded that the appellant herein was not the original owner of 44 cents of land, and she sold only an extent of 17 cents to him, through sale deed dated 10-03-1993, and in that view of the matter, he cannot transfer any extent more than 17 cents.

3. The appellant filed a separate written-statement. Her plea was almost in consonance with that of the 2nd respondent. It is stated that she executed a sale deed dated 10-03-1993 in favour of the 2nd respondent only to an extent of 17 cents, and she continues to be owner and possessor of balance of 27 cents. She has also pleaded that her four daughters, one of whom, is the wife of the 2nd respondent, are the joint owners of the property.

4. Through its judgment dated 30-07-2005, the trial Court decreed the suit. The 2nd respondent was directed to execute the sale deed and deliver possession of the suit schedule property to the 1st respondent, after evicting the appellant from the suit property.

5. The appellant challenges the decree passed by the trial Court. The 1st respondent, on the other hand, filed cross-objections, feeling aggrieved by the direction issued by the trial Court to the 2nd respondent to evict the appellant herein from the suit schedule property, and deliver possession to the appellant. She wants that the decree, as to delivery of possession must be issued against the 2nd respondent and the appellant, in executable form.

6. Sri C. Hanumantha Rao, learned Counsel for the appellant submits that the appellant is not a party to the transaction between respondents 1 and 2, and there was absolutely no basis for making her a party to the suit, at all. He contends that the very fact that the 1st respondent admitted that the appellant is in possession of the property, or at least, a major part of it, discloses that the 2nd respondent has no marketable title to the suit schedule property. He places reliance upon the judgment of this Court in *Koneru Syam Sundara Rao and Another Vs. Pendurti Kanaka Durga*, Learned Counsel further contends that the extent of the land was wrongly mentioned in the sale deed, dated 10-03-1993, marked as Ex.B-1, and this fact was admitted by the vendor and purchaser under the document. He submits that the relief of specific performance being discretionary in nature, the trial Court ought to have dismissed the suit, once it became clear that the appellant, who is not a party to the agreement, is in possession of part of the suit property. He submits that the cross-objections deserve to be rejected.

7. Sri S. Srinivas Reddy, learned Counsel for the 1st respondent, on the other hand, submits that the agreement of sale, Ex.A-1, dated 21-09-1997, is clear

and specific in its purport, and it was in respect of 44 cents. He contends that, once the 2nd respondent realized that the value of the suit land has increased, he went on searching for one excuse or the other, to avoid the obligation under the agreement. Learned Counsel submits that the appellant, who is none other than the sister, as well as mother-in-law of the 2nd respondent, aided the latter, in presenting a fabricated version before the trial Court, contrary to the unambiguous documentary evidence. Learned Counsel further submits that the 2nd respondent has an absolute, clear and marketable title, in respect of the entire 44 cents of land, and his sinister motive to present a different picture was thoroughly exposed by the trial Court, by making reference to oral and documentary evidence. He submits that the trial Court ought to have passed the decree as regards delivery of possession against the 2nd respondent and the appellant, instead of requiring the former, to evict the latter.

8. The agreement of sale, marked as Ex.A-1 is between the respondents 1 and 2. The suit was filed for specific performance thereof. The necessity for the 1st respondent to implead the appellant arose, on account of the fact that she was found to be in possession of part of the suit schedule property. Incidentally, it is from the appellant, that the 2nd respondent purchased the suit schedule property under Ex.B-1. On the basis of the averments in the plaint filed by the 1st respondent and separate written-statements filed by the 2nd respondent and the appellant, the trial Court framed two issues for its consideration, viz.,

1) whether the agreement of sale dated 21-09-1997 is true, valid and binding on the defendants ? and

2) whether the plaintiff is entitled for specific performance of the agreement of sale dated 21-09-1997 ?

9. On behalf of the 1st respondent PWs 1 to 4 were examined and Ex.A-1 to A-19 were marked. The 2nd respondent deposed as DW-1 and the appellant, as DW-2. DWs 3 to 6 were also examined on their behalf. The sale deed dated 10-03-1993, executed by the appellant in favour of the 2nd respondent, was marked as Ex.B-1. Both the issues were answered in favour of the 1st respondent, and the suit was decreed.

10. The 2nd respondent did not file any appeal, nor did he enter appearance in this appeal.

11. Though the trial Court framed issues, touching upon the truthfulness of Ex.A-1, there is no serious dispute about the same. The actual controversy is, about the extent covered by the agreement of sale, on the one hand, and the existence of marketable title in the 2nd respondent. Therefore, the following points arise for consideration, viz.,

a) whether the extent covered by Exs.B-1 and A-1 is 44 cents, or 17 cents ?

b) whether the 2nd respondent had marketable title in the suit schedule property ? and

c) whether a decree for specific performance can take in its fold persons, not parties to the agreement of sale, in the context of delivery of possession?

12. There is no dispute that the 2nd respondent executed agreement of sale, Ex.A-1, on 21-09-1997 in favour of the 1st respondent. Obviously, because there was no positive response for a period of two years, the 1st respondent got issued a notice dated 27-07-1999, marked as Ex.A-2, to the 2nd respondent. The 2nd respondent, on the other hand, got issued a notice dated 23-07-1999, marked as Ex.A-3. He came forward with the plea that the extent agreed to be sold is only 17 cents and he called upon the 1st respondent to get the sale deed executed in respect of that extent, forthwith. The 1st respondent replied the same through Ex.A-4, dated 15-08-1999, and stated that the extent agreed to be sold is 44 cents. Two more notices, being Exs.A-5 and A-6 were exchanged, and ultimately the suit came to be filed. In the written-statements also, the plea of the 2nd respondent was mainly that the extent agreed to be sold is 17 cents. For this, the basis pleaded by him was that, he purchased only 17 cents from the appellant herein, through Ex.B-1.

13. To prove her readiness and willingness to pay the consideration, the 1st respondent has filed copies of sale deeds marked as Exs.12 to A-19, through which, she sold her property, and the consideration thereof is said to have been kept in a Bank, for being paid to the 2nd respondent.

14. The consistent version of the 2nd respondent and the appellant is that though the latter owned an extent of 44 cents, she sold only an extent of 17 cents, under Ex.B-1. In Ex.B-1 it is mentioned that the appellant was the absolute owner and enjoyer of 44 cents of land in Sy. No. 98/1, within the boundaries mentioned therein and that the same is sold to the 2nd respondent. A deed of rectification was executed at a later point of time, by correcting the survey number, to 98/4. No mention was made at that time, to the extent, much less, it was altered. In Ex.A-1 also, the 2nd respondent made a specific reference to Ex.B-1, and the manner in which he acquired the property, namely, by purchase from the appellant. The extent was clearly mentioned as 44 cents. It is only two years thereafter, that the 2nd respondent came forward with the plea, that the extent covered by Ex.A-1 is only 17 cents. When Exs.B-1 and A-1 clearly mention the extent as 44 cents, it is just impermissible for the 2nd respondent and the appellant to plead the extent to be 17 cents. Section 92 of the Evidence Act prohibits them from stating anything contrary to the recitals in the documents.

15. A vague and pale attempt was made by the 2nd respondent and the appellant to justify their plea that the extent is only 17 cents, by making reference to a recital in Ex.B-1. After the extent of 44 cents was mentioned, its equivalent in Hectares i.e. 0.176 was given. On this basis, it is sought to be urged that the extent covered by Ex.B-1 is 17 cents. This cannot be accepted. It is pure mathematics, that 44 cents is equivalent to 0.176 hectares.

16. Another contention advanced on behalf of the appellant is that though she possessed 44 cents of land, she sold only 17 cents and since herself and the 2nd respondent are illiterates, they could not verify the correctness of recitals in Ex.B-1 in this regard. This again is unacceptable. The 2nd respondent was clear in his mind, that what he purchased under Ex.B-1 was 44 cents, and he mentioned that extent in Ex.A-1. If the appellant is of the view that the extent sold by her is only 17 cents, she ought to have taken necessary steps, either by filing a suit for rectification of Ex.B-1, or by filing counter-claim in the present suit itself. She did neither. The appellant and the 2nd respondent cannot be permitted to plea contrary to what is contained in Exs.B-1 and A-1, to which they are parties. The bar contained in Section 92 of the Evidence Act operates against both of them.

17. At one stage, the appellant made an attempt to plead that she has no authority to sell the entire property. However, she did not feel such hindrance, when she executed Ex.B-1. Further, she cannot take such a plea, that too, at this length of time.

18. Therefore, this point deserves to be answered in favour of the 1st respondent.

19. The second point is as to whether the 2nd respondent has marketable title in respect of the suit schedule property, viz., 44 cents of land in Sy. No. 98/4 of Vemulavalasa Village, Anandapuram Mandal, Visakhapatnam District. It is argued that the 2nd respondent does not hold such title and he cannot be compelled to execute the sale deed. Judgment in Koneru Syam Sundara Roa's case (1 supra) is relied upon. In the said precedent, this Court reiterated the principle, that no individual can convey a better title, than what he holds, and unless the vendor under an agreement of sale holds marketable title, he cannot be compelled to perform his part of obligation.

20. In the instant case, the source of title for the 2nd respondent, vis--vis the suit schedule property is, Ex.B-1. If that document is incapable of conveying absolute title to him, the contention advanced by the appellant can certainly be accepted. It has already been mentioned that Ex.B-1 is a registered sale deed, in respect of 44 cents of land, and at no point of time, its validity or legality, De hors the feigned reluctance on the part of the 2nd respondent to become owner, was assailed. Ex.B-1 confers absolute title upon him, as regards 44 cents. At any rate, he did not challenge the findings of the trial Court, be it, in respect of his obligation to execute the sale deed, or his being in a position to honour the commitment under Ex.A-1. Therefore, this point is also answered in favour of the 1st respondent.

21. The third point is in relation to the cross-objections. The plea of the appellant is that, when admittedly she is in possession of the part of the property, she cannot be evicted from the property, inasmuch as she is not a party to Ex.A-1. The grievance of the 1st respondent, on the other hand, is that, since the 2nd respondent derived title from the appellant, both of them must be brought under

the purview of the decree, in the context of delivery of possession. The trial Court took note of the purport of Section 22 of the Specific Relief Act, and observed that in a given case, the Court can grant the relief of delivery of possession also.

22. It is true that the appellant is not a party to Ex.A-1. Had she been a total stranger to the parties to Ex.A-1, and they did not derive any rights from her, vis--vis the land, there would have been some strength in her plea. She was the predecessor in title for the suit schedule property till she conveyed the same, absolutely, to the 2nd respondent, who is none other than the brother and son-in-law. There is a clear recital in Ex.B-1, that the possession of the property was delivered to the 2nd respondent. It has already been mentioned that the 2nd respondent stated in Ex.A-1 that the source of his title to the property is Ex.B-1. Once the property was sold and possession was delivered, by the appellant, to the 2nd respondent, the question of her retaining any interest in any part thereof does not arise. Different results would have ensued, had she claimed her rights independent of, and subsequent to Ex.B-1. It is not her case that Ex.B-1 was nullified, modified, or rescinded. She is bound by that document and she cannot be heard to contend anything contrary to it. The specific plea of the 1st respondent, that the appellant started making construction on a small portion of the suit schedule property during the pendency of the suit; remained unrebutted. Further, the appellant did not adduce any evidence before the trial Court, to substantiate that she is in possession over the land, prior to the filing of the suit. The trial Court is competent to deal with any situation, that has taken place subsequent to the filing of the suit.

23. While framing the relief, the trial Court took the view that the 2nd respondent has to evict the appellant from the portion of the suit schedule property, in her occupation, and deliver possession thereof to the 1st respondent. In view of the discussion undertaken above, it is not necessary to depend or rely upon the 2nd respondent, to recover possession of a small portion of the suit property from the appellant. Once she is a party to the decree, and all her contentions were rejected, she cannot be permitted to perpetuate the illegal and collusive possession of a fraction of the suit schedule property, which she assumed, during the pendency of the suit.

24. The Appeal is therefore dismissed, and Cross-Objections are allowed. There shall be no order as to costs.