
(1998) 07 AP CK 0091
In the Andhra Pradesh High Court
Case No : A.S. No. 447 of 1991

Krovidi Kameswaramma and others	Vs	APPELLANT
Kudapa Balaramayya and another		RESPONDENT

Date of Decision : 14-07-1998

Acts Referred:

Specific Relief Act, 1963 — Section 20

Citation : (1998) 5 ALD 68 : (1998) 5 ALT 69 : (1998) 3 APLJ 59 : (1999) 3 RCR(Rent) 205

Hon'ble Judges : T. Ranga Rao, J;P. Ramakrishnam Raju, J

Bench : Division Bench

Advocate : Mr. M. Lakshmana Sarma, for the Appellant; Mr. M.S.K. Sastry, for the Respondent

Judgement

P. Ramakrishnam Raju, J.—The plaintiffs are the appellants. The first plaintiff late Kowidi Venkata Ananda Raja Gopala Krishna Murthy entered into an agreement of sale for purchase of Ac.5-88 cents of land in S.No.751 of Konthamuru, hamlet of Komaluru of Rajahmundry taluk, East Godavari district with the defendants 1 and 2 at the rate of Rs.53,000/- per acre on 11-12-1982. The said plaintiff paid a sum of Rs.20,000/- as advance on that date. He agreed to pay Rs.80,000/- on or before 31-1-1983, Rs.50,000/- before 30-4-1983 and the balance on or before 15-5-1983. It is also agreed that in case the above conditions are fulfilled by the said plaintiff, the possession of property would be delivered on 30-3-1983.

2. However, it is the case of the first plaintiff that he has been althrough ready and willing to perform his part of the contract but the defendants were never ready to comply with the terms of the contract. It is further stated in the plaint that apart from Rs.20,000/- paid on 11-12-1982 to the defendants a further sum of Rs.30,000/- was paid on 16-1-1983 for discharge of the bank debt due by the defendants. No endorsement of part payment for this amount was made by the defendants on the agreement but they promised that they would make the endorsement on the agreement when the first plaintiff pays a further sum of

Rs.50,000/-by the end of January 1983 to make up a sum of Rs.80,000/- as agreed. Taking advantage of the fact that there is no endorsement for the said sum of Rs.30,000/- the defendants have conveniently denied the receipt of the said amount but the telegraphic notice issued by the first defendant amply proves the said payment. The defendants did not cooperate in execution of the sale deed or deeds. Hence in pursuance of the said agreement the first plaintiff was constrained to file the suit.

3. The first defendant who is the father of the second defendant filed written statement which was adopted by the second defendant. In the written statement the execution of the agreement dated 11-12-1982 and the terms thereunder have been admitted. But the alleged payment of Rs.30,000/- on 16-1-1983 is denied. It is further asserted that the first plaintiff was never ready with balance of consideration and therefore the defendants have repudiated the contract and terminated it as the first plaintiff failed to perform his part of the contract inspite of notice of demand by the defendants.

4. Pending the suit the first plaintiff died and his mother, widow, his son and daughter are added as plaintiffs 2 to 5.

5. In the lower Court the fifth plaintiff was examined as PW1 besides examining three more witnesses on behalf of the plaintiffs. Exs. A-1 to A-16 were also marked. The first defendant was examined As DW] on behalf of the defendants and Exs. B-1 to B-7 were marked.

6. The lower Court on a consideration of the entire material on record dismissed the suit. Hence the appeal.

7. The learned Counsel for the appellants submits that it is the defendants that committed default of the terms of the contract and the first plaintiff was always ready and willing to perform his part of the contract and therefore the decree and judgment of the lower Court have to be set aside.

8. The execution of the suit agreement Ex.A-1 dated 11-12-1982 is admitted by the defendants. There is also no dispute about the terms of the said agreement. Accordingly, the first plaintiff agreed to pay the consideration at the rate of Rs.53,000/- per acre for the demised property which is an extent of Ac.5-88. It is also admitted that the first plaintiff paid a sum of Rs.20,000/- at the time of execution of the agreement, to the defendants. According to the terms of the agreement he had to pay a further sum of Rs.80,000/- by 31-1-1983. The first plaintiff claims to have paid a sum of Rs.30,000/-by 16-1-1983 which is disputed by the defendants.

9. Now the question is whether the first plaintiff was ready and willing to perform his part of the contract?

10. It is necessary to see whether the alleged payment of Rs.30,000/- on 16-1-1983 was, in fact, made by the first plaintiff or not. The first defendant issued a telegraphic notice Ex.A-10 on 1-3-1983 stating as follows:

"Client Kudapa Balaramayya instructs you agreed purchase land Ac.5-88 cents Kolamuru at fifty three thousand rupees per acre. You paid advance twenty thousand. As per terms you have to pay fifty thousand rupees by January, 1983".

This telegraphic notice was followed by regular registered notice Ex.A-11 dated 11-3-1983 whercunder it is specifically stated that as per the terms of the agreement the plaintiff has to pay a sum of Rs.80,000/- by the end of January 1983 and as he has committed default the first defendant has treated the agreement as cancelled and he is entitled to forfeit the advance amount paid by the first plaintiff. The said notice was replied under Ex.A-12 notice dated 2-5-1983 by the plaintiff No. 1 nearly after a period of more than two and half months stating mat a sum of Rs.30,000/- was paid on 16-1-1983. Although the telegraphic notice contains the words "fifty thousand" wehave to see whether there is any mistake in showing the words "fifty thousand". The tenor of the telegraphic notice shows that the first plaintiff paid an advance of Rs.20,000/- and as per the terms he has to pay Rs.50,000/- by January 1983. According to the terms of the agreement the first plaintiff has to pay by the end of January 1983 a sum of Rs.80,000/- and not Rs.50,000/-. In fact the words "fifty thousand" are mistake for the words "eighty thousand". The same is dear from Ex-A-11 dated 11-3-1983 which is a regular registered notice. The contents of the telegraphic notice were also extracted in the said notice. It is clear from the said extract that what was conveyed under the telegraphic notice was that the first plaintiff failed to pay the amount due by the end of January 1983 i.e. a sum of Rs.80,000/-. In fact in para No.2 of registered notice it is clearly stated that the first plaintiff has to pay Rs.80,000/- by the end of January 1983 and he has not paid any amount but committed default. For this the first plaintiff issued a reply after waiting for nearly two and half months. If really he has paid Rs.30,000/- by 16-1-1983 he should have immediately issued a reply stating that the contents of Ex.A-11 that he (first plaintiff) should pay Rs.80,000/-by the end of January 1983 arc not correct and that he lias already paid Rs.30,000/- on 16-1-1983. There is not even a scrap of paper evidencing the said payment. No endorsement was made on the suit agreement. Therefore, it is clear that the first plaintiff tried to take advantage of the mistake committed in noting the words "fifty thousand" in the telegram instead of the words "eighty thousand" by inadvertence. Therefore, in our view the lower Court rightly held that the said payment was not made by the first plaintiff.

11. Any plaintiff must come to the Court with clean hands, more so in the case of a plaintiff who seeks an equitable relief of specific performance. The relief by way of specific performance lies within the discretion of the Court. It is absolutely necessary that the plaintiff should come to the Court with clean hands. In other words a plaintiff who sets up a false case cannot expect a Court of equity to grant him the relief In view of the finding that the plaintiff has failed to pay the amount due by the end of January 1983 it is clear that he has come up setting out a false plea and that he has committed default of the terms of the contract. This again implies that he is not ready and willing to perform his part of the

contract. It is axiomatic to infer that the plaintiff who sets up a false plea of payment and fails to substantiate that he is always ready and willing to perform his part of the contract cannot seek the relief of specific performance. In a similar case this Court in Kommisetti Venkatasubbayya Vs. Karamsetti Venkateswarlu and Others, , observed as follows:

"Irrespective of any other fact the averment in the plaint and the notice is sufficient to hold that he was not ready and willing to perform his part of the obligation under Ex.A-1 and that apart the plaintiff who seeks equitable remedy of specific performance must come to the Court with clean hands".

It is categorically observed there that the plaintiff who had set up a false plea of payment of a major portion of the purchase money was not only disentitled to the discretionary relief on the ground that he has set up a false plea but also on the ground that, that discloses that he was not ready and willing to perform his part of the contract. We are in respectful agreement with the view taken in this decision. The principle that *Impart delicto potior est conditio defendis* is also to the effect that in case of equal guilt the defendant alone should succeed. So on application of this principle also the plaintiff must fail for setting up a false plea. From all the above principles it is clear that the plaintiff who does not come to the Court with clean hands cannot succeed. From the above discussion it is clear that the first plaintiff has taken a false plea with a view to show that he has paid substantial sum of Rs.30,000/- which in fact he did not pay thereby he is exposed to falsehood while he is expected to come with clean hands before seeking equitable relief of specific performance. It also implies that he is not ready and willing to perform his part of the contract as per the terms of the agreement at all material times. As he has not come with clean hands he is not entitled to the relief of specific performance-For all these reasons we do not find any merit in the appeal.

12. Appeal suit is accordingly dismissed but in the circumstances without costs.