

(1959) 10 AP CK 0019

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Petition No. 6736 of 1959

Mareddi Venkata Rami Reddy

APPELLANT

Vs

Mareddi Adinarayana Reddy and Others

RESPONDENT

Date of Decision : 23-10-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148

Citation : AIR 1960 AP 271

Hon'ble Judges : S. Qamar Hasan, J;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : K. Krishnamurthy and A.S. Prakasam, for the Appellant; D. Narasaraju, General, Y. Suryanarayana, T. Ramachandra Rao and A. Kuppuswamy, for the Respondent

Final Decision : Dismissed

Judgement

Syed Qamar Hasan, J.—Appeal No. 627 of 1954 on the file of this Court in which the question was whether the trial court was right in decreeing the suit for specific performance of contract of sale, was dismissed by our judgment d/- 24-4-59. Therein we, however, granted a fresh-period of three months to enable the successful plaintiff to deposit the balance of purchase price amounting to Rs. 75,000/ from the date of the judgment. Plaintiff, the petitioner herein deposited Rs. 53,500/ in the trial court on 24-7-1959 which was the last day of the extended time granted by us.

In order to enable him to. deposit the remaining balance of Rs. 21,500/ he filed the present civil miscellaneous petition praying that on the facts and grounds affirmed in the accompanying affidavit, an extension of time may be granted to him by three weeks from 24-7-1959. We are informed that during the pendency of the petition, the petitioner has by 4-8-1959 deposited Rs. 21,500/ in the trial court. Be that as it may, the contention of the contesting opponents as advanced by the learned Advocate General in resistance of the petition is that this court undoubtedly has power to extend the time for payment of the purchase price in

supersession of the time fixed by the trial court at the stage of the final disposal of the appeal but when once that power has been exercised, the appellate court becomes *Functus Officio* and it does not lie within its competence to further extend time either on the authority of Section 148 or Section 151 C. P. C.

To fortify that contention, reliance was placed on *Ramaswami Kone v. Sundara Kone*. ILR 31 Mad 28 *Mohideen Kuppai v. Mariam Kansi* 12 IC 139 *Mohideen Kuppai v. Ponnuswami Pillai* 1 MLW 882 : (AIR 1915 Mad 69) and *Gopala Aiyar v. Saimasi* 3 Mad LW 29 : AIR 1917 Mad 838(1)). In the first case cited what has been decided is that where the appellate decree confirms the decree of the first court and is silent regarding the time fixed for payment by the court of first instance, a further time would not be given for payment, from the date of appeal.

In the second case referred to, above, it was held that where time for payment of money is fixed by an appellate court in its decree, it is not competent to a Subordinate Court to which the decree is sent for execution to extend the time because the specific directions contained in the mandate of the appellate court are beyond the judicial discretion of the lower court and hence must be implicitly followed, the reason being that extension of time fixed by the judgment of an appellate court for performance of a condition would amount to an amendment of it.

The learned Judges however left open the question whether they would extend time if a proper application were made to them for that purpose.

That application was eventually made and it came on for hearing in the third case cited above. The learned Judges held that there was no provision of law under which the extension prayed for could be granted and that neither Section 148 nor Section 151 of the C. P. Code was applicable to the case. The last case relied upon was decided on the authority of ILR 31 Mad 28 and 1 Mad LW 852 : AIR 1915 Mad 69 and two propositions were laid down by Srinivasa Aiyangar J. (1) a confirmation by an appellate court of an original decree for specific performance does not extend the time fixed for payment in that decree, and (2) a court which passes a decree for specific performance of a contract to sell lands has no power to extend the time fixed for payment of purchase money nor can an appellate Court do so either u/s 151 or Order 41, Rule 33, C. P. Code.

2. These authorities are obviously based on the reasoning that there are no provisions in the CPC empowering the Court to extend time as fixed in the decree. But the learned advocate for the petitioner brings to our notice a Bench decision reported in *Abdul Shaker Sahib Vs. Abdul Rahiman Sahib and Another*, which has an important bearing on the decision of the present petition. The facts in that case were that in a suit for specific performance of a contract for sale of certain lands a decree was passed providing that upon payment by the plaintiffs on or before 19-12-1921 of a sum of Rs. 4,000, the 1st defendant do execute and register a proper deed of conveyance of the properties in the schedule. Before the expiry of two months, the 1st defendant had given notice of appeal;

the plaintiff had filed an application before the Trial Judge for extension of the time for paying the money and this application was heard in January 1922 i.e., after the expiry of two months and it was ordered to stand over until the hearing of the appeal. When the appeal came on for hearing, a preliminary point was taken that the two months having elapsed neither the original Court nor the appellate Court had any power to extend the time and that therefore the plaintiffs had lost irrevocably all their rights under the decree except the costs.

The preliminary objection was overruled and it was held that a decree in a suit for specific performance of a contract for sale of land, directing conveyance on payment of an amount by the plaintiff and fixing a time for such payment, is in the nature of a preliminary decree and after the original judgment, the action is not ended but remains under the control of the court and the decree only attains a final form after the plaintiff had made the deposit of sale consideration and has thereafter obtained actual sale of the property.

It was observed by Schwa he C. J. that till the date of the final completion of the matter that court has seizin of the case and that as such the court could extend the time which it may have fixed earlier for the payment of sale consideration. On these premises the learned Chief Justice while dismissing the defendant's appeal extended the time for completion for a period of two months and observed that

"It must be understood that the original Court still has jurisdiction in this matter and has full powers to deal with any point that may arise, including, if necessary, art application for further time."

3. This authority was followed by another Bench of the Madras High Court in the case of Mohammad Ali Sahib v. Abdul Khadir Sahib 59 M. L. J.351 and by the Allahabad High Court in Someshwar Dayal and Others Vs. Widow of Lalman Shah and Others, .

4. It would thus appear that, though we had fixed a fresh period in our judgment while disposing of A. S. No. 627 of 1954, the power of the trial court is still intact to consider the question of extension in the circumstances as mentioned in the affidavits filed in support of the petition. In these circumstances, we need not go into the larger question whether it is open to the appellate court to extend further time in the present circumstances.

5. Subject to the above remark, the petition is, therefore, dismissed. No order as to costs.