

(2011) 06 AP CK 0045
In the Andhra Pradesh High Court
Case No : Second Appeal No. 241 of 2009

Meruva Anji Reddy

APPELLANT

Vs

Ganaparthi Sessaiah and Others

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Limitation Act, 1963 — Article 54, 3
Specific Relief Act, 1963 — Section 20
Transfer of Property Act, 1882 — Section 48, 53A

Citation : (2011) 5 ALD 419 : (2011) 6 ALT 478

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : I. Koti Reddy, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This Second Appeal arises out of a reversing judgment rendered by the lower Appellate Court, decreeing a suit for specific performance of an agreement of sale. The Appellant is the third Defendant in the suit.

2. The 1st Respondent filed O.S. No. 30 of 1993 in the Court of Junior Civil Judge, Darsi, against Respondents 2 and 3 and the Appellant, for the relief of specific performance of an agreement of sale and for perpetual injunction, in respect of the suit schedule property. It was pleaded that the 1st Defendant in the suit, Punugunbati Basavaiah, died during the pendency of the suit; the 2nd Respondent herein, his daughter, was already on record as 2nd Defendant, and in addition to that, the 3rd Respondent, wife of Basavaiah, was added as Defendant No. 4. The 1st Respondent pleaded that Basavaiah executed an agreement of sale - Ex.A1, on 20.02.1978, in respect of about 21/2 acres of agricultural land, for a consideration of Rs. 9,500/-. It was further pleaded that the entire consideration was paid and possession of the property was delivered to the 1st Respondent. He pleaded that he is in possession and enjoyment of the

property, ever since then by paying the land revenue and that his name was entered in revenue records with the consent of Basavaiah. The cause of action for filing of the suit was said to be a declaration by the Appellant herein in the year 1993 that he purchased the suit schedule property from the 2nd Respondent. On verification, the 1st Respondent is said to have come to know that his vendor Basavaiah executed a deed of settlement dated 04.02.1988 (Ex.A.6) in favour of the 2nd Respondent and the latter, in turn, executed a sale deed - Ex.B.1 in favour of the Appellant on 02.02.1992. The 1st Respondent got issued notice to the Appellant and Ors. and on receiving a reply, he filed the suit.

3. The Appellant filed a written statement and that was adopted by the 2nd Respondent. They opposed the suit by raising various contentions, including the one of limitation and denial of Ex.A.1 by late Basavaiah.

4. The trial Court dismissed the suit through judgment, dated 21.01.2002, mainly on the ground that the suit was barred by limitation, though it held that Ex.A.1 was proved. The 1st Respondent filed A.S. No. 3 of 2002 in the Court of Senior Civil Judge, Darsi. The appeal was allowed through judgment, dated 17.11.2008. Hence, this Second Appeal.

5. Sri I. Koti Reddy, learned Counsel for the Appellant, submits that, a suit for specific performance filed after 15 years from the date of agreement of sale, is barred by limitation by any standard and that there was No. justification for the lower Appellate Court in reversing the findings recorded by the trial Court. He contends that the Plaintiff was silent as to the nature of steps taken by the 1st Respondent to insist on execution of sale deed. Learned Counsel further submits that the Appellant is a bona fide purchaser for valuable consideration and without notice or knowledge of the existence of agreement of sale and that the discretionary relief of decree for specific performance, ought not to have been granted in favour of the 1st Respondent. He has urged other subsidiary contentions also.

6. Sri O. Manohar Reddy, learned Counsel for the 1st Respondent, on the other hand, submits that the trial Court and the lower Appellate Court have held that the agreement of sale was proved and if one goes by the recitals therein, it emerges that the entire consideration was paid and possession was delivered. Learned Counsel contends that with the payment of entire consideration and delivery of possession, what remains to take place is only the execution of a formal sale deed, and in matters of this nature, the question of limitation needs to be examined from a different perspective. He further submits that Exs.A.6 and B.1, settlement and sale deeds, in favour of the 2nd Respondent and the Appellant, respectively, are on the face of it sham and nominal, the reason being that it is not even mentioned as to how the possession of the property was recovered from the 1st Respondent.

7. On the basis of the pleadings before it, the trial Court framed two issues initially and thereafter two additional issues. They are as under:

i) Whether the agreement of sale dt. 20.02.1978 in favour of the Plaintiff is true and valid?

ii) Whether the Plaintiff is entitled for specific performance of contract under agreement of sale dt.20.02.1978 in respect of the suit land?

Additional issues:

i) Whether Defendant No. 2 and Defendant No. 3 are the bona fide transferors for valid consideration?

ii) Whether the Plaintiff is entitled for permanent injunction as prayed for?

8. On behalf of the 1st Respondent, PWs.1 to 7 were examined and Exs.A.1 to A.5 were filed. On behalf of the Appellant and Respondents 2 and 3, PWs.1 to 4 were examined and Exs.B.1 to B.9 were filed. The suit was dismissed. In A.S. No. 3 of 2002 filed by the 1st Respondent, the lower Appellate Court framed the following three points for its consideration:

i) Whether the suit is in time and not barred by limitation?

ii) Whether the Plaintiff is in possession of the schedule property from the date of agreement of sale 20.02.1978?

iii) Whether the Plaintiff is entitled for specific performance of contract?

9. The appeal was allowed, and the suit was decreed.

10. This Court is of the view that the same points arise for consideration in this second appeal also.

11. At the outset, this Court expresses the view that the learned Junior Civil Judge, Darsi, who delivered the judgment in the suit, and the learned Senior Civil Judge, Darsi, who decided the appeal, have taken pains to analyze the matter from all possible angles, applied the principles of law, duly taking the support of the relevant precedents and have written very good judgments. Though they differed on the result of the suit, the way in which they addressed the issues involved in the matter, deserves to be appreciated. It is hoped that they and their other colleagues would continue the same trend.

12. The suit was filed in the year 1993 for the relief of specific performance of agreement of sale of the year 1978. Though No. specific issue was framed on the question of limitation, the trial Court and the lower Appellate Court have devoted substantial part of their judgments to discuss that issue, obviously recognizing their obligation placed u/s 3 of the Limitation Act. The limitation prescribed for filing the suit for specific performance is three years from the date of refusal by the other party, to perform his part of the obligation. Legislature has deliberately desisted from treating the date of agreement of sale as the starting point of limitation, in a suit for specific performance. This is not without reason. Though a perfect sale of immovable property can take place, without execution of a sale deed, as provided for u/s 48 of the Transfer of Property Act, 1882 (for short "the

Act"), the effective passing over of an item of immovable property, from one person to another and the de facto conveyance, is in No. way hindered, on account of absence of a sale deed, if the other ingredients of the transaction such as payment of the entire consideration and delivery of possession are complied with.

13. As a matter of fact, law recognizes the rights of an individual to enjoy the property, the possession of which he got by paying the whole or substantial part of sale consideration, though the formal sale deed was not executed. Section 53A of the Act is one such provision, which protects the rights of a transferee though he may not be a perfect transferee. In case, an individual had paid the entire consideration, and was delivered possession of the property, and is not facing any problem from his vendor, he may not devote much of his attention to the necessity of obtaining a sale deed, as in the case of a transaction where several steps including payment of balance of sale consideration, and delivery of possession; are yet to take place. If what is left over is execution of a formal sale deed, the transferee in such a case, may not acquire the perfect title, but can enjoy the property, as though the sale is complete in all respects.

14. In the instant case, the 1st Respondent pleaded that the entire consideration was paid, possession was delivered and his name was entered in the revenue records, with the consent of his vendor Basavaiah. Hailing from a village, he felt that those steps are sufficient to enable him to enjoy the property. It is only in the year 1993, he came to know that the Appellant is proclaiming that he acquired rights vis-?-vis the property and got issued the notice. Soon thereafter, he filed the suit.

15. The concept of "refusal" embodied in Article 54 of the Schedule to the Limitation Act, assumes significance here. The refusal can be express or can be implied from the surrounding circumstances. From the fact that Basavaiah executed Ex.B.4 in favour of his daughter, the 2nd Respondent herein, and the latter, in turn, executed a sale deed-Ex.A.1 in favour of the Appellant, the 1st Respondent gathered that there was an implied refusal by his vendor. He got this information at a later point of time. There is nothing on record to disclose that the 1st Respondent was aware of the execution of Ex.B.4 or A.1. It was not even suggested that he was aware of those transactions three years prior to the filing of the suit. Therefore, the view taken by the lower Appellate Court that the suit was filed within the period of limitation, is correct.

16. The relief of specific performance of an agreement of sale, being discretionary, in a given case, the suit can be dismissed, even if it is filed within limitation, as held by the Supreme Court in several cases. The reason is that the suit may have been filed within limitation, but the facts, such as the escalation of the value over the property in the interregnum, lack of bona fides on the part of the Plaintiff; would disentitle him to get the discretionary relief. Where however, the entire consideration was paid and possession was delivered, totally different approach is warranted. While it can be said that the Plaintiff in a suit for specific

performance, lacked bona fides, in case he delayed the payment of consideration and wanted to take advantage of an agreement of sale, to the detriment of the Defendant, it can equally be said that a Defendant, who received the entire consideration, and delivered possession of the property, lacks bona fides, if he refuses to execute the sale deed, that too, on the ground of limitation.

17. Coming to the question of possession of the 1st Respondent over the property, the trial Court as well as the lower Appellate Court held that the agreement of sale - Ex.A.1 was proved. With that, the contents thereof including the one as to delivery of possession stand proved. It is well settled principle of law that where the admitted facts establish the possession of the disputed property with one of the parties, the presumption forwards and backwards can be drawn, and heavy burden rests upon the other party to prove as to how the possession has changed hands. Once Ex.A.1 proves delivery of possession of the property in favour of the 1st Respondent in the year 1978, the Appellant and Respondents 2 and 3 could have justified Ex.B.4 and A.1, only when it is proved that the possession was recovered from the 1st Respondent in accordance with the procedure known to law. There was not even an effort, much less, success for the Appellant in that behalf. Bereft of possession, Ex.6 and B.1 transactions in favour of Appellant and Respondents 2 and 3 are without any legal consequences.

18. So far as the entitlement of the Respondent to seek the relief of specific performance of contract is concerned, the fact that he paid the entire consideration and that possession was delivered to him assumes significance. It is a situation akin to the one of Section 53A of the Act. It is No. doubt true that the Court has discretion to grant or refuse relief even if various pleas rounds in a suit for specific performance are proved. However, if the facts of a case are covered by Section 53A of the Act, totally different picture emerges. In Yenugu Achayya and Another Vs. Ernaki Venkata Subba Rao and Others a Division Bench of this Court held that apart from providing an effective defence, Section 53A of the Transfer of Property Act in itself can constitute the basis to claim title and that a suit can be filed by invoking that provision. Their Lordships held that such suits are covered not only by Section 20 of the Specific Relief Act, but also Section 53A of the Act.

19. This Court does not find any basis to interfere with the judgment rendered by the lower Appellate Court.

20. The Second Appeal is accordingly dismissed. There shall be no order as to costs.