
(2013) 03 AP CK 0080

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1048 of 2012

N.P. Nagaraja

APPELLANT

Vs

Tirumala Tirupathi Devasthanams

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 128, 74(1)(a), 75, 80, 83
Specific Relief Act, 1963 — Section 16(c)
Transfer of Property Act, 1882 — Section 53A

Citation : (2013) 4 ALD 245 : (2013) 5 ALT 48

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B.V. Subbaiah for Smt. Bobba Vijaya Lakshmi, for the Appellant; M. Adinarayana Raju, S.C. for T.T.D., for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—In this batch of Second Appeals, the facts and questions of law that arise for consideration are identical. Hence, they are disposed of through a common judgment. The appellants herein were having shops in Sadhura Mutt, at Putakullamita area of Tirumala. The land, on which the structures were existing, was owned by Sri Hathiramjee Mutt. Tirumala Tirupati Devasthanams (TTD), the respondent herein prepared a plan for construction of Que Complex in that area. Though acquisition of the land did not pose any problem, the appellants, who were having their business establishments over the super structures, offered resistance. After undertaking negotiations, the respondent has agreed to provide accommodation to the appellants and other effected persons for their shops in the premises constructed by it, at a different place on the hills. Accordingly, the appellants vacated the premises under their occupation and were inducted into the possession of the new ones", as the lessees.

2. Individual agreements of lease were executed on 07-09-1976. The salient

features of the agreements are that, a) the lease shall be for a period of 25 years on payment of rent of Rs. 28/- per month, b) if the conditions of lease are violated in any manner, the respondent shall have the right to determine the lease, c) if the monthly rental amount is regularly paid, for a period of 25 years, the respondent shall be under obligation to sell the respective premises to the appellants without any further consideration, and d) it shall be open to the appellants to pay lump sum of the future rents and all other amounts and to make a request to the respondent to execute the sale deed in their favour. The conditions, which the appellants were to comply with, are incorporated in Clause (12) of the agreement.

3. The respondent served notices dated 03-04-1998 upon the appellants, calling upon them to vacate the premises within 15 days from the date of receipt of the notice. It was mentioned that the lease or sale of the properties held by a Hindu Charitable Institution, is invalid, unless such lease or sale was effected with prior permission of the Commissioner of Endowments, u/s 75 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short "the Act"), and that such a permission did not exist in their cases. On receipt of the notices, the appellants filed suits, being O.S.No. 908 of 1998 and batch, in the Court of I Additional Junior Civil Judge, Tirupati, for a decree, in the form of direction to the respondent to execute regular conveyance deeds in their favour, and in default, the documents be executed by the Court itself. The relief of perpetual injunction against the respondent was also prayed for. In their plaints, which are similar, they stated that it is the obligation of the respondent to obtain permission from the Commissioner of Endowments, and that as a matter of fact, the Commissioner was Ex-officio Member of the Board, which passed resolution, that paved the way for execution of the lease deeds. They pleaded that the respondent is estopped from resiling from the terms of the lease deeds, and that the documents executed on 07-09-1976 are in fact, agreements of sale. The appellants have also pleaded that they are ready and willing to pay the future monthly rents from 13-08-1998 to 12-08-2001, in lump sum, and that the respondent is under obligation to execute the sale deeds.

4. The respondent filed individual written-statements in the respective suits. The fact that the agreements of lease were executed is admitted. It was, however, stated that on a close scrutiny of the matter, it was found that the agreements are contrary to Section 75 of the Act, and accordingly the leases were terminated. A plea was raised to the effect that the appellants have committed default, and have made alterations to the structures, contrary to the conditions incorporated under Clause 12. It was mentioned that the appellants added constructions to the existing ones, without obtaining any permission, and that proceedings were initiated before the concerned authority under the Act for removal of the encroachments. The respondent further pleaded that Section 128 of the Act confers right of preemptive purchase in a Devasthanam, in respect of the lands in Tirumala Hills, and the question of the Devasthanam parting with or transferring of any property owned by it does not arise.

5. The trial Court dismissed the suits through judgments dated 31-07-2007. Thereupon, the appellants filed A.S. No. 38 of 2008 and batch in the Court of IV Additional District Judge, Tirupati. The lower Appellate Court dismissed the appeals through judgment dated 30-03-2012. Hence, this batch of Second Appeals.

6. Sri B.V. Subbaiah, learned Senior Counsel appearing for the appellants submits that though the agreement, marked as Ex. A-1, named as agreement of lease, the terms thereof particularly, Clauses 8 and 1) disclose that they are agreements of sale. He contends that the respondent was very much aware of the necessity to obtain permission of the Commissioner of Endowments for leasing of any property, owned by an Endowment Institution, beyond three years, or for sale thereof, and still, no steps were taken for decades together. Learned Senior Counsel submits that the only inference that can be drawn is that the respondent did not feel the necessity of obtaining permission, because the Commissioner was party, to the resolution, that constituted the basis for the arrangement under the agreements. It is urged that the issuance of notices in 1998 was contrary to the letter and spirit of the agreements, and that such notices do not have the effect of determining the leases or terminating the agreements. He contends that once the appellants have expressed their willingness to pay the lump sum, the respondent has no alternative, except to execute the sale deeds and the trial Court was very much competent to require the respondent to obtain permission, if any. He further submits that the trial Court and the lower Appellate Court have committed errors in dismissing the suits and appeals.

7. Sri M. Adinarayana Raju, learned counsel for the respondent, on the other hand, submits that the respondent has already paid the compensation for the acquired land and super structures, and it was only as a measure of compassion, that the displaced persons were granted long leases on different premises. He submits that the leases beyond the period of three years, and the clauses providing for conveyance of title in respect of the properties of the Devasthanam, without specific permission of the Commissioner are contrary to Section 75 of the Act, and that taking note of the same, the leases were determined. He contends that under Ex. A-1, the respondent reserved to it, the right to determine the leases, and apart from there being a valid ground in the form of absence of permission from the Commissioner, the constructions made by the appellants without permission of the respondent and default in payment of rents, constituted the basis for determination of the leases. He alternatively submits that, the form of suits is defective, inasmuch as they were filed before expiry of 25 years. According to him, the appellants cannot invoke clause 11 of the agreement, once leases were determined.

8. In their respective suits, the appellants claimed the relief, in the form of specific performance of agreements of sale, on the one hand and perpetual injunction, on the other hand. Common trial was undertaken and the typical

issues, that are framed in the suits, are, as under:

1. "Whether the plaintiff is entitled for declaration that clauses 5, 8, 9 & 11 of the agreement dated 7-9-1976 for the sake of B schedule property are null and void?
2. Whether the plaintiff is entitled for direction against the defendant to surrender vacant possession of B schedule property?
3. Whether the plaintiff is entitled for recovery of Rs. 196/-from the defendant with interest at 12% p.a. from the date of suit till realization?
4. Whether the plaintiff is entitled for damages for use and occupation of the B schedule property at Rs. 500/- per month from the date of suit till recovery of possession?
5. Whether there is no cause of action to file this suit?
6. Whether this Court has no jurisdiction to entertain this suit?
7. Whether the claim of the plaintiff is barred by principles of promissory estoppel and res judicata?

Additional Issues:

1. Whether the defendant is protected by Section 53-A of T.P. Act or not?
 2. Whether the suit is barred by limitation is not challenging several clauses in the suit agreement within 3 years from the date of said agreement?
 3. Whether the suit is not properly valued or not?
 4. Whether the suit is barred by 0.23 of C.P.C.?
9. On behalf of the appellants, PWs 1 and 2 were examined and Exs.A-1 to A-16 were filed. On behalf of the respondent, DWs 1 and 2 were examined and Exs.B-1 to B-13 were filed. The suits were dismissed, and in the appeals filed by them, the lower Appellate Court framed the following points for its consideration:
1. Whether the suit agreement dated 7-9-1976 is a lease deed or an agreement of sale on Hire purchase basis?
 2. Whether the appellants are entitled for specific performance of contract and consequential permanent injunction as prayed for in A.S. No. 38/2008 in O.S. No. 908/1998?
 3. Whether the respondent T.T.D. who is plaintiff in O.S. No. 420/1999 entitled for recovery of B schedule property, arrears of rent and damages as prayed for?
 4. Whether the plaintiff is entitled for declaration of title over B schedule property and consequentially held that clauses Nos. 5, 8, 9 and 11 are null and void as prayed for?
 5. Whether the suit filed by the respondent TTD in O.S. No. 420/99 is well within

time?

6. To what relief in A.S. No. 38/2008?

7. To what relief in A.S. No. 116/2007?

10. Ultimately the appeals were also dismissed.

11. From the arguments advanced by the learned counsel for the parties, the following questions arise for consideration in these Second Appeals:

a) Whether the agreements marked as Ex. A-1, in so far as they provided for sale of the property accord with the provisions of the Act; and

b) Whether the suits filed by the appellants herein were maintainable, from the point of view of timing and the prayer?

Point (a):

12. The appellants were running shops in the structures, that existed upon a land, owned by Sri Hathiramjee Mutt in Tirumala Hills. The land was needed for construction of Que Complex. The respondent did not face any difficulty in acquiring the land, duly and following the prescribed procedure. However, it faced difficulty from the appellants in the context of evicting them from the premises. Therefore, it has been decided to provide alternative accommodation to all the displaced persons, subject to certain conditions. The agreements executed in favour of the respective displaced persons were termed as "agreement of lease". While "A" schedule in the agreements described the premises in which they were; running the business, the "B" schedule represented the shop allotted to them, on lease. Though it is termed as an agreement of lease, it has traces of agreement of sale. For a proper understanding of the dispute and interpretation of the agreement of sale, it becomes necessary to take note of the conditions incorporated therein. They read,

1. The Lessor who is the owner of the "B" schedule site and the building on it agreed to let it and the lessee agreed to take it on rent for a term of 25 years from now.

2. The lessor had handed over possession of the site and the building in "B" schedule to the lessee and put him in possession thereof.

3. The lessee hereby agrees to pay to the lessor Rs. 28-00 every month towards the rent for the said occupation.

4. The lessee shall pay the rents for every month on or before the 10th day of the succeeding month, failing which, the rents due will be paid by the lessee with interest at 6% per annum.

5. This is only an agreement of lease with the ultimate right to purchase the "B" schedule premises and during the entire period of lease, the lessor remains the

absolute owner of the property and the title shall not pass to the lessee until a sale deed is executed by the lessor in favour of the lessee.

6. If the lessee makes default in punctual payment of the monthly rents for any three consecutive months or in the observance or performance of any of the provisions of this agreement, the lessor will be entitled to determine the tenancy immediately and the lessee shall forfeit his rights under this agreement.

7. Upon such determination of the lease arising out of defaults mentioned in Cos. 6 of the agreement, it is open to the lessor to recover possession of the said premises without any further notice to quit and the lessee shall be deemed to be an "encroacher" within the meaning of Sec. 75 of A.P. Charitable and Hindu Religious Endowments and Institutions Act, 1966.

8. If the lessee pays all the monthly rental amounts regularly for the above said period of 25 years abide by all the terms and conditions of the agreement, the said "B" schedule site and the building in occupation of the lessee shall be sold to the lessee free from all encumbrances without any further consideration.

9. At the end of the above said period of 25 years and if all the rents due are paid and other conditions are fulfilled the lessor shall execute and register the conveyance deed required by the lessee in respect of the "B" schedule property at the expense of the lessee.

10. The lessee shall be entitled for receipts for the rents paid by him and payments not covered by receipts shall not be considered.

11. It is open to the lessee to pay in one lump sum, the future rents and arrears and all other amounts due and request the Lessor to execute a sale deed in his/her favour.

12. During the lease period of 25 years the lessee (a) shall not transfer or sub-let the said property or mortgage or create any charge over the same in any manner, (b) shall not without the consent of the lessor in writing effect any alterations or additions to the existing building and he shall not make any new constructions over the site, (c) shall pay all charges towards electricity, water supply, scavenging services etc (d) shall pay the property tax if any due on the said property, on behalf of the lessor, (e) shall permit the lessor or his authorized agents at all reasonable times to inspect and examine the conditions of the building, (f) shall effect all necessary periodical repairs to the building at his own cost and keep the same in perfectly good condition, and (g) shall not use the property for the purpose other than for residential purpose.

13. If the tenancy is determined in pursuant of the clause No. 6 of the agreement the lessor may without notice or demand, re-take possession of the said property and for that purpose may by himself or his Agent or servants enter upon the said premises and occupy the same. The lessee shall handover peaceful possession to the Lessor and he shall also be liable for damages for any obstructions or resistance made by him in handing over possession.

14. The tenancy is terminable at the option of either party and if the lessor terminates the same as per above such termination shall not prejudice the lessor's right to recover the rent and other amounts due up to such termination, nor his right to recover damages for any prior breach of this agreement by the lessee, and the lessee shall not be allowed credit or set off on account of any payment previously made by him.

15. Any indulgence granted by the lessee during the currency of the agreement shall not be constructed as a waiver of his rights to deal suitably with above terms of this agreement.

16. In case of any doubt in enforcement of the terms of this agreement the opinion of the lessor is final.

13. The appellants were inducted into possession of the respective premises, in the year 1976. The controversy started with the filing of O.A. No. 16 of 1996 and batch before the Commissioner of Endowments against the appellants, u/s 83 of the Act. It was alleged that the appellants have made constructions by encroaching substantial extent of neighbouring land of the "B" Schedule premises without any specific permission. The relief of removal of encroachments was prayed for. This was followed by issuance of notice dated 03-04-1998, marked as Ex. A-11, in each of the cases, through which, the appellants were required to vacate the premises, stating that the agreements are void ab initio. In effect, the respondent determined the leases. The basis pleaded for the determination was that the arrangement covered by Ex. A-1, is contrary to Section 75 of the Act. Section 75 reads,

Sec. 75: Lease, sale of imams to be void in certain cases:- (1) Any lease and any gift, sale, exchange or mortgage of an inam land granted for the support or maintenance of charitable or religious institution or endowment or for the performance of a religious or public charity or service, shall be null and void unless any such transaction not being a gift, is effected with the prior sanction of the Government

(2) Such prior sanction may be accorded by the Government where they consider that the transaction is--

(i) necessary or beneficial to the institution or endowment;

(ii) in regard to the land which is an uneconomical holding for the institution or endowment to own and maintain; and

(iii) the consideration thereof is adequate and proper.

(3) The provisions in Clause (c) of sub-section (1) of Section 80 shall apply for the sale of any inam land.

14. The appellants do not dispute that the permission of the Commissioner of Endowments is necessary for the respondent to transfer any item of immovable property. As a matter of fact, they found fault with the respondent for not

submitting the proposals. In paragraph 9 of the plaint, it was pleaded as under:

The plaintiff further submits that the defendant has not sent the proposal for the sale of plaintiff B schedule property to the Commissioner of Endowments either before the agreement of sale dated 7.9.1976 or afterwards from the date of agreement of sale even till today, with an ulterior motive to defraud the valuable rights of the plaintiff under the guise of non-approval of the proposal for sale of plaintiff B schedule property by the Commissioner, Endowments. It is the bounden duty and responsibility of the defendant to obtain approval of the Commissioner for the proposal of sale of plaintiff B schedule property to the plaintiff. It is usual practice that the defendant institution has to obtain the permission of the Commissioner of Endowments. The defendant has not informed the plaintiff for the last 22 years i.e., since the date of agreement about the fact that the transaction of sale of plaintiff B schedule property is not sent for the sanction of Commissioner, endowments. Only with a view to take advantage of the section 74(1)(a) of A.P.C.H.R.I. and Endowments Act 1966 at this stage. This act of the defendant is against the principles of public policy and fair play without sending the proposal for approval to the Commissioner, the defendant is trying to take advantage from his own wrongs and thus the defendant is estopped by their conduct. The plaintiff submits that the defendant institution being one of the greatest institution of Ancient Hindu religion propagating Dharma through out the world, the representatives of this noble institution should not be allowed to spoil the very object of the institution by adopting this type of transaction without any moral values.

15. It is also mentioned in paragraph 12 of the plaint that, if for any reason, the permission or sanction of the Commissioner of Endowments is not forthcoming, they are entitled to get back the properties, that were taken from them, which are described in "A" schedule.

16. The respondent is bound by the provisions of the Act. As a matter of fact, separate Chapter is devoted for its affairs, over and above the provisions, that apply to other religious institutions. Once it emerged that there is no approval of the Commissioner of Endowments for sale of the property, any arrangement under Ex. A-1, in that behalf, becomes void. Added to that, the appellants have carried out certain constructions, contrary to the conditions stipulated under Clause 12, and provided valid basis for the respondent to terminate the agreements. The very fact that proceedings were initiated against them u/s 83 of the Act leaves no doubt in this regard. Even if Ex. A-1 is treated as an agreement of sale, Section 75 of the Act makes it unenforceable.

Point (b):

17. Assuming that no impediment from the point of view of the provisions of the Act existed, it needs to be seen as to whether the suits, as presented by the appellants, were maintainable. This may be from the point of view of the timing of and the prayer in the suits.

18. If the appellants wanted to derive the benefit under Clauses 8 and 9 of the agreements, they were under obligation to wait till the completion of 25 years, without committing any default, as to payment of rents. The period of 25 years was to expire in the year 2001. However, suits were filed in the year 1998 and 1999. If an agreement of sale stipulates time or date, for completion of certain formalities, any suit, filed for specific performance thereof, before the stipulated date, becomes premature and thereby liable to be rejected.

19. Clause 11 of the agreement provides for payment of lump sum amount, representing the future rents and arrears, and then to make a request, for execution of the sale deed. None of the appellants have approached the respondent with the lump sum amounts and a written request for execution of the sale deeds. Straightaway suits were filed. Even along with the suits, they did not deposit the corresponding amounts. Their plea in this behalf was perfunctory and halfhearted, obviously because the agreements stood terminated with the issuance of the notice, marked as Ex. A-11. Almost the entire plaint was devoted to the issue pertaining to the legality of the notice dated 03-04-1998, and their right to become owners on completion of 25 years. Paragraph 11 of the plaint reads,

The plaintiff further submits that the plaintiff as per the clause 11 of the said agreement is ready and willing to pay the future monthly installments i.e., from 13.8.1998 to 12.8.2001 at the rate of Rs. 28/- per month if the defendant accepts the same and execute registered sale deed in his favour. Even though there is time left for demanding specific performance of the agreement of sale after the completion of the stipulated period of 25 years. The plaintiff after receiving the notice dated 3.4.1998 is apprehending danger of dispossession from the plaint B schedule property by the defendant hence this suit. The plaintiff is ready and willing to perform his part of the contract even today.

20. In the paragraph pertaining to cause of action, it was not mentioned that any demand, at least oral, was made to the respondent, to receive the advance installments in lump sum, in terms of clause 11, and to execute the sale deed. The evidence in this behalf was scanty, if not dismal. If one applies the principle underlying Section 16(c) of the Specific Relief Act, the prayer for specific relief becomes untenable.

21. The other aspect of the plaint is as to the nature of relief. The prayer made by the appellants reads,

It is therefore, prayed that the Hon''ble Court may be pleased to pass a decree and judgment in favour of the plaintiff against the defendant:

a) directing the defendant to execute a regular registered conveyance deed in favour of the plaintiff for the plaint B schedule property, failing which the plaintiff is entitled to get the same by process of court;

b) granting permanent injunction in favour of the plaintiff restraining the

defendant, its men, agents, servants, subordinates etc., from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit B schedule property, or disconnecting the water and electricity connections to the plaintiff B schedule property;

c) award costs of this suit.

22. From a perusal of the plaint, in its entirety, it is evident that the appellants are aware that the execution of the sale deed became impossible, in the absence of permission from the Commissioner of Endowments. If they wanted to overcome that hurdle, the appellants ought to have made a prayer in that behalf. However, the relief claimed in the plaint proceeds as though, there is no legal impediment for the respondent to execute the sale deeds, and the event is not taking place for want of willingness on the part of the respondent.

23. The trial Court has dealt with the respective issues with reference to the oral and documentary evidence, and discussed them with settled principles of law. Though much of discussion was undertaken to decide the character of the agreement, Ex. A-1, viz., whether it is an agreement of lease or an agreement of sale, in view of the discussion undertaken above, that aspect virtually becomes secondary. Specific findings were recorded to the effect that, default in payment of rents was committed. Even if there was no default, there would not be any change in the net result.

24. This Court does not find any substantial questions of law in the Second Appeals. They are accordingly dismissed. There shall be no order as to costs.