
(2012) 08 AP CK 0066
In the Andhra Pradesh High Court
Case No : Second Appeal No. 244 of 2011

Padam Satyanarayana

APPELLANT

Vs

Smt. Ravula Varalakshmi and Others

RESPONDENT

Date of Decision : 29-08-2012

Acts Referred:

Specific Relief Act, 1963 — Section 21, 22, 22(2)

Citation : (2013) 1 ALD 237 : (2013) 4 ALT 12

Hon'ble Judges : N.R.L. Nageswara Rao, J

Bench : Single Bench

Advocate : K. Chidambaram, for the Appellant; Nimmagadda Satyanarayana, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Sri. Justice N.R.L. Nageswara Rao

1. The defendant in O.S. No. 14 of 1994 on the file of the court of Senior Civil Judge, Kovvur is the appellant herein. The suit was one filed for specific performance of contract of sale contending inter alia that the defendant has entered into an agreement of sale on 17-12-1993 and first plaintiff paid an advance of Rs. 1,15,000/- and the balance of Rs. 10,000/- is agreed to be paid by 17-03-1994. In case of default, interest shall be paid @ 18%. After the said transaction, as there was an offer for higher price, the defendant has issued a notice on 18-12-1993 with false allegations for which a proper reply was given. Consequently, the suit was filed for specific performance.

2. The defendant has denied the sale transaction and claimed that the son-in-law of the first plaintiff took the defendant to the house of the first plaintiff on 17-12-1993 and asked the defendant to sign on blank stamped papers and due to fear and threat, he signed on the said papers. During the pendency of the suit, the relief of amendment for alternative relief of refund of money was filed and defendant contended that the said claim is barred by time.

3. After appreciation of the evidence on record, the court below has accepted the agreement of sale as true, but, however, granted a decree for refund of the advance money of Rs. 1,15,000/- with interest @ 6%. As against that the appeal was preferred to the VII Additional District Judge, West Godavari, at Eluru who has also confirmed the said judgment and decree. Aggrieved by the said judgment, the present Second Appeal is sought to be filed. The Second Appeal is admitted on the following substantial questions of law:-

(i) Whether the relief of refund of the consideration is barred by time; and

(ii) Whether Section 22 of the Specific Relief Act is independent or subject to the provisions of the Limitation Act?

4. The learned counsel for the appellant sought to contend that the courts below have not properly appreciated the evidence with regard to execution of the agreement and passing of the consideration. Evidently, it is a question of fact, which has to be decided by the court below. Considering the evidence of PWs.1 to 5, both the courts have found that the agreement is true and on the next day of the agreement, a notice is given by the defendant is no ground to accept his contention. It is difficult to believe that the agreement was obtained by force or coercion. The particulars of which are not properly pleaded. Therefore, the appellant cannot be allowed to contend on the question of fact about the truthfulness of the agreement and also the payment of the consideration.

5. The learned counsel for the appellant sought to contend that the alternative relief claimed by the plaintiff is barred by limitation as it was not pleaded at the time of filing of the suit. As matter stands, evidently, the alternative relief was not claimed when the suit was filed. The agreement of sale is dated 17-12-1993 and the suit was filed on 17-03-1994. There is no doubt about the fact that the alternative plea of the refund of consideration was taken by the plaintiffs 2 to 5 who are the legal representatives of the first plaintiff, who came on record in the year 1999. Evidently it is beyond three (3) years from the date of suit and also from the date of agreement. It is to be noted that u/s 22(2) of the Specific Relief Act, 1963 the plaintiff can be permitted to amend the relief for refund of earnest money at any stage. Section. 22(2) of the said Act reads as under:-

Section. 22. Power to grant relief for possession, partition, refund of earnest money, etc.,

(1).....

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

6. The learned counsel for the appellant relied upon a decision reported in

Bhagwati Prasad Jalan Vs. Smt. Prem Lata Devi Kedia 1997 LAWS (PAT) 3 52 whereunder the contention of the appellant herein is supported. He also relied upon another decision reported in M/S. Revajeetu Builders and Developers Vs. M/s. Narayanaswamy and Sons and Ors. AIR 2009 SC (SUPP) 2897 whereunder an amendment of the plaint introducing the new cause of action, if it is barred by limitation, cannot be allowed.

7. However, it is to be noted that the provision u/s 22(2) of the Act is a special provision and it gives the power of amendment at any stage of the proceedings. On this aspect, a decision rendered by this court reported in Donthi Padmavathamma and another Vs. Suguna Fertilizers, by its Managing Partner Durgamma Temple Street, Dharmavaram 1984 (1) An.W.R. 336 will answer the contention raised by the counsel for the appellant and it was held in the said decision as under:-

The proviso to sub-clause (5) of section 21 is clear and unambiguous and enables the plaintiff to seek the amendment of the plaint at any stage of the proceeding. The object obviously is to avoid multiplicity of suits. The expression "at any stage" in it means without limitation either in the frequency or duration or length of time. The question of applying the provisions of the Indian Limitation Act in a case where the amendment of the plaint is sought either under sub-clause (5) of section 21 or sub-clause (2) of section 22 of the Act does not arise. A specific relief is an equitable remedy and the Courts are competent to grant the relief sought for or other specific remedies which are incidental. It is a matter of common knowledge that in some cases the contract becomes unenforceable and the party suffers some loss. In such a case, it is open for the party to ask for damages in the alternative in the same suit and Section 21 of the Act provides for the same.

Therefore, in view of the above circumstances, there is no substantial question of law involved in this Second Appeal and the same is liable to be dismissed.

Accordingly, the Second Appeal is dismissed. No costs.