

(2001) 08 AP CK 0030

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 1498 and 1500 of 2000

Pagadala Pedda Yadaiah and Others

APPELLANT

Vs

K. Annapurna and Others

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, 115
Specific Relief Act, 1963 — Section 28, 28(3)

Citation : (2001) 5 ALT 417 : (2001) 2 APLJ 371

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : K. Ramakrishna Reddy and B. Mahinder Reddy, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision : Allowed

Judgement

Goda Raghuram, J.—Since common issues are involved and between same parties these revisions are considered together and disposed of by this common order.

2. Respondents 1 and 2 herein are the plaintiffs in OS 23/95 on the file of the Senior Civil Judge, Bhongir, Nalgonda District. The suit has been filed for specific performance of the agreement of sale dated 10.10.1995. Respondents 3 and 4 herein and the revision petitioners are the defendants in the suit.

3. The suit was decreed on 6.3.1998 ex parte. The decree to the extent relevant and material for the purpose of these revisions, reads as under:

"2. That the defendants do hereby directed to executed a regular sale deed in favour of the Plaintiff No.1 in respect of the suit schedule property on receipt of balance sale consideration and also deliver the physical and vacant possession of the suit schedule property to the plaintiff no.1, within three months."

4. In terms of the decree above, the plaintiffs are required to pay the balance sale consideration within a period that would enable and obligate the defendants

to execute a regular sale deed and deliver vacant physical possession of the suit schedule property, within three months i.e., before 5.6.1998.

5. The plaintiffs did not deposit the amount, but on 16.12.99, more than 11/2 years after the expiry of the time ordained in the decree, filed an Execution Petition for execution of the decree. The court below numbered the E.P. on 19.1.2000 and passed an order directing the plaintiffs to deposit the balance sale consideration in the court on or before 8.3.2000. Against this order CRP 1498/2000 is instituted. On 3.4.2000 the plaintiffs instituted an application E.A. 19/2000 seeking setting off of the costs awarded against the balance sale consideration payable by them under the decree. This application was ordered, without notice to the defendants - the revision petitioners herein. CRP 1500/2000 is directed against the order in E.A. 19/2000.

6. Meanwhile, the revision petitioners filed an application u/s 28 of the Specific Relief Act for rescission of the agreement of sale dated 10.10.95, which is pending.

7. Heard Sri K. Ramakrishna Reddy, learned Senior Counsel instructed by Mr. B. Mahinder Reddy and Sri O. Manohar Reddy learned counsel for the disputant parties.

8. The petitioners assail the orders of court below, in brief, as under:

A) The E.P., having been instituted on 16.12.99 more than 11/2 years of the expiry of time stipulated in the decree for deposit of sale consideration (5.6.98) and without any application for extension of time having been filed or granted, could not have been entertained.

B) The order of the court below dated. 19.1.2000 in the E.P. directing the plaintiffs to deposit the balance sale consideration by 8.3.2000, contrary to the terms of the decree and passed even without notice to the petitioners herein is illegal.

C) The order of the court below dated 3.4.2000 in E.A. 19/2000 permitting the plaintiffs to avail setting off of the costs awarded to them against the balance sale consideration payable under the decree, even without notice to the petitioners herein constitutes a material irregularity and illegality revisable u/s 115 of the Civil Procedure Code.

9. A decree for specific performance has a distinct character. It is a decree in favour of both the plaintiff and the defendant in the suit and is capable of being executed by either - vide Bai Karimabibi Daudbhai Vs. Abderehman Sayad Banu, Heramba Chandra Maitra Vs. Jyotish Chandra Sinha and Others, H.I. Trust vs Haridas Mundhra .

10. The court which passes a decree for specific performance retains control over the decree even after passing of the decree. It has thus been held that the court which passed a decree for specific performance has the power to extend the time

fixed in the decree for the reason that the court retains control over the decree and the contract between the parties is not extinguished by the passing of a decree for specific performance. In that sense the decree passed in a suit for specific performance is not a final decree and the suit must be deemed to be pending even after the decree - vide Mohammadali Sahib v Abdul Khadir Saheb (1930) 59 MAD LJ 351; Peari Sundari Dassee v Hari Charan Mozumdar Chowdhry ILR (1888) CAL 211; Someshwar Dayal and Others Vs. Widow of Lalman Shah and Others, . In the virtual sense, therefore, a decree for specific performance is in the nature of a preliminary decree - vide Anandilal Poddar Vs. Gunendra Kr. Roy and Another, ; Tribeni Tewary and Others Vs. Ramratan Nonia and Others, .

11. On a comparative analysis of the provisions of Sec.28 of the Specific Relief Act and Order 21 Rule 32 CPC, Justice B.P. Jeevan Reddy (as His Lordship then was) speaking for a Division Bench of this court in Cherukuri Venkata Rao v Brahmojosyula Bala Gangadhara Sharma and others 1987(2) ALT 229 held that both an E.P. under Order 21 of CPC as well as an application u/s 28 of the Specific Relief Act are available to the plaintiff for enforcement of a decree for specific performance, but the provisions of Sec.28 which are designed to obviate multiplicity of the proceedings are more salutary. It was held that where no time is prescribed in the decree for the performance of the reciprocal obligations thereunder, then and in such a case an E.P. is maintainable if it is instituted within 12 years in view of Art. 136 of the Limitation Act and if it is instituted u/s 28(3) of the Specific Relief Act, within a reasonable time even though no period of limitation is prescribed thereunder. This is so in view of the fact that grant of relief under Specific Relief Act is based on equity, fair play and good conscience. Even in case of an E.P. while 12 years is the outer limit, any application for execution preferred technically within a period of 12 years cannot automatically be held to be filed with reasonable diligence. The application should be filed much sooner and within a reasonable time. "What is reasonable time" is a question of fact to be decided in the facts and circumstances of each case.

12. In an apposite fact situation Justice Chinnappa Reddy (as His Lordship then was) speaking for a Division Bench of this court in M. Sakuntala Devi Vs. V. Sakuntala and Others, analyzing the provisions of Sec.28 of the Specific Relief Act, which provides for rescission, in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been granted, and further provides for consequences of such rescission, held that though the provisions recognise the power of the Court to extend the time prescribed by the decree for payment of purchase money, it does not expressly confer any power on the Court to extend time. It does not also purport to prescribe the conditions subject to which the Court may allow further time than that prescribed in the decree for payment of the purchase money. This court ruled that it is equally well settled that in a contract for purchase of immovable property time is to be considered to be of essence and relief cannot be granted in equity to the defaulting purchaser. It must thus follow that where a Court grants a decree for specific performance of an agreement to reconvey immovable

property and stipulates a time for payment of purchase money, such time cannot later be extended.

13. Dealing with a fact situation arising under the Specific Relief Act 1877, a Division Bench of the Calcutta High Court in Pankoj Kumar Bhattacharjee Vs. Manmatha Nath Vidyabhushan Bhattacharjee, held that where a decree for specific performance specifically provides for payment of balance of purchase money within certain time it is not open to the decree holder to come at any time to pay money and ask for enforcement of the decree. No question of payment within reasonable time arises in such a case. The Calcutta High Court also held that the court may, however, extend the time taking into consideration the attitude of the decree holder. However, the court clearly ruled that where a decree holder has not made any application for extension of time at any stage of the proceedings instituted for rescission, an order rescinding the contract and the decree for specific performance is justified. The court specifically held that even in the absence of any specific provision of power to fix a time limit for the performance of the plaintiff's obligation, under Specific Relief Act 1877, the prescription of a time limit is valid and the parties must act in conformity to the time fixed.

14. In a case the respondent-decree holder filed an application for execution of the decree for specific performance of contract 5 years after the decree of the Trial Court and 3 years after the dismissal of the appeals by the High Court. In one of the cases balance of consideration amount was deposited much after the period granted in the decree and in the other no amount of balance consideration was at all deposited. The appellant judgment debtor contested the E.P. on the ground that the decree holder failed to deposit the balance amount of consideration in terms of the decree. The executing court dismissed the E.P. holding that the amount of balance consideration was not paid within the time stipulated under the decree. In the revisions against these orders instituted by the respondent-decree holders the High Court remitted the matter to the executing court with a direction to treat the application as an Interlocutory Application in the E.P. and to dispose of them in accordance with law. Aggrieved thereby the appellant-judgment debtors preferred appeals to the Supreme Court. Considering the provisions of Sec.28 of the Specific Relief Act, the Supreme Court found that no application has been preferred by the respondents-decree holders before the trial court seeking extension of time to deposit the balance amount under the decrees. It further found that the case before it is not of a mere delay but total inaction on the part of the plaintiff for over 2 1/2 years, in clear violation of the terms of agreement and of the decree. Relying upon the decision of the Supreme Court in K.S. Vidyadnam and Others Vs. Vairavan, , the Supreme Court ruled that the plaintiffs had not made out a case for interference by way of extension of time. The appeals preferred by the judgment debtors were accordingly allowed - V.S. Palanichamy Chettiar Firm Vs. C. Alagappan and Another, .

15. In the case on hand a true and fair construction of the decretal terms must posit an obligation on the plaintiff to pay the balance sale consideration within such period as would obligate and enable the judgment debtor to execute the sale deed within three months from the date of the decree i.e., within three months from 6.3.98. Since the obligation of the judgment debtor to execute the sale deed springs into operation on receipt of the balance sale consideration, the plaintiffs-respondents 1 and 2 herein, must be held obligated, in terms of the decree, to pay the balance sale consideration prior to 5.6.98.

16. We are, in this case, not concerned with an application of the respondents 1 and 2 seeking extension of time for payment of purchase money, in an application preferred by the petitioners herein for rescission of the agreement of sale, instituted in OS 23/95. In fact the plaintiffs have not instituted any application for extension of time.

17. The decree in this case clearly requires the payment of balance sale consideration within 5.6.98. This time frame has not been adhered to by the plaintiffs. Neither was an application for extension of time made. In the circumstances the court below could not have itself and even without notice to the petitioners herein, granted time to deposit the balance sale consideration on or before 8.3.2000.

18. On an analysis of the principles culled out from the decisions noticed hereinabove, it is clear that the orders of the court below dated 19.1.200 and 3.4.2000 in E.P. 4/2000 and E.A. 19/2000 in E.P. 4/2000, respectively, directing the decree holders (Respondents 1 and 2 herein) to deposit the balance sale consideration on or before 8.3.2000 and allowing the application seeking setting off of the costs awarded against the balance sale consideration payable, suffer from vice of gross illegality and material irregularity. In the absence of any application filed for enlargement of the time for deposit of balance sale consideration, the court below could not have, of its own accord, enlarged the time for payment of the balance sale consideration, as it did by its order dated 19.1.2000. Both the orders also suffer from the irretrievable error of having been passed without notice and opportunity to the petitioners-judgment debtors. The orders thus call for invalidation and are accordingly set aside.

19. The revisions are allowed. In the circumstances, no order as to costs.