
(2007) 10 AP CK 0062
In the Andhra Pradesh High Court
Case No : SA No. 865 of 1997

Pamarti Venkayamma

APPELLANT

Vs

Koppisetty Venkata Ratnam

RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:

Citation : (2008) 2 ALD 144

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C. Subba Rao, for the Appellant; G. Vasantha Rayudu, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The sole defendant in O.S. No. 158 of 1987 on the file of the Principal Subordinate Judge, Kakinada is the appellant. The deceased respondent filed the suit for the relief of specific performance of an agreement of sale, dated 5.5.1984. He pleaded that his wife late Smt. Koppiseti Mangadevi entered into an agreement with the appellant to purchase an extent of Ac.0.50 cents of land in Sy. Nos. 174/4 and 174/5 of Toorangi Village at the rate of Rs. 50,000/- per acre and a sum of Rs. 1,500/- was paid as advance. It was complained that in spite of repeated demands, the appellant did not execute the sale deeds in respect of the property agreed to be sold. Reference was made to the notices that were exchanged between the parties.

2. The appellant admitted the execution of agreement and receipt of Rs. 1,500/- as advance. It was, however, contended that four sale deeds were executed in respect of Ac.0.40 cents of land in favour of the holder of the agreement i.e. Mangadevi and her three other nominees on 5.7.1984 and she expressed her willingness to execute the sale deed in respect of balance of Ac.0.10 cents.

3. Through its judgment, dated 23.9.1993, the trial Court decreed the suit, as prayed for. Aggrieved thereby, the appellant filed A.S. No. 112 of 1993 in the

Court of the IV Additional District Judge, East Godavari at Kakinada. The appeal was dismissed on 28.4.1997. Hence, this second appeal.

4. Sri C. Subba Rao, the learned Counsel for the appellant, submits that the Courts below failed to take note of the fact that none other than the holder of the agreement purchased an extent of Ac.0.10 cents in the same survey numbers, within two months from the date of the agreement and that on the same day, three other sale deeds were executed in respect of Ac.0.10 cents each in those very survey numbers. He submits that the very fact that Mangadevi, the original agreement holder, did not take steps after receiving the reply under Ex.A3 discloses that the version presented by the appellant was impliedly accepted. He further contends that the Courts below have expanded the scope of the suit by supplying some additional details to the agreement such as plot numbers.

5. Sri G. Vasantha Rayudu, the learned Counsel for the respondent, on the other hand, submits that the plea of execution of four sale deeds out of five plots agreed to be sold is not borne out by the record and that the sale deeds, Exs.A6 and B5 to B7, are in respect of different land in the same survey numbers. He further submits that the very fact that Ex.B1, dated 12.10.1986, which speaks about variation, was disbelieved discloses that the appellant did not present the correct version.

6. The suit was filed for the relief of specific performance of an agreement of sale, dated 5.5.1984, marked as Ex.A1. The appellant admitted the execution of the agreement, but pleaded performance thereof to a substantial extent, apart from expressing her willingness to perform the remaining part of it.

7. The trial Court framed the relevant issue, namely whether the plaintiff is entitled to specific performance of the agreement of sale. The other issue as to the maintainability of the suit became virtually inconsequential.

8. On behalf of the respondents, P.W.I deposed as witness. Ex.A1 is the agreement of sale. Ex.A2 is the office copy of the notice got issued during the lifetime of the agreement holder and Ex.A3 is the reply thereto. Ex.A4 is the copy of notice got issued by the respondent and Ex.A5 is the cover with an endorsement as to return. Ex.A6 is the sale deed executed by the appellant in favour of the wife of the respondent i.e., holder of the agreement. Ex.A7 is the alleged layout of the land.

9. On behalf of the appellant, D.Ws. 1 to 5 were examined. Ex.B1 is the letter, dated 12.10.1986, through which Ex.A1 is said to have been varied. Exs.B2 and B3 are the proposed layouts. Ex.B4 is the sale deed, through which the appellant and her daughter purchased some other land. Exs.B5 to B7 are sale deeds, dated 5.7.1984 executed along with Ex.A6.

10. The agreement of sale was between the appellant on the one hand and the wife of the respondent on the other. The execution thereof is admitted. Under it, an extent of Ac.0.50 cents of land with certain boundaries was agreed to be sold

at the rate of Rs. 50,000/- per acre. The fact that a sum of Rs. 1,500/- was paid as advance was also admitted.

11. Before discussing the matter further, one important aspect needs to be taken note of. The suit schedule mentions an extent of Ac.0.50 cents of land in Sy. Nos. 174/4 and 174/5 out of total extent of Acs.6.89 cents. The Courts below, however, proceeded as though Ex.A1 was in relation to identified plots in a layout. That is not at all supported by the record.

11.1 The wife of the respondent (Koppiseti Mangadevi), who is a party to Ex.A1, got issued a notice to the appellant on 29.1.1985, Ex.A2 alleging that the appellant did not execute the sale deeds in pursuance of Ex.A1 inspite of repeated demands. A prompt reply in the form of Ex.A3 was issued to Ex.A2, whereunder the existence of agreement of sale was admitted. It was clearly pointed out that within two months from the date of Ex.A1, four sale deeds were executed in favour of the holder of the agreement as well as her nominees on 5.7.1984. The appellant had also expressed her readiness and willingness to execute the sale deed in respect of the balance of Ac.0.10 cents, as and when the wife of the respondent pays the consideration. K. Mangadevi is said to have died in the year 1987. For almost two years, she did not take any steps nor did she contradict the version presented under Ex.A3. It is only her husband, the respondent herein, that started the litigation. The question as to whether Exs.A6 and B5 to B7 were executed in favour of the persons nominated by Mangadevi became difficult to be ascertained. However, there is intrinsic evidence which adds strength to the version of the appellant. Mangadevi herself is a purchaser under Ex.A6 and on the same day, three more sale deeds being Exs.B5 to B7 were executed. So far as Ex.A6 is concerned, there was no difficulty in relating that document to Ex.A1. When it was specifically pleaded that the purchasers under Exs.B5 to B7 were also the nominees of late Mangadevi and this allegation of the appellant was not denied during the lifetime of late Mangadevi, it was for the respondent to summon those transferees and elicit necessary information.

12. Things would have been different altogether, had it been a case where the four sale deeds executed on 5.7.1984 were all in favour of strangers and there was no occasion for the parties to relate them to Ex.A1. On receiving the reply from the appellant, Mangadevi had chosen to remain silent for a period of two years till her death. That would naturally add strength to the version put forwarded by the appellant.

13. The Courts below have mostly devoted their attention to the truth or otherwise of Ex.B1, through which the agreement under Ex.A1 is said to have been varied. Even assuming that there was any cloud upon Ex.B1, the fact remains that Mangadevi herself purchased an extent of Ac.0.10 cents of land under Ex.A6 and on the same day three more sale deeds have been executed. The bona fides and truthfulness on the part of the appellant is evident from the fact that she had offered to execute the sale deed as regards the leftover Ac.0.10 cents covered by Ex.A1. While granting the equitable relief of specific

performance of an agreement of sale, the Courts below ought to have examined the conduct of the parties as well as the circumstances that surrounded the various transactions covered by various documents.

14. For the foregoing reasons, the second appeal is allowed in part and the decree passed by the trial Court is confined to the extent of Ac.0.10 cents of land excluding the land covered by Exs.B6 and B5 to B7. There shall be no order as to costs.