
(2008) 02 AP CK 0013

In the Andhra Pradesh High Court

Case No : SA No's. 192 and 210 of 1999

Pothepalli Nagabhushanam

APPELLANT

Vs

Ravipati Subba Rao and Others

RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:

Citation : (2008) 3 ALD 599 : (2008) 6 ALT 711

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.R.S. Srinivas, in SA No. 192 of 1999 and Muvva Chandrasekhara Rao, in SA No. 210 of 1999, for the Appellant; G. Pedda Babu, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Second Appeal No. 192 of 1999 is filed by the first defendant being aggrieved by the reversing decree and judgment made in A.S. No. 13 of 1995 on the file of the Senior Civil Judge, Addanki. Likewise, Second Appeal No. 210 of 1999 is preferred as against the selfsame decree and judgment by defendants 2 and 3 and hence both these matters are being disposed of by this common judgment.

2. The first respondent in these second appeals Ravipati Subba Rao filed the suit O.S. No. 199 of 1984 on the file of the Additional District Munsif, Addanki, praying for the relief of specific performance of agreement of sale dated 18.6.1981. The learned District Munsif, on the strength of respective pleadings of the parties, having settled the issues, recorded the evidence of PWs. 1 to 3, DWs. 1 to 3, marked Exs. A. 1 to A. 4, Ex.B. 1 and ultimately came to the conclusion that the plaintiff was not entitled to the relief of specific performance of agreement of sale dated 18.6.1981 and dismissed the suit. Aggrieved by the same, the said Ravipati Subba Rao carried the matter by way of appeal A.S. No. 13 of 1995 on the file of the Senior Civil Judge, Addanki and the appellate Court having framed the point for consideration at Para 11, recorded reasons in detail and came to the conclusion that the decree and judgment made by the Court of

first instance cannot be sustained and accordingly the dismissal of the suit was set aside and the relief of specific performance was granted. Aggrieved by the same, the present second appeals are preferred.

3. The substantialia] questions of law raised in S.A. No. 192 of 1999 are as hereunder:

1. Whether the agreement dated 18.6.1981 is enforceable when the " plaintiff did not pay the balance of consideration within the time prescribed in the agreement which would disclose that time was the essence of contract especially when the suit for specific performance was filed after a period of two years after execution of the sale deed in favour of the defendants 2 and 3 and the same is within the knowledge of the plaintiff?

2. Whether the plaintiff discharged his burden to establish that time was not essence of the contract inspite of the specific recitals in the agreement, that the entire transaction had to be completed within a period of two months and whether the conduct of the plaintiff in filing a suit after period of two years for specific performance of the suit agreement disentitles him to seek specific performance of the agreement of sale and whether the findings of the lower appellate Court in reversing the findings of the trial Court are perverse?

Likewise, the substantial questions of law raised in SA No. 210 of 1999 read as hereunder:

1. When the property agreed to be sold under Ex.A. 1 is unidentifiable and when Ex.A. 1 is not enforceable at law, is the learned Appellate Court justified in ordering specific performance of Ex.A. 1 agreement?

2. In the absence of any specific finding that Ex.A. 1 is true, valid and binding on the defendants 2 and 3, is the learned Appellate Court justified in ordering specific performance of Ex.A. 1 agreement?

3. Whether the judgment of the learned Appellate Court is vitiated by surmises and conjectures and non-application of mind and non-consideration of the material facts as shown in the grounds of appeal and misreading of evidence and assumption of facts which are not in existence?

4. Whether the finding of the learned Appellate Court that time is not the essence of the contract is vitiated for the reasons mentioned in ground Nos. 11 to 14?

5. Whether in the facts and circumstances of the case, the learned Appellate Court is not justified in holding that defendants 2 and 3 are not bona fide purchasers for value without notice of Ex.A. 1 agreement of sale?

6. Whether the finding of the Appellate Court that defendants 2 and 3 are not bona fide purchasers for value without notice of Ex.A. 1 agreement of sale is vitiated as shown in ground Nos. 15 and 16?

7. Whether the plaintiff is not entitled for specific performance of the contract for the reasons mentioned in ground No. 17?

8. Whether in the facts and circumstances of the case, is it unreasonable and inequitable to order specific performance of Ex.A. 1?

9. When several points were raised for consideration, is the appellate Court justified in considering only one point for determination?

10. When the 1st defendant did not dispute the binding nature of Ex.B. 1 sale deed on him, is the Appellate Court justified in holding that it does not bind him and that Ex.B. 1 is non est?

11. Whether the judgment of the Appellate Court is perverse?

12. Whether the Appellate Court has not exercised its discretion judiciously in ordering specific performance of Ex.A. 1?

4. In S.A. No. 210 of 1999, the appellant in S.A. No. 192 of 1999, defendant No. 1, is shown as second respondent. However, the second appeal was dismissed as against R.2 by a default order dated 26.4.2006.

5. Heard Sri Srinivas, representing the appellant in S.A. No. 192 of 1999 and Sri Muvva Chandrasekhara Rao, learned Counsel representing the appellants in S.A. No. 210 of 1999 and Sri G. Pedda Babu, learned Counsel representing the first respondent-plaintiff in both these appeals.

6. Sri Srinivas and Sri M. Chandrasekhara Rao the Counsel representing- the appellants in both these appeals had taken this Court through the respective pleadings of the parties, the evidence available on record and the findings recorded by the Court of first instance and also the findings recorded by the appellate Court and would maintain that there is inordinate delay on the part of plaintiff and the same had not been explained even and in such a case it can be taken that in the light of the recitals made in the agreement of sale in, the time to be treated as essence of contract and even otherwise it is to be taken that the plaintiff had never been ready and willing to perform his part of contract and hence in the light of the clear reasons recorded by the Court of first instance, the reversal made by the appellate Court, definitely, cannot be sustained. The Counsel also in elaboration explained the nature of burden of proof in the case of bona fide purchasers without notice of the prior agreement of sale and would maintain that in the light of the facts and circumstances the second appeals are to be allowed. Reliance was placed on several decisions.

7. On the contrary, Sri G. Pedda Babu, had taken this Court through the findings recorded by the appellate Court and would maintain that these are the findings based on facts on clear appreciation of evidence and there is no substantial question as such involved. The learned Counsel also while further elaborating his submissions would point out that relating to the stand taken by the first defendant absolutely there is no evidence, much less, acceptable evidence and in

the light of the same, the findings recorded by the appellate Court are well justified. Hence, these appeals are to be dismissed.

8. The substantial questions of law already had been specified supra. For the purpose of convenience, the parties hereinafter would be referred to as shown in O.S. No. 199 of 1984 on the file of the Additional District Munsif, Addanki.

9. The plaintiff filed the suit for the relief of specific performance of agreement of sale dated 18.6.1981. Defendant No. 1 was the original owner of the property who entered into the agreement of sale. Defendant Nos. 2 and 3 are the purchasers. It was pleaded in the plaint as hereunder:

Defendant No. 1 was the owner of the property described in the plaint schedule and he offered to sell the same to the plaintiff. It was agreed between the parties that the cost of one cent of site as Rs. 950/- and thus the total value of the property as Rs. 5,700/-. An amount of Rs. 1,000/- was paid as an advance towards sale consideration to defendant No. 1 on 18.6.1981 and a stamped agreement of sale was executed by defendant No. 1 in favour of the plaintiff and took a counterpart from the plaintiff for the same incorporating the said facts and the balance was payable by 12.8.1981. The plaintiff should take sale deed at his own expenses and the possession would be delivered at the time of registration. The time of two months mentioned in the agreement was not the essence of contract. On 29.7.1981 the plaintiff paid Rs. 1,000/- and obtained acknowledgment for the same from the first defendant. It is also stated that the plaintiff requested the first defendant several times to receive the balance of sale consideration, execute the sale deed, register the same at his own expenses and deliver possession of the same, for which the first defendant was postponing on some pretext or the other. The plaintiff got issued a registered notice dated 13.6.1983 to the first defendant, but the same was returned with an endorsement that he was absent continuously. Defendants 2 and 3 were fully aware of the suit agreement of sale. Defendant No. 1, with a view to put the plaintiff to loss and to have wrongful gain to the plaintiff, had collusively transferred the suit property in the name of defendant Nos. 2 and 3 under a registered sale deed without any consideration, though the payment of consideration was recited. Defendant Nos. 2 and 3 were bona fide purchasers for value and their sale deed would not take away the right of the plaintiff.

10. Defendant No. 1 filed written statement denying certain allegations and admitting certain averments made in the plaint. It was averred that it was agreed between the parties that with a condition that the sale must be completed on or before 12.8.1981 and the time was made for essence of contract. Defendant No. 1 requested the plaintiff to pay the balance consideration and take sale deed at his expense, for which the plaintiff represented that he was not interested in the property and he was also not in a position to raise funds and suggested defendant No. 1 to sell his property. When the first defendant asked for return of agreement, the plaintiff represented that it was misplaced and would return whenever traced. As the first defendant was in

need of money for having a shelter of his own for his business, he offered the suit property for sale and defendants 2 and 3 came forward to purchase Ac. 0-10 cents on a bargain at Rs. 15,500/- and accordingly defendant No. 1 executed the sale deed on receipt of such consideration to such extent of land in S. No. 986/1 within the boundaries recited that the suit schedule property forms part of the site sold by the first defendant. The first defendant did not have notice of registered notice and the endorsement as to his absence if any. The plaintiff is fully aware of the sale in favour of defendants 2 and 3 and they were in possession of the property. The claim of the plaintiff is barred by limitation and hence the suit is liable to be dismissed.

11. Defendant No. 2 filed written statement which was adopted by defendant No. 3 wherein several averments had been denied. It was specifically averred that the agreement of sale dated 18.6.1981 might have been executed by the first defendant with ante-date after the execution of the sale deed dated 8.2.1982 colluding with plaintiff to have wrongful gain. The site purchased by them was Ac. 0-10 cents with specific boundaries. They had no notice about the alleged agreement of sale, but the plaintiff was aware of the sale deed. Defendants 2 and 3 were the bona fide purchasers for valuable consideration as they paid Rs. 15,500/- to the first defendant. The suit is bad for misjoinder of parties and the same is liable for dismissal.

12. On the strength of these pleadings, the following issues were settled by the Court of first instance:

1. Whether the agreement of sale dated 18.6.1981 is sham and nominal one?
2. Whether defendants 2 and 3 are the bona fide purchasers for value?
3. Whether the plaintiff is entitled for specific performance of agreement of sale dated 18.6.1981?
4. To what relief?

13. On behalf of plaintiff, PWs. 1 to 3 were examined and Exs.A. 1 to A. 4 were marked. On behalf of, DWs. 1 to 3 were examined and Ex.B. 1 was marked.

14. The Court of first instance recorded that the evidence available on record would go to show that Ex.A. 1 is a genuine agreement, but however, the same to be enforced within limitation and came to the conclusion that the relief of specific performance to be negated. Aggrieved by the same, the plaintiff carried the matter by way of appeal A.S. No. 13 of 1995 wherein the Appellate Court recorded reasons in detail commencing from Paras 12 to 34 and ultimately allowed the appeal. Aggrieved by the same, the present appeals are preferred by the first defendant and also defendants 2 and 3 as well respectively as already specified above.

15. The learned Counsel representing the appellants placed strong reliance on the under noted decisions:

1. Katragadda Subbayyainma and Ors. v. Sajja Chempirayya and Ors. 1976 (1) An. WR 438;
2. Mohd. Abdul Razak Vs. B. Venkatesh @ Venkataiah, ;
3. The State of Punjab Vs. Iqbal Singh and others, ;
4. High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore and others, ;
5. Sardar Amarjeet Singh v. Nandu Bai 1998 (5) ALD 697;
6. Nalamothu Venkaiya (Died) and N.J. Lalitha Vs. B.S. Neelakanta and M. Aruna,
7. Municipal Corporation of Hyderabad, Secunderabad Division Vs. M. Ramathulsi,
8. His Holiness Acharya Swami Ganesh Dassji Vs. Shri Sita Ram Thapar, ;
9. Suryadevara Satyanarayana (died) by L.Rs Vs. Hirachand,
10. Repaka Prasada Rao Vs. Machilipatnam Municipality and Others,

Likewise, the learned Counsel representing respondent No. 1-plaintiff placed strong reliance on the under noted decisions.

- (1) K. Sambasiva Rao Vs. P. Bangaru Raju, ;
- (2) Dr. Jiwan Lal and Others Vs. Brij Mohan Mehra and Another, ;
- (3) Prakash Chandra Vs. Angadlal and Others, ;
- (4) Mool Chand Vs. Ved Prakash and Others, ;
- (5) Damacharla Venkata Sessaiah Vs. Damacharla Venkayya and Others, ;
- (6) Eswari Amma and Another Vs. K.K. Korah and Others, ;
- (7) Gobind Ram Vs. Gian Chand, ; and
- (8) S. Indira and Anr. v. Netyam Venkataramanna and Ors. 1996 (3) ALD 548

16. The evidence also had been placed before this Court and certain relevant portions of the evidence also had been pointed out. As can be seen from the respective stands taken by the parties, several of the facts appear to be not in controversy. The plaintiff examined himself as P.W. 1. P.W. 2 is the attester of receipt under which P.W. 1 paid Rs. 1,000/- to D. 1. This witness deposed that the signature as attester on Ex.A. 2 was that of P.W. 2. P.W. 3 identified the signature of his father. The signatures on Exs.A. 1 and A. 2 were that of his father. Defendant No. 1 examined himself as D.W. 1. Defendant No. 2 examined himself as D.W.2. The third defendant deposed in relation to purchase made by D. 2 and D. 3. Several of the admissions made by D.W. 1 also had been taken into consideration and in the matter of this nature the conduct of the parties also to be evaluated in proper perspective.

17. No doubt, certain discrepancies in the evidence had been pointed out relating to financial capacity of P.W. 1 and it is needless to say that these are factual controversies and when the appellate Court recorded reasons in detail, appreciated the oral and documentary evidence available on record in proper perspective and also relied upon, in particular, on the evidence of P.W.2 apart from the evidence of P.Ws. 1 and 3 as well and further came to the conclusion that the suit was filed within the period of limitation and merely because a recital had been made in Ex.A. 1 specifying some time that by itself could not make the time the essence of the contract in relation to the immovable property and ultimately decreed the suit. It is pertinent to note that even the Court of first instance recorded certain positive findings and ultimately while concluding affirming and upholding the genuineness of Ex.A. 1 in controversy, ultimately negated the relief on other grounds.

18. In the light of the reasons recorded in detail by the appellate Court, this Court is of the considered opinion that taking the conduct of D.W. 1 also into consideration it cannot be said that the findings recorded by the appellate Court are in any way unjust or improper. Even otherwise, in the light of the limitations imposed on this Court while re-appreciating the evidence and also the factual controversies, this Court is not inclined to disturb the findings of the appellate Court. Accordingly, these second appeals are hereby dismissed. No order as to costs.