
(1996) 08 AP CK 0065

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 239 of 1986

Raja Ratan Gopal Sainchar (Died) and Others

APPELLANT

Vs

Rajendra Prasad and Others

RESPONDENT

Date of Decision : 21-08-1996

Acts Referred:

Specific Relief Act, 1963 — Section 10, 16

Citation : (1997) 1 ALD 25 : (1997) 1 ALT 45 : (1997) 1 CivCC 159

Hon'ble Judges : Lingaraja Rath, J;C.V.N. Sastri, J

Bench : Division Bench

Advocate : Y. Sivaramasastri, for the Appellant; R. Vijayanandam, for the Respondent

Final Decision : Dismissed

Judgement

Lingaraja Rath, J.—The legal representatives of the defendant in the suit are the appellants against a reversing judgment decreeing the suit for specific performance of the contract brought by the plaintiff-respondents on the basis of an agreement of sale Ex. A-1 executed on 28-1-1974. The admitted case of the parties is that under the document Rs. 20,000/- was received as earnest money out of the total consideration of Rs. 90,000/- with the condition that the sale deed shall be executed within three months and vacant possession of the suit house shall be handed over at the time of registration and with the further condition that if the plaintiff-respondents fail to pay the balance of consideration within time, the earnest money shall stand forfeited and the contract stands cancelled. The plaintiffs alleged that they were ever ready and willing to pay and perform their part of the contract and, as a matter of fact, they paid, as required by the defendant Rs. 2,700/- on 1-2-1974 and thereafter Rs. 10,000/- on 3-6-1974, but the defendant was not coming forward to execute the sale deed and instead time was extended from time to time on his behalf and ultimately since the sale deed was not executed, the suit was filed on 24th October, 1975. The suit was contested with the written statement filed contending the plaintiffs

not having remained ready and willing to pay the balance of consideration money and time being the essence of the contract, non-compliance within the stipulated time, to have frustrated the contract. For such reason, the defendant had issued notice Ex. A-11 on 29-8-1974 cancelling the contract. Both the learned trial Court as well as the learned Single Judge in appeal concurrently found the plaintiff respondents to have been always ready and willing to perform their part of the contract. The learned trial Court had also found that though time was the essence of the contract between the parties, yet by their subsequent conduct, they had extended the time for which the contract was not frustrated. The learned Single Judge, while taking the view that time was not the essence of the contract, in a sense, concurred with the finding of the trial Court in holding that as the contract stood extended from the time to time, time could not have been the essence of the contract. The trial Court, while finding as such, had dismissed the suit taking the view that the plaintiff-respondents were disentitled to the decree having insisted upon a new condition of getting vacant possession of the house before their getting ready to perform their part of the contract, but directed as the plaintiffs had paid Rs. 32,700/- and the defendant had made the plaintiffs pay Rs. 2,700/- to the broker, refund of Rs. 32,700/- with interest at 6% per annum from the date of the decree till the date of the realisation. The learned Single Judge reversed the decree holding that the plaintiff-respondents had not introduced any new condition and were entitled to the decree for specific performance but because v of their insistence that the property should be kept vacant three days prior to the date of registration they had caused delay in performance of the contract for which, in equity, they should pay the balance of consideration with interest at the rate of 6% per annum.

2. Mr. Y. Sivarama Sastry, the learned counsel appearing for the appellants has urged, in assailing the judgment of the learned Single Judge, firstly that there is no evidence worth the name of the respondents having been ready with the balance of consideration and that secondly time, in fact, was the essence of the contract which, having not been adhered to, the contract is not available to be specifically enforced.

3. Both the submissions are directed against the findings reached on questions of fact on analysis of evidence. The findings are concurrent by both the forums. Even so, since the question has been urged with great tenacity, we would briefly enter into the area (sic. arena) to examine the plausibility of the submissions. So far as time being the essence of the contract is concerned, apart from the oral evidence led by P.Ws.1 and 3 on the plaintiffs' side and D.W.1 on the defendant's side, the only other materials available are Exs. A-1, A-2, A-3, A-10, A-11 and A-13. It is undisputed that in Ex.A-1 a time-limit was fixed with the penal clause attached for the performance. Left to itself the agreement was open to the submission that time was stipulated as the essence, but the question need not be gone into as apart from a sum of Rs. 2,700/- received on 1-2-1976 i.e., within the stipulated time of three months, a sum of Rs. 10,000/- was received by the defendant on 3-6-1974 which is admittedly beyond the time stipulated in

Ex. A-1. Ex. A-3, which is the receipt regarding the payment, does not show anything about the time within which the sale deed was to be executed. Acceptance of the money after the stipulated time would itself show acquiescence of the defendant that sale deed would be effected after that date. Had he regarded time as the essence of the contract, he would have regarded the contract as having fallen and would not have accepted the money, but having not done so, the conduct is explicit to indicate that the defendant did not intend to stick to the time in Ex.A-1. In Ex. A-3 even, no further time is stipulated. While that was so, the rest of the exhibits i.e., Ex.A-11, Ex.A-10, Ex. B-5 and Ex. A-13 relate to the period after the controversy between the parties had arisen, and it is clear to see that in these notices and replies each of the parties were trying to make out a case for themselves keeping the suit to be filed or contested in view and thus both sides were alleging stipulations and extensions of time to have been made at the instance of the other side and the other side having not come forward to perform his part of the contract. If the stand taken in these documents is not taken into account being self-serving statements, the only other materials on record, apart from the oral evidence which are worthy of likewise rejection, are the Exs. A-1, A-2 and A-3 which we have already considered as showing time to have been not insisted upon Essential part of the contract. We are, hence, of the view that the finding, reached in that regard by both the forums below, is not liable to be interfered with.

4. So far as the other question is concerned, namely whether the plaintiffs were ready and willing with the balance of consideration through out the" learned Single Judge observed in his judgment as follows:

"On the third question it is in evidence that the 1st plaintiff is a business man. His capacity to pay the amount is not doubted. The 1st plaintiff as P.W.1 stated that he is always ready and willing to deposit the money whenever the Court directs and he is having cash balance to do so. This is not seriously challenged by the learned counsel for the defendant in this appeal."

He further observed:

"I have gone through the evidence of both the 1st plaintiff and his father (P.W.3) . They are Income Tax assesseees having considerable income. I do not find any evidence to hold that they are unable to pay the consideration agreed within the time stipulated. Except the solitary statement of the defendant that the plaintiffs failed to pay the amount, there is no material to hold that the plaintiffs are unable to pay the amount and time was obtained by him."

5. It is the submission of Mr. Sastri, placing reliance on Jugraj Singh v. Raj Singh AIR 1995 SC 945 : 1995 (3) SLT 42 that the requirements of Section 16(c) of the Specific Relief Act is that the plaintiffs must not only allege but also prove their having been ever ready and willing to perform the essential terms of the contract and hence it was for the plaintiffs to have established by producing material to show that the money was at their command.

6. We have perused the evidence of P.W.1 and P.W.3 i.e, of plaintiff No. 1 and his father. Both constituted as joint family and it is their case that the house was to be purchased by the joint family. P.W.3 in his evidence stated that they had flourishing business and paid Rs. 80,000/- towards Income Tax per year. He further stated that they were having the entire sale consideration from the date of Ex. A-1 and then also they had got the money to pay the balance of sale consideration. He further stated: "Now it is 4.25 p.m. If five minutes time is allowed and if I am asked to get cash, I can get the entire balance of sale consideration within five minutes." There was no cross-examination to P.W.3 on this aspect except a suggestion made to which the reply of P.W.3 was, "It is not correct to say that we told defendant that we did not have money to purchase stamp as it is huge amount." So far as the evidence of D.W.1 is concerned, the solitary statement made by him was that he had sent his advocate Mr. Narayana Prasad to find out whether plaintiffs were ready to pay the money and to complete the sale transaction but that the advocate had come back and requested (sic. said) that they were not ready and that they wanted one more month. The advocate was never examined as a witness¹ to corroborate the statement. Besides neither in the cross-examination of P.W.3 nor in his own evidence, D.W.1 ever challenged the statements made by P.W.3 referred to above. The fact remains that the plaintiffs had not only paid Rs. 20,000/- but had also paid Rs. 2,700/- on 1-2-1974 and Rs. 10,000/- again after the expiry of the first stipulated time, on 3-6-1974. All such facts go to show the requirements of Section 16(c) of the Act to have been complied with.

7. The jurisdiction exercised by the Court while deciding a letters patent appeal is that of a corrective one only to safeguard as to whether any judgment of the Court can be said to be untenable in law. The mechanism is an internal one for the Court to correct itself either on questions of fact or law. The jurisdiction is not available to disturb a finding of fact reached by the learned Single Judge unless the finding can be said to be wholly against the evidence on record. A Division Bench would not substitute appreciation of evidence with another finding of its own only because it is possible to reach a different conclusion also. Even so we have gone into the evidence and also found ourselves in agreement with the finding reached by the learned single Judge. This argument of Mr. Sastri must hence also be rejected.

8. A further submission is raised contending that since the contract was prior to the introduction of the Urban Land (Ceiling and Regulation) Act, 1976, the contract becomes frustrated because of the application of the Act as any sale of vacant land has to be done only with the permission of the competent authority. Vacant land has to be determined, after submission of the returns, by the competent authority and thereafter, permission has to be obtained. A petition has been filed registered as C.M.P. No. 9574 of 1991 to take such additional ground in the appeal. The question is a mixed question of fact and law and had never been raised earlier even though the Act has been in existence from 17-2-1976. As to whether the land is a vacant land and whether it is within the ceiling

determined for the appellant are questions over which no material is available. We would hence not allow the application and leave the question open.

9. It has also been urged that insistence by the plaintiffs to give vacant possession evicting the tenants is a new condition introduced by them. The learned Single Judge held it to be not a new ground as Ex. A-1 itself stipulated that at the time of registration of the sale deed, vacant possession of the house will be given. The learned Judge took the view that it is normal for any purchaser to insist for vacant possession to be given. He noticed that in the agreement it was originally written "after the registration", but the word "after" was struck off and instead substituted by the words "At the time of registration". The correction was also initialled by the defendant. While it is the case of the respondents that there are tenants in the house, it was the case of the appellants that there are no tenants which fact was accepted by the trial Court. The finding of the trial Court in that regard, it was observed by the learned Single Judge, was not on proper appreciation of the evidence of the plaintiffs since a part of the evidence of P.W.3 was not taken into account. The learned Judge thereafter examined the case on the basis of the defendant as remaining in the premises, which was an admitted fact in the evidence of D.W.1, and came to hold that it was natural for the plaintiffs to have demanded vacant possession, which was not imposition of any new condition by the respondents. We see no reason to differ.

10. Lastly Mr. Sastry urges that the respondents cannot be taken to have been ready and willing since even at the commencement of the proceeding or during the pendency of the suit, they did not deposit the balance of consideration. The submission is not tenable in view of the provisions of Section 16(c) Explanation (1) of Specific Relief Act which provides that it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the Court. The defendant never called upon the plaintiffs to deposit the money in Court and never obtained any orders in that regard. This argument hence is also rejected.

11. In the result, the appeal has no merit and is dismissed with costs.