
(1997) 03 AP CK 0024

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1972 of 1993

Smt. M. Prabhavathamma

APPELLANT

Vs

H. Anwar Khan

RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Article 15

Citation : (1997) 3 ALT 95 : (1997) 2 APLJ 53

Hon'ble Judges : R. Bayapu Reddy, J

Bench : Single Bench

Advocate : C. Manohar Reddy, for the Appellant; Wasim Ahmed Khan, for the Respondent

Final Decision : Dismissed

Judgement

R. Bayapu Reddy, J.—This revision petition is filed by the defendant in Small Causes Suit No. 18 of 1991 on the file of the Additional District Judge, Hindupur questioning the decree and Judgment dated 18-3-1993 by which the suit was decreed for an amount of Rs. 4,500/- with proportionate costs and interest.

2. The respondent herein who is the plaintiff in the suit had filed the above said suit seeking recovery of an amount of Rs. 8,000/- from the petitioner, contending that the petitioner executed an agreement of sale on 9-2-1988 relating to some property agreeing to sell the same for Rs. 67,500/- and received an amount of Rs. 4,500/- as advance; that subsequently it came to be known that the petitioner was having only limited rights in the said property and her daughter alone was having title to the same; that her daughter subsequently sold away the said property to others; that she, therefore, committed breach of contract and that he was, therefore, entitled to receive back the amount of Rs. 4,500/- paid by him as advance and also a further amount of Rs. 3,500/- by way of damages for breach of contract. The petitioner contested the suit admitting the execution of the agreement of sale by her in favour of the respondent and also the receipt of Rs. 4,500/- from the respondent by way of advance, but

contending that the respondent himself failed to obtain the sale deed from her and he was never ready and willing to perform his part of contract and that in view of such circumstances, the respondent was not entitled to seek recovery of the advance amount or any amount by way of damages for breach of contract from her. She also contended that the suit is not maintainable in the Small Causes Court and that the Additional District Judge, Hindupur was also not having territorial jurisdiction to try the suit.

3. On the basis of the evidence placed before him, the learned Additional District Judge came to the conclusion that the respondent is entitled to recover the amount of Rs. 4,500/- paid by him to the petitioner as advance under the agreement; that he is, however, not entitled to receive any amount by way of damages; that the suit is cognizable by a Court of Small Causes and that the Additional District court, Hindupur is having territorial jurisdiction to try the suit. He, therefore, decreed the suit for the amount of Rs. 4,500/- with proportionate costs and interest. The defendant has now chosen to file the present revision aggrieved by such decree and Judgment of the lower Court mainly contending that the Small Causes Court has no jurisdiction to try the suit and the decree passed by it is therefore liable to be set aside and that at any rate the respondent-plaintiff is not entitled to recover from her the amount of Rs. 4,500/- for which the suit was decreed.

4. The points that arise for consideration in the present revision petition are:-

(i) whether the suit is cognizable by a Court of Small Causes as held by the lower Court? And

(ii) whether the respondent is entitled to recover the amount of Rs. 4,500/- paid as advance under the agreement of sale from the petitioner?

5. Point No. 1: It is clear from the averments in the plaint in the suit and the allegations contained in the written statement and also the evidence adduced in the suit that the petitioner executed the agreement of sale dated 9-2-1988 in favour of the respondent agreeing to sell the land for an amount of Rs. 67,500/- and received an amount of Rs. 4,500/- from him as advance. But subsequently it came to be known that the petitioner was not having valid title to the said property and that her daughter alone was having rights in the same. The petitioner examined as RW-1 has admitted in her evidence that she was having only limited rights in that property and that her daughter who was minor alone was having absolute rights for the same. It is also clear from the evidence that the said property was subsequently sold away in favour of some other person for an amount of Rs. 71,000/-. In view of such circumstances, the respondent put an end to the agreement by rescinding the same and opted for recovery of the advance amount of Rs. 4,500/- paid by him to the petitioner under the agreement of sale. Under such circumstances, the lower Court rightly felt that the suit is only for recovery of the amount paid under the agreement which was cancelled due to the above said circumstances and that it is not barred under any

of the provisions of Second Schedule of the Provincial Small Cause Courts Act (for short "the Act"). Such finding given by the lower Court in view of the facts and circumstances of the case is quite in accordance with law and there is no error committed by the lower Court in arriving at such finding.

6. The contention of the learned counsel for the revision petitioner is that the suit for recovery of the amount paid by way of advance under the contract of sale is only a suit for specific performance of the said contract and that the suit is, therefore, not cognizable by the Small Causes Court in view of the provisions of Article 15 of the second schedule of the Act. Article 15 of the second schedule only relates to a suit for specific performance or rescission of a contract. But in the present case, the suit is neither for specific performance of contract nor for rescission of such contract. The suit is filed only for recovery of the amount paid as advance under the agreement after putting an end to the agreement when it came to be known that the petitioner was not having valid title to the property and when she already sold away the same property to some others. Therefore, the suit for recovery of the advance amount paid under the agreement under such circumstances, is not barred by the provisions of Article 15 of the Second Schedule of the Act.

7. The learned counsel for the petitioner tries to rely upon the decision of the Madras High Court reported in Mundlamudi Penchalamma Vs. Kopparthi Subbaramiah and Others, in support of his contention. But it is seen from the facts of the said case that it has no application to the present facts. It was a case where the suit was filed for recovery of the amount said to be due to him towards the balance amount as per the agreement under which the defendant had agreed to discharge all the debts of the plaintiff including the debt under a decree passed in the Munsif's Court. Under such circumstances, it was held by the Madras High Court that the suit was not for mere recovery of any specified amount and that the terms of the agreement had to be looked into and the suit itself was filed for recovery of the balance amount due as per the agreement and as such it was only a suit for specific performance of such agreement, and therefore, not cognizable by a Court of Small Causes. The said decision, therefore, cannot be said to be of any assistance for the contention of the petitioner herein. He has also tried to rely upon the decision of the Bombay High Court reported in Pandurang Laxman Mohite Vs. Kaluram Bahiru Bhikule, . In that case, the plaint described the circumstances under which the contract became void or, in the alternative voidable and the plaintiff did not come to the Court with a clear allegation that the contract became void as he alternatively alleged that the contract was voidable and that he, therefore, wanted the Court to pass a decree for refund of the earnest money in terms of the contract itself. In view of such facts and circumstances, it was observed by the Bombay High Court that the suit was for specific performance and for rescission of contract and, therefore, it was outside the jurisdiction of the Court of Small Causes.

8. The learned counsel for the petitioner also tried to rely upon the decision of

the Delhi High Court reported in Gopi Chand Vs. Bishambar Nath, , which was also referred to and discussed in the Judgment of the lower Court, it is seen from a perusal of the said Judgment that it was also a case where the plaintiff filed a suit for refund of earnest money on the allegation that the contract of sale of the immovable property had fallen through on account of the false promises made by the defendant and the plaintiff therein never rescinded the contract and on the other hand he relied upon various terms of the contract and contended that the vendor had failed to perform his part of the contract and as such according to the terms of the contract, the purchaser has become entitled to recover the amount paid as earnest money. Under such circumstances, it was observed by the Delhi High Court as follows:-

"A suit for refund of money in a contract of sale may as well amount to suit for enforcement of contract. On the other hand, if the petitioners allege that by breach of the contract on the part of the respondent the contract has been cancelled and then a suit is filed for recovery of the earnest money, it would be triable by the Court of Small Causes and would not be barred by any of the articles of the Second Schedule."

As already stated above, the present suit was filed only for recovery of the earnest money by the plaintiff after putting an end to the contract and he has not chosen to file a suit for recovery of such amount as per the terms of such agreement and by trying to specifically enforce the terms of such agreement. Therefore, the suit cannot be said be barred under the provisions of Article 15 of the Second Schedule of the Act.

9. The lower Court has relied upon the earlier decision of this Court rendered in C.R.P. No. 2278 of 1964 on 14-4-1967 and reported in G. Sesharatnamma v. Kadiyala Narasimha Murthy 1967 (2) An. W.R. 21 (SN). In the said case also the suit was filed for recovery of an amount of Rs. 1200/- which was paid as part of sale consideration amount under an agreement to the defendant. It was contended by the plaintiff that as the defendant had failed to redeem the mortgage debt as per the terms of the agreement, he committed breach of contract and as such the contract was cancelled and the suit was filed for recovery of the amount of Rs. 1200/- paid to the defendant at the time of the execution of the agreement. Under such circumstances, it was observed by this Court in the said Judgment that the suit is not for specific performance of the agreement as it was already cancelled and it was merely a suit for recovery of the amount paid by the plaintiff to the defendant by way of part payment of sale consideration and that, therefore, the suit is maintainable under the Act. The decisions reported in Sundara Thevan v. Ananthan Kaladi AIR 1924 Mad 903, Udairam v. Thakur Prasad AIR 1926 Nag 65. and Raghunath Das Vs. Chingan, were referred to in the above cited decision of this Court in support of its view. In the above said cases also, the suits were filed for recovery of some amounts under the agreements which were cancelled on account of breach of contract and the suits were not filed for recovery of such amounts by way of specific

performance of such contracts. In the above cited decision of the Madras High Court reported in *Sundara Thevan v. Ananthan Kaladi* (supra) it was held that a suit by a vendee for recovery of purchase money on the failure of a contract by vendor to convey land, is of a small cause nature and that if there was a contract and the defendant refused to perform it, the plaintiff was at liberty to put an end to such contract and thereupon the defendant was bound to restore the earnest money to the plaintiff and the plaintiff was entitled to sue for it and such a suit is of a small cause nature. In the decision reported in *Udairam v. Thakur Prasad* (supra) it was held that in a case where a contract of sale of an immovable property falls through and the vendee sues to recover back the purchase money from the vendor, such suit is of small cause nature. In the other decision reported in *Ragunath Das v. Chingan* (supra) it was held that in case where the plaintiff sues for refund of money paid under an agreement after cancelling such agreement on the ground that the defendant has refused to perform such contract, such suit is maintainable in a Court of Small Causes. Therefore, in view of all such circumstances, the lower Court has rightly found that the suit is maintainable in a Court of Small Causes and there are no valid reasons to interfere with such finding of the lower Court.

10. Point No. 2: The learned counsel for the revision petitioner tries to contend that the respondent himself committed breach of contract by failing to obtain the sale deed from her and that, therefore, he is not entitled for seeking recovery of the advance amount paid under the agreement. But this contention also was rightly negatived by the lower Court in view of the facts of this case. As already stated above, the petitioner was not having valid title to the property covered by the agreement and her minor daughter alone was the owner of such property and the petitioner, however, executed the agreement of sale in favour of the respondent herein styling herself as the owner of the property. The property was also subsequently sold away by her daughter to some third parties. Under such circumstances, the respondent cancelled the agreement and sued for recovery of the advance amount paid by him to the petitioner. He is clearly entitled for recovery of such amount in view of such facts and circumstances of the case, and the lower Court, therefore, rightly decreed the suit for the amount paid as advance under the agreement. There are, therefore, no valid reasons to interfere with the decree and Judgment of the lower Court.

11. The revision petition is, therefore, dismissed with costs of the respondent.