
(2013) 12 AP CK 0100

In the Andhra Pradesh High Court

Case No : L.P.A. No's. 174 and 183 of 1999

Smt. Y. Vijaya Akshmi

APPELLANT

Vs

J. Ravi Sharma and Others

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2013) 12 AP CK 0100

Hon'ble Judges : M.S.K. Jaiswal, J;L. Narasimha Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—These two appeals are between the same parties and in relation to the same property. Hence, they are disposed of through a common judgment. For the sake of convenience, the parties are referred to as arrayed in L.P.A. No. 174 of 1999.

2. The appellant filed O.S. No. 131 of 1980 in the Court of the Principal Subordinate Judge, Visakhapatnam, against Sri G. Punnayya, respondent No. 3, for the relief of specific performance of an agreement of sale, dated 05.01.1980 (Ex. A1). It was pleaded that respondent No. 1 offered to sell the property for a consideration of Rs. 1,00,000/- and accordingly, Ex. A1 was entered into. On the date of agreement, a sum of Rs. 1,116/- was said to have been paid as advance. She further pleaded that one of the contentions incorporated in Ex. A1 was that the permission from the Special Officer and Competent Authority, Urban Land Ceiling (for short "the Special Officer") must be obtained, since Visakhapatnam is covered by the provisions of the Urban Land (Ceiling and Regulation) Act (for short "the Act") and that such a permission has been obtained in the year 1980 itself by submitting a joint application of herself and respondent No. 1. She pleaded that in spite of repeated demands, respondent No. 1 did not come forward to execute the sale deed.

3. During the pendency of O.S. No. 131 of 1980, respondent Nos. 1 and 2 herein

filed O.S. No. 37 of 1981 in the same Court against respondent No. 3 and his sons, defendant Nos. 4 to 6, for the relief of specific performance of an agreement of sale, dated 22.12.1979, said to have been executed by respondent No. 3 in their favour in respect of the same property. They pleaded that the property was agreed to be sold to them for a consideration of Rs. 85,000/- and a sum of Rs. 1,500/- was paid as advance. They too complained that respondent No. 3 has not been coming forward to execute the sale deed, though they are ready and willing in all respects.

4. Over the period, while respondent Nos. 1 and 2 were impleaded in O.S. No. 131 of 1980 as defendant Nos. 2 and 3, the appellant came to be impleaded as defendant No. 5 in O.S. No. 37 of 1981.

5. The trial Court did not club the suits and separate trial was conducted. Through separate judgments, dated 24.04.1984, the trial Court decreed O.S. No. 37 of 1981. O.S. No. 131 of 1980 was decreed only to the extent of granting the relief of refund of a sum of Rs. 1,116/- paid as advance and the one for specific performance was rejected. The appellant filed A.S. Nos. 14 and 742 of 1985 against the said decrees, before this Court. Through separate judgments, dated 06.08.1997, a learned Single Judge of this Court dismissed both the appeals. Hence, these two Letters Patent Appeals.

6. Arguments on behalf of the appellant are advanced by her husband, Sri Narayana Murthy. He contends that the execution of Ex. A1 was not disputed by respondent No. 3 and the very fact that the permission under the Act was obtained, adds credibility to it. He contends that the facts of the cases clearly demonstrate that the agreement in favour of respondent Nos. 1 and 2 was brought into existence only with a view to defeat the rights of the appellant under Ex. A1. He contends that the very fact that respondent Nos. 1 and 2 did not take any steps to obtain clearance under the Act demonstrates the fictitious nature of Ex. A13. He has also made extensive submissions about the plea of respondent No. 3 that the property was joint and that he signed the agreement in his capacity as Kartha of the joint family. According to them, the trial Court and the learned Single Judge of this Court did not appreciate the evidence on record in the proper perspective.

7. No one had appeared for the respondents.

8. Though two suits were filed by the respective parties, for all practical purposes, it is a case for the relief of specific performance being claimed by two separate parties vis-?-vis the same property and against the same persons. On the basis of the pleadings before it, the trial Court framed the following issues in the respective suits.

O.S. No. 131 of 1980:

(1) Whether the plaint schedule property is the absolute property of the defendant or the joint property of the defendant and his sons?

- (2) Whether the agreement to sell dated 05.01.1980 is not supported by consideration as such it is invalid and inoperative?
- (3) Whether the defendant agreed to bear the stamp and registration charges?
- (4) Whether the plaintiff is ready and willing to perform his part of contract?
- (5) Whether the agreement to sell is enforceable at law against the defendant?
- (6) Whether there is any breach of contract if so whether the defendant is liable to pay damages?
- (7) Whether the suit is maintainable under law for recovery of physical possession of the property?

O.S. No. 37 of 1981:

- (1) Whether the suit agreement dated 22.12.1979 is true, valid and binding on the 5th defendant or whether it is ante-dated and a collusive agreement?
- (2) Whether the plaint schedule property is joint family property?
- (3) Whether the agreement dated 05.01.1980 executed by D1 in favour of D5 is valid and binding on the plaintiffs?

9. Separate evidence was recorded. In O.S. No. 131 of 1980, the husband of the appellant deposed as P.W. 1 and Exs. A1 to A16 were filed. Respondent No. 3 deposed as D.W. 1 and he filed Exs. B1 to B4. In addition to that, Exs. X1 to X8 were taken on record. In O.S. No. 37 of 1981, respondent Nos. 1 and 2 examined P.Ws. 1 to 3 and filed Exs. A1 to A6. The husband of the appellant deposed as D.W. 1 and he filed Exs. B1 to B20. The nature of relief that was granted in the suits has already been indicated.

10. In the appeals filed before this Court, no points as such were framed, but both the appeals were dismissed. We are of the view that the following points arise for consideration, in these L.P.As.

- (1) Whether respondent Nos. 1 and 2 have proved the execution of Ex. A13?
- (2) If Ex. A13 is validly executed and it remains in the field, whether the appellant derives any rights under Ex. A1?

11. Point No. 1: Respondent No. 3 was, admittedly, the owner of the suit schedule property at Visakhapatnam. It is he who proposed to sell the property by issuing an advertisement in a Newspaper. The appellant is said to have come to Hyderabad, where respondent No. 3 was living, and the agreement Ex. A1 was entered into. Here itself, it needs to be mentioned that though the date "05.01.1978" is mentioned therein, the stamp paper was purchased on 05.01.1980. In case there was a serious contest by respondent No. 3 in this behalf, things would have been different altogether. However, a perusal of Ex. A1 discloses that underneath the signature of respondent No. 3, he has put the date

as 05.01.1980. Therefore, the date mentioned in Ex. A1, namely 05.01.1978, is a mistake.

12. The evidence adduced on behalf of the appellant further discloses that a joint application for obtaining permission under the Act was submitted by herself and respondent No. 3, marked as Exs. X1 and X2, and a permission in that behalf was granted by the Special Officer through Ex. X6.

13. Respondent No. 3, no doubt, admitted the execution of Ex. A1. His version, however, was that much before Ex. A1, he executed Ex. A13 in favour of respondent Nos. 1 and 2 for consideration of Rs. 85,000/- and thereafter, the father and P.W. 1, husband of the appellant, came to him at Hyderabad offering to purchase the property for a sum of Rs. 1,00,000/-. He has also stated that when he informed them about the existence of Ex. A13, P.W. 1 informed him that he would discuss the matter with respondent Nos. 1 and 2 and settle the issue.

14. On their part, respondent Nos. 1 and 2 filed O.S. No. 37 of 1981 for the relief of specific performance of agreement of sale, Ex. A13. Though they did not implead the appellant herein in their suit, she came to be impleaded as defendant No. 5 at a later point of time. To prove Ex. A13, respondent Nos. 1 and 2 examined P.Ws. 1 to 3. Though respondent No. 3 did not enter the witness box, he did not dispute the execution thereof. Apart from there not being any denial from respondent No. 3, two witnesses of the document, were examined as P.Ws. 2 and 3.

15. In case any finding was recorded in O.S. No. 37 of 1981, behind the back of the appellant, she could have certainly ignored it while pursuing the remedies in her suit. After becoming a party, to that suit, she filed written statement and her husband deposed as D.W. 1. Nothing was elicited from the witnesses examined in that suit, to doubt the execution of Ex. A13. Incidentally, respondent No. 3, who remained ex parte in O.S. No. 37 of 1981, contested O.S. No. 131 of 1980 and deposed as D.W. 1. In the course of extensive cross-examination, nothing was elicited from him, to establish that Ex. A13 was not validly executed. The doubt, if at all, was only about Ex. A1, in relation to its date and other aspects. It is a different matter that the trial Court did not believe the plea of respondent No. 3 about the difference as to the dates. The net result is that Exs. A1 and A13, agreements, dated 05.01.1980, and 22.12.1979, executed in favour of the appellant and respondent Nos. 2 and 3 respectively, have been proved. Neither in the appeals nor before us, the appellant is not able to demonstrate that Ex. A13 was not executed at all. Therefore, we hold that Ex. A13 is proved.

16. Point No. 2: It is, no doubt, true that the appellant was relatively well prepared for execution of the sale deed inasmuch as she was instrumental in obtaining the clearance from the Special Officer and filed the suit earlier in point of time. However, once there exists another agreement, which is anterior to Ex. A1, the relief of specific performance could not have been granted to the appellant at all. The trial Court has rightly commented upon the conduct of

respondent No. 3 in executing both the agreements. In case the appellant was serious enough, she ought to have claimed the relief of declaration to the effect that Ex. A13 was not validly executed or that it is otherwise not enforceable, in law. No such steps were taken.

17. As long as Ex. A13 remains and execution thereof is not disputed, there is no way that the appellant can be granted the relief of specific performance. Even if one goes by comparison, it emerges that the witnesses who figured in Ex. A13 were also examined, whereas in respect of Ex. A1, except P.W. 1, no other witnesses were examined. The discrepancies as to dates were also pointed out. In this scenario, the trial Court was left with no alternative except to decree the suit filed by respondent Nos. 1 and 2 and once that decree holds the field, the question of granting relief of specific performance in favour of the appellant does not arise.

18. The appeals are accordingly dismissed. There shall be no order as to costs. The miscellaneous petitions filed in these appeals shall also stand disposed of.