
(1984) 07 AP CK 0008
In the Andhra Pradesh High Court
Case No : Appeal No. 637 of 1979

Syed Sultan Pai

APPELLANT

Vs

Syed Bikhu Saheb (Deceased by LRs) and Others

RESPONDENT

Date of Decision : 11-07-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4
Specific Relief Act, 1963 — Section 16, 20, 20(1)

Citation : AIR 1986 AP 342

Hon'ble Judges : Ramaswamy, J

Bench : Single Bench

Advocate : J.V. Suryanarayana, for the Appellant; C. Poornaiah, for the Respondent

Judgement

Ramaswamy, J.—The unsuccessful plaintiff is the appellant. She laid the suit seeking specific performance of the Khararnama, Ex. A1 dt. 14-7-1972 and for possession of Ac. 3.00 of the plaint schedule property and for mesne profits.

2. The case of the plaintiff is that the first defendant had two sons viz., the second defendant and her husband, late Syed China Janvalli alias Basha. Her husband and the second defendant purchased Ac. 7-01 cent of land under Ex. B-3. She was married in 1969 and her husband died on July 13, 1972 at Madras. His body was brought to their village Rachapudi in Addanki Taluk, Prakasam District. On that day i.e., 14-7-72 there was an agreement between the parties that Ac. 3.00 of land would be given to her for her maintenance. Subsequently the second defendant resiled therefrom. In fact the defendants had nine acres of land in the village apart from a house and had also a house at Madras and were doing money lending and charcoal business. Thereby she pleads that the defendants are possessed of extensive property in which she is entitled to the share of her husband but she was satisfied with the three acres of land, as agreed to under Ex. A1. Thus she filed the suit for the above reliefs.

3. The second defendant filed the written statement admitting his doing business

at Madras, the death of his younger brother at Madras and the corpse being brought to Rachapudi and thereafter execution of document. But he pleads that he was completely exhausted and tired; that several people came there; they conspired and compelled him to sign the document. Therefore he was obliged to sign the document. He in the first instance denied the execution of the document Ex. A.1 as such and therefore for the reasons stated therein, the document is without consideration and void. He admits the purchase of Ac. 7.01 of land under Ex. B3 but he pleads that his brother did not contribute his share of consideration. On the other hand he pleads that the entire consideration was paid by him. He also further pleads that the plaintiff has been in possession of dry land in Patta No. 1467, and S. No. 164 of the village, which is worth about Rs. 6,000/-. He also further pleads that she was given 25 sovereigns of gold. The suit was filed at the instigation of the enemies of the defendants due to his absence at the village.

4. The trial Court framed as many as five issues and it found that the husband of the plaintiff died at Madras and his body was brought to the village Rachapudi by the 2nd defendant. It also found that Ex. A1 was executed, that it was scribed by P. W. 3 and attested by P. Ws. 4 to 6 and five others and it bears the signatures of the defendants and that the attestors are disinterested witnesses. Ex. A1 is a true document. It was agreed between the parties to provide some sort of maintenance to the plaintiff, or give some property in lieu thereof. The plaintiff had half share in Ac. 7.01 cents purchased under Ex. B3 since her husband is a co-owner and therefore it was stated : "It is true that the transaction has an outward garb of reasonableness....." It also held that the second defendant failed to establish that any threats were held out towards them and that they were compelled to execute Ex. A1 to avoid any dire consequences. But, however, the suit was dismissed on the ground that there was some sort of undue influence in bringing into existence Ex. A1 and therefore it was not executed out of free will. It also further held that since the plaintiff was not willing to perform her part of contract viz., paying the funeral expenses and discharging the debts contracted from D. W. 3, the suit for specific performance cannot be granted. It was also held that the plaintiff has not expressly pleaded readiness and willingness on her part to perform her part of the contract as enjoined under S. 16(c) to the Specific Relief Act (47 of 1963) for short, "the Act", and therefore she is not entitled to the performance of the specific relief.

5. In the appeal Sri. J. V. Suryanarayana Rao, learned counsel for the appellant strenuously contended that having given the finding by the lower Court that Ex. A1 is a true document and there was no threat extended as to the dire consequences to the defendant for execution of the document Ex. A1, the lower Court has committed grievous error of law in dismissing the suit. It is not a case of enforcement of a contract between the parties in whom there is no pre-existing right. It is a case where an unfortunate young childless widow was driven to Court, in the circumstances, seeking for maintenance of some portion out of the properties held by the members of the family of her husband. Though

the lower Court found as a fact all the findings in favour of the plaintiff, it committed error of law in holding that the Ex. A1 was brought into existence by undue influence for which there was no express plea nor an issue nor any evidence adduced in that regard. Therefore the whole approach of the lower Court is vitiated by error of law and fact.

6. Sri. C. Poornaiah, learned counsel for the respondents (defendants) on the other hand contends that the finding of the lower Court that there was a family settlement and that Ex. A1 was brought into existence at the time is not supported by any evidence. On the own evidence of the plaintiff, there was no dispute at that time and from his it is clear that defendants 1 and 2 would not have volunteered to execute Ex. A1 document. The reference is that there was some sore of undue influence exercise on the defendants to execute the document Ex. A1. The dead body was brought by about 4 p.m. Several people gathered and the dead body was not allowed to be removed for burial unless the document is executed. Defendant 2 had no volition to execute the document but for coercion and threat held out by the people and under these circumstances the finding of the lower Court that Ex. A1 is not a voluntary document is well justified. He further reiterated the stand taken that the appellant was not ready and willing to perform her part of the contract and therefore the relief of specific performance of contract cannot be granted.

7. In view of the respective contentions, the first question that arises for consideration is whether Ex. A1 was executed voluntarily by the defendants. Both the learned counsel led me through the entire oral evidence and on going through the entire evidence, I am satisfied that the document Ex. A1 was executed voluntarily. On the day when the dead body was brought to the village, it is common knowledge that every one in the village gathers there to pay their homage to the departed soul. It is in evidence that both Muslims and Hindus gathered at the dead body. Several witnesses have signed Ex. A.1. Those comprise of both Muslims and Hindus. It is admitted by the second defendant in his cross-examination that he has no enmity against any of them. His plea that he was exhausted and has no volition to execute the document, the trial Court itself disbelieved and found that the document is a true document and the witnesses are disinterested witnesses.

8. Order 6, R. 4 CPC, enjoins that in all cases in which the party pleading reliefs on undue influence, the particulars thereof have to be stated with necessary details thereof in the pleading. In this case on such plea has been taken and no issue has been framed. In the evidence, vague suggestions have been given to the witnesses but they were denied. In his evidence, D. W. 2 has stated that he was coerced that the corpse would not be allowed to be taken to the burial ground unless he signed the papers. He stated that he raised that plea in his written statement, but no such plea is taken. Even in his chief-examination he did not state it expressly. It is brought out only in the cross-examination when a suggestion was given to him. Under these circumstances it must be held that the

alleged undue influence which weighed with the lower Court is clearly an afterthought and it has no legal basis. On a consideration of the above facts and totality of circumstances. I hold that Ex. A1 was voluntarily executed by the defendants without undue influence.

9. The next question is, whether the suit for specific performance of Khararnama, Ex. A1 can be enforced. No doubt, the trial Court has the discretion and Court is not bound to grant such a relief. The discretion exercised should not be arbitrary but should be guided on sound and reasonable judicial principles, capable of being corrected by the Court of appeal, as adumbrated under S. 20(1) of the Act. In this case, the question is whether the lower Court has reasonably exercised its discretion guided by sound and judicial principles. It is now well settled by catena of decisions that the Court of appeal has got jurisdiction to consider whether the trial Court has exercised such a discretion on sound and reasonable judicial principles. The relief is discretionary and can be refused where the ends of justice do not require the relief to be granted. In other words, where justice demands that the grant of the relief of specific performance is just, reasonable or proper, the Court has to grant the relief and it would be a proper exercise of discretion. The question is whether the Court below had exercised that discretion. Exercise of discretion would posit weighing pros and cons of grant of relief in proper perspective and to arrive at the decision. Assigning reasons in support thereof is the guide through which the exercise of discretion is to be gauged. Here, it is not the normal case on enforcement of a bilateral contract between the parties who have no pre-existing right. Admittedly Ex. B3 establishes that the second respondent and the husband of the plaintiff are co-owners and the total extent purchased thereunder was Ac-7.01 cents. Though the plea was raised that the consideration was paid by the second defendant himself, no satisfactory evidence has been placed on record to that effect and therefore it must be held that the second defendant and the husband of the plaintiff are co-owners. When the appellant is admittedly a young widow having no means to support herself, both the defendants thought it appropriate to provide her maintenance and therefore the Khararnama (Ex. A1) was executed in the presence of the villagers and it was attested by as many as nine witnesses, comprised of Hindus and Muslims. P. W. 3 is the scribe. As already held, they are disinterested witnesses. It is well settled that the settlement of a family dispute may be in respect of present or future disputes that may arise. In this case, in view of the extensive business the second defendant is carrying on at Madras and in view of the other properties, they thought it expedient.....to avoid future litigation and to provide maintenance to the appellant. S. 16(c) of the Act no doubt is couched in peremptory language but it is not a mere catch word nor incantation of readiness and willingness to carry it to its logical conclusion to find out whether the party seeking specific performance is in fact ready and willing to perform his/her part of the contract. Therefore the omission to mention by the plaintiff of her readiness and willingness to perform her part of the contract is not by itself a ground to non-suit the plaintiff. It is already seen that she is an

unfortunate young widow, suddenly plucked out from family life and made bereft of her sustenance. Her husband being a co-owner had the right in the lands purchased under Ex. B-3. She has no independent means of her livelihood. Under these circumstances she could not discharge the obligations undertaken under the contract unless she is inducted into possession of the property in pursuance of Ex. A-1. Therefore, she was disabled to perform her part of the contract viz., discharge the debt contracted with D. W. 3 and payment of the funeral expenses. In view of the long lapse of time, I am of the view that she may not be mulcted at this distance of time to pay the funeral expenses which would not be possible to ascertain and the debt due to D. W. 3 as well. Accordingly I hold that the lower Court has committed grievous error of law and fact in not considering the case from the above perspective and arbitrarily refusing to decree the suit. Accordingly, the appeal is allowed, the decree of the lower Court is set aside and the suit is decreed as prayed for, with costs throughout and the costs shall be recovered from the 2nd respondent. The Court-fee payable on the Memorandum of appeal as well as on the plaint, shall be recovered from the 2nd respondent.

10. Appeal allowed.