
(2006) 11 AP CK 0115
In the Andhra Pradesh High Court
Case No : SA No. 760 of 1998

Tammineni Ramesh Naidu

APPELLANT

Vs

Giri Lakshma Swamy and Others

RESPONDENT

Date of Decision : 14-11-2006

Acts Referred:

Specific Relief Act, 1963 — Section 16

Citation : (2007) 1 ALD 410 : (2007) 1 ALT 430

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : Y.V. Ravi Prasad, for the Appellant; S. Appadhara Reddy, for the Respondent

Final Decision : Allowed

Judgement

G. Chandraiah, J.—Heard both the Counsel.

2. Aggrieved by the judgment and decree dated 18.11.1996 passed by the Court of I Additional District Judge, West Godavari at Eluru in AS No. 111/1993 in confirming the judgment and decree passed by the Court of District Munsif, Chintalapudi in OS No. 147/1988 dated 13.9.1993 in decreeing the suit for specific performance of an agreement of sale, the original defendant No. 2 filed the second appeal.

3. For the sake of convenience the parties will be referred to as per their array in the original suit.

4. The plaint averments in brief are that the defendants are agriculturists and also doing business in mangoes and are residents of Chintalapudi. For the purpose of business and family expenses, to meet the educational needs, the 1st defendant who is the father of defendants 2 and 3 expressed his intention to sell the schedule mentioned property for an amount of Rs. 15,000/-and the plaintiff agreed to purchase the same. On 25.4.1987 an agreement of sale was entered into and the plaintiff paid an amount of Rs. 10,500/- towards part of sale

consideration and the 1st defendant received the same. As per the terms of the agreement of sale, balance amount of Rs.4,500/- was to be paid on or before 24.4.1988 and the 1st defendant has to execute the registered sale deed. Though the plaintiff requested the 1st defendant to execute the sale deed by receiving the balance consideration, he evaded and therefore, the plaintiff got issued notices on 14.5.1988 and 1.6.1988 calling upon the 1st defendant to execute the sale deed. As he failed to execute the sale deed, the plaintiff filed the suit for specific performance of the agreement of sale.

5. The 1st defendant filed written statement and stated that he is an agriculturist and denied that for business and for educational purposes he expressed his intention to sell the suit schedule property for Rs. 15,000/- and that he received an amount of Rs. 10,500/- and executed the agreement of sale and that agreed to receive the balance amount of Rs.4,500/- on or before 24.4.1988 and execute the sale deed. The 1st defendant stated that he is residing with his family out of Ac.0.90 cents and in item No. 2, the defendant already sold Ac.0.77 cents to Pennetcha Sri Ramachandra Raju more than five years ago under a registered sale deed and the defendants also parted with Ac.0.50 cents to the Government for the purpose of raising a shed for installing pump sets and that in item No. 2 only an extent of Ac.0.68 cents is remaining and they raised cashew nut in the said extent. Defendants 2 and 3 who are aged 16 and 13 years respectively are studying in 10th and 7th Classes and their education is free and the 1st defendant is supporting the family from the income out of the mango business and that there is no necessity to sell away the property. As the 1st defendant required an amount of Rs. 7,500/- towards family expenses, he approached one Ibrahim Saheb and Pulla Saheb of Chintalapudi to secure loan from the plaintiff. It is the practice of the plaintiff to lend money against blank signed papers and that the 1st defendant agreed to the terms subject to A.P. Act 7/1977. The plaintiff and Pullu Saheb obtained the signatures of the 1st defendant on a stamp purchased in his name and also on two blank white papers and that the defendant No. 1 had already paid the loan amount by 24.4.1988. The plaintiff fabricated the suit promissory note and that the 1st defendant did not execute suit promissory note. The 1st defendant did not contract the loan for family legal necessities and that because of the said loan, the relations between the 1st defendant and his wife were very much strained. It is stated that if it is true that the property is agreed to be sold for family maintenance, a substantial portion of the sale consideration will not be allowed to be paid after one year. The identical property in Chintalapudi was sold at Rs.40,000/- per acre. Item No. 1 is a potential house site and fetches Rs.20/-per square yard. It is stated that the plaintiff in collusion with Pullu Saheb fabricated the suit promissory note. With these averments the 1st defendant sought for dismissal of the suit.

6. As the defendants 2 and 3 were minors, their mother filed written statement and denied the plaint averments that the 1st defendant for his family expenses and for educational needs of these defendants expressed his willingness to sell the suit schedule property for Rs. 15,000/- and that executed an agreement of

sale on 25.4.1987 and received Rs. 10,500/- agreeing to receive the balance consideration on a future date. It is stated inter alia that there is no need or necessity for the 1st defendant to sell the property for the education of defendants 2 and 3 as they are studying in a local school in 4th and 6th classes and for this purpose they shall not require even an amount of Rs. 100/-. The schedule land is a cashew garden and the remaining part is a Jama (Eucaliptus) and Sarvi garden and the income from them would be sufficient to meet the educational needs of the children. The 1st defendant was addicted to vices and sold away the properties allotted to him in the partition among his brothers and left item No. 1 and Ac.0.68 cents in item No. 2 of schedule property. On the advice of elders, the schedule property was settled in favour of the defendants 2 and 3, after deducting extents of Ac.0.15 cents and Ac.0.05 cents in item No. 2 of schedule property as they were sold and gifted away to P. Sree Rama Chandra Raju and Gram Panchayat respectively. The 1st defendant settled the schedule property by executing an agreement of settlement dated 15.8.1984 and thereafter the schedule property is in possession of these defendants. The value of the schedule property per acre will be Rs. 35,000/-. The 1st defendant sold the property to an extent of Ac.0.17 cents at the rate of Rs. 31,500/- per acre prior to settlement in their favour. It is stated that taking the advantage of the vices of the 1st defendant, the plaintiff fabricated agreement of sale. The alleged agreement of sale executed by the 1st defendant to the plaintiff is not binding on defendants 2 and 3 and it is void, as it is against the interest of these defendants. It is also stated that the plaintiff did not give any notice prior to the filing of the suit to these defendants and the plaintiff and the 1st defendant colluded to defraud these defendants. With these averments, the suit was sought to be dismissed.

7. Based on the above pleadings, the trial Court framed the following issues for trial:

1. Whether the plaintiff is entitled for specific performance of contract as prayed for?

2. Whether the sale made by the 1st defendant in favour of the plaintiff is binding on D-2 and D-3?

3. To what relief?

8. In support of the case of the plaintiff, P.Ws. 1 to 4 were examined and Exs.A-1 to A-5 were got marked. On behalf of the defendants D.Ws. 1 to 5 were examined and no document was marked.

9. The trial Court appreciating the entire evidence on record held that the plaintiff is entitled for specific performance of contract. The trial Court held that the agreement of sale executed by the 1st defendant is binding on the defendants 2 and 3, because to meet their educational needs as mentioned in Ex.A-1, the amount was harrowed. Accordingly the trial Court decreed the suit for specific performance of contract. Aggrieved thereby the defendants 2 and 3

filed appeal on the file of I Additional District Judge, West Godavari at Eluru. The lower appellate Court considering the rival contentions and the material on record framed the following issues for consideration:

1. Whether Ex.A-1 suit agreement is binding on the defendants 2 and 3 - appellants 1 and 2 herein?

2. Whether the plaintiff-1st respondent herein is entitled for the reliefs of specific performance of the suit agreement and for possession of the suit property as prayed for?

10. The lower appellate Court on re-appreciation of the entire evidence oral and documentary upheld the judgment of the trial Court and dismissed the appeal. Hence the second appeal.

11. The second appeal is admitted on the following substantial question of law:

In view of the statement of the plaintiff-purchaser that he did not make necessary enquiries as to the family necessity, whether the Courts below are justified in decreeing the plaintiffs suit on the basis of the evidence on record both oral and documentary?

12. As per the recitals in Ex.A-1 agreement of sale the suit schedule property is an ancestral property and it had fallen to the share of the defendant No. 1 and defendants 2 and 3 are the sons of the 1st defendant and they were minors as on the date of the filing of the suit. These facts are not under dispute. The case of the plaintiff is that the 1st defendant for his business and for his family expenses, to meet the educational needs of his children, expressed his intention to sell the schedule mentioned property and the plaintiff agreed to purchase the same at Rs. 15,000/- and on 25-4-1987 an agreement of sale was executed and he paid an amount of Rs. 10,500/-, agreeing to pay the balance consideration of Rs.4,500/- on or before 24-4-1988. Therefore the main case of the plaintiff is that for the benefit of defendants 2 and 3 to meet their educational needs and for the purpose of business, i.e., in other words for legal necessities, the 1st defendant had executed Ex.A-1 agreement of sale. On the other hand the 1st defendant has denied the execution of Ex.A-1 agreement of sale and also denied all the plaint averments and alleged inter alia that defendants 2 and 3 are studying 10th and 7th classes respectively and their education is free and that out of Ac.0-90 cents he sold an extent of Ac.0-17 cents to Pennetcha Sriramachandra Raju five years ago under a registered sale deed; Ac.0-50 cents to the Government and in the remaining extent of Ac.0-68 cents they have raised cashew plants and that the income derived out of mango garden is supporting the family of the defendants. The further case of the defendant is that he put his signature on a blank stamped paper and on two blank white papers for obtaining loan of Rs. 7,500/- from the plaintiff and that he paid the entire amount and the plaintiff had fabricated Ex.A-1. The mother of the defendants 2 and 3 filed separate counter on behalf of these defendants and while reiterating the averments of the 1st defendant with regard to sale of property further stated

that the 1st defendant was addicted to vices and never cared for the family and that on the advise of elders the schedule property was settled in favour of defendants 2 and 3 by the 1st defendant by executing an agreement of settlement dated 15-8-1984. The further contention is that the value of the schedule land will be Rs.35,000/- per acre and the consideration fixed for the schedule property is very low and with these averments the suit was sought to be dismissed.

13. At the cost of repetition it is to be seen that the case of the plaintiff is that the 1st defendant executed Ex.A-1 for legal necessities and Ex.A-1 also contains recitals to that effect. A Division Bench of this Court in B. Ranga Rao (died) and others Vs. G. Venkata Krishna Rao and others, , held that the karta of the Hindu joint family has got the power to alienate the joint family property only for legal necessity or for the benefit of the family and where the sale of joint family property is for the benefit of the family, the alienee has to take reasonable care to find out whether the sale, in fact, was for the benefit of the family on the date of transaction, which includes to find out that the sale was for the purchase of other property or better investment; that the sale consideration was actually utilized for the purpose of purchasing other lands for the benefit of the family. The Division Bench further held that the alienees had to establish one of the following two things viz., (i) the transaction was in fact justified by legal necessity or for the benefit of the estate, or (ii) they had made reasonable and bona fide enquiries as to the existence of the necessity and satisfied themselves that the manager was acting for the benefit of the estate. The Division Bench considering various judgments of the Apex Court and other High Courts noted the guidelines laid down by different High Courts, at Paragraph No. 29 of the judgment and the same are extracted as under for better appreciation:

All the above cited judgments laid down the following principles:

1. The Kartha of Hindu Joint Family has got the power to alienate the joint family property only for legal necessity or for the benefit of the family;
2. Whether the joint family property is sold for legal necessity or for the benefit of the family, the degree of prudence which is required for the Kartha of the joint family, who is not the sole owner of the property is greater than that of the owner, and like a trustee.
3. When the sale is only for legal necessity, the burden on the alienee is to show that the sale itself was justified by legal necessity and he is under no obligation to enquire into application of sale amount in detail by the Kartha as alienee has no control over him.
4. Where the sale of joint family property is for the benefit of the family, the alienee has to take reasonable care to find out whether the sale, in fact, was for the benefit of the family on the date of transaction, which includes to find out that the sale was for the purchase of other property or better investment; that the sale consideration was actually utilized for the purpose of purchasing other

lands for the benefit of the family.

30. The alienees, in this case, therefore, had to establish one of the following two things - (i) the transaction was in fact justified by legal necessity or for the benefit of the estate, or (ii) they had made reasonable and bona fide enquiries as to the existence of the necessity and satisfied themselves that the manager was acting for the benefit of the estate.

14. In view of the above judgment of the Division Bench of this Court, now it is necessary to examine whether execution of Ex.A-1 agreement of sale by the 1st defendant is for the legal necessities and for the benefit of defendants 2 and 3 or whether the plaintiff could discharge his burden with regard to existence of legal necessities and that he made reasonable enquiries for the said purpose.

15. As already noted above the suit schedule property is an ancestral property and there is also recital with regard to the same in Ex.A-1 agreement of sale and there is no dispute in this regard. Ex.A-1 also contains a categorical recital that for family expenses and for the educational development of defendants 2 and 3, the defendant No. 1 agreed to sell the suit schedule property to the plaintiff for Rs. 15,000/-. Ex.A-1 was alleged to be executed by the 1st defendant in favour of the plaintiff. To prove the case of the plaintiff he got examined himself as P.W.I. In his evidence he deposed that he purchased the mango garden for Rs. 15,000/- and paid Rs. 10,500/- and got executed the agreement of sale from D-1 four years back; that Ex.A-1 was written by one Prasad; that he demanded for execution; the defendant refused and he was ready and willing to perform his part of contract; he got issued the notice to the defendant; Ex.A-2 is office copy of notice and Ex.A-3 is another notice and returned covers are marked as Exs.A-4 and A-5; he filed the suit for execution of the sale deed; that the amount was taken for the purpose of children education and business and he utilized the amount and; the plaintiff knows the brothers of the defendant and their partition. Further the plaintiff admitted that in the boundaries, jam oil trees are there and it was not written in his agreement and the yield from the mango trees is about Rs. 10,000/-. Coming to the cross-examination he deposed that he did not enquire whether the children are studying in school and whether they are going to school from the house or hostel and how much amount could be necessary for their studies and in which school they are studying. He also deposed that he does not know why the 1st defendant was selling the land and that he knew that the defendant was doing business and agriculture and was not having any bad habits. Therefore from these statements in the cross-examination it is clear that the case of the plaintiff that Ex.A-1 was executed for family expenses and educational development of defendants 2 and 3 in other words for legal necessities is demolished, inasmuch as in the cross-examination he deposed that he do not know anything about the educational particulars of defendants 2 and 3 and further he categorically deposed that he do not know why the 1st defendant was selling the land. In the chief-examination he admitted that in the boundaries of the schedule property there are jam (Euculoptus) trees and it was not written

in the agreement and the yield from the mango trees is about Rs. 10,000/-. Therefore the case of the plaintiff that Ex.A-1 was executed by the 1st defendant for legal necessities is not established and it can also be concluded that the recitals in Ex.A-1 with regard to legal necessities were written only to see that the transaction could pass the legal test and therefore, it can safely be further concluded that Ex.A-1 is not executed for any legal necessities. Both the Courts below lost sight of this piece of evidence in the cross-examination of P.W. 1 and proceeded mainly relying on the recitals in Ex.A-1, as the same was proved by examining the scribe and attestors. As already noted above, the Division Bench of this Court in *B. Rangarao (died) v. G. Venkata Krishna Rao (supra)*, has held that in case of sale of Hindu joint family properties by the Karta the alienees had to establish either the transaction was in fact justified by legal necessity or for the benefit of the estate or they had made reasonable and bona fide enquiries as to the existence of the necessity and satisfy themselves that the manager was acting for the benefit of the estate. The plaintiff could not establish any one of the conditions stipulated by the Division Bench in the decision of *B. Rangarao (died) v. G. Venkata Krishna Rao (supra)*.

16. A perusal of the decisions relied on by the Counsel for the respondents - plaintiff reported in *Sunder Das v. Gajananrao AIR 1997 SCW 757: 1997 (3) ALD (SCSN) 48*, *Mukesh Kumar and Others Vs. Col. Harbans Waraich and Ors*, *Jagir Singh Vs. Amarjit Singh and Another*, *V.V.V. Ramaraju and another Vs. Korada Malleswara Rao and others*, and *Kolasani Sivakumari and others Vs. Kolasani Sambasiva Rao and others*, would reveal that there is evidence on record for the respective Courts to come to the conclusion that there was legal necessity for the sale of ancestral property by the Karta of the joint Hindu Family and accordingly it was held that such concurrent findings cannot be interfered with and as such the documents executed by the Karta of the joint family were held to be binding on the minors. But in the present case, as already discussed above the case of the plaintiff that Ex.A-1 was executed for legal necessities was demolished by his own testimony in the cross-examination and this important piece of evidence was lost sight of by both the Courts below and they proceeded on the assumption that there were legal necessities. Hence, the said judgments cannot be made applicable for the facts of the present case.

17. Coming to the evidence adduced on behalf of the defendants, the 1st defendant was examined as D.W.I he reiterated the averments made in his written statement. The mother of the defendants 2 and 3 was examined as D.W.4 and she also reiterated the averments made in the written statement and deposed about the statement made by the 1st defendant in favour of defendants 2 and 3. The other witnesses examined on behalf of the defendants also supported the version of the defendants. The defendants did not produce any settlement alleged to have been made by the 1st defendant in favour of defendants 2 and 3. As already stated above, the plaintiff failed to prove that Ex.A-1 was executed for legal necessities. Therefore, though the defendants did not produce any documentary evidence in support of their case, no adverse

inference can be drawn, because the plaintiff has to establish his case and cannot rely on the weakness of the defendants.

18. However, it could be seen that from the evidence of on record, that the execution of Ex.A-1 is proved by the plaintiff by examining the scribe and attestors and though the recitals with regard to legal necessities is not proved, passing of the consideration of Rs. 10,500/-under Ex.A-1 is proved and the signature of 1st defendant also admitted by him. Therefore in the interest of justice, the 1st defendant is directed to pay the said amount with interest at the rate of 6 per cent per annum from 25-4-1987 till the date of payment.

19. The contention of the Counsel for the appellant/defendant No. 2 that the plaintiff could not establish that he was willing to perform his part of the contract as per Section 16 of the Specific Relief Act and hence cannot seek for specific performance of contract, need not be gone into in view of the finding that the plaintiff could not establish the existence of legal necessities.

20. The lower appellate Court has recorded that the 3rd defendant attained majority during the pendency of the suit and no steps were taken to declare him as major and he also did not file any separate written statement accepting or avoiding the suit contract. This objection was not taken at the earliest point of time and further this has not caused any injustice or prejudice to the plaintiff-respondent. During the course of arguments before the lower appellate Court, the Counsel for the plaintiff submitted that the 2nd defendant died long back after filing of the appeal and the Counsel for the 2nd defendants i.e., 1st appellant before the lower appellate Court did not deny the same and, therefore, as the legal heirs of the 1st defendant were not brought on record, the appeal was abated. Evidencing death of the 2nd defendant no document or any memo was filed by either side. Further in the grounds of second appeal it is stated that the 2nd defendant lives happily. However, the lower appellate Court has taken this as a technical aspect of the matter and further the present second appeal is admitted on the substantial question of law which is noted above.

21. For the foregoing reasons the substantial question of law framed is answered in the affirmative and the second appeal is allowed to the extent indicated above. In the circumstances of the case there shall be no order as to costs.