
(2014) 06 AP CK 0004

In the Andhra Pradesh High Court

Case No : Second Appeal No. 638 of 2013

Tammiseti Nageswara Rao

APPELLANT

Vs

Darsi Radhakrishna Murthy

RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:

Citation : (2015) 1 ALD 203 : (2015) 3 ALT 673

Hon'ble Judges : L.N. Reddy, J

Bench : Single Bench

**Advocate : S. Subba Reddy for V.L.N.G.K. Murthy, Advocate for the Appellant;
N. Subba Rao, Advocate for the Respondent**

Final Decision : Partly Allowed

Judgement

L. Narasimha Reddy, J.—The defendants in O.S. No. 63 of 2001 on the file of the Court of Senior Civil Judge, Bapatla, filed this Second Appeal, feeling aggrieved by the decree dated 15-07-2009, passed in that suit and affirmed by the Court of VI Additional District Judge (Fast Tract Court), Guntur, in A.S. No. 40 of 2011, dated 14-03-2013.

2. For the sake of convenience, the parties are referred to, as arrayed in the suit.

3. The plaintiff filed the suit for the relief of specific performance of an agreement of sale, dated 09-04-2001. It was pleaded that the defendants agreed to sell the suit schedule property for a sum of Rs. 3,50,000/-, and accordingly the agreement of sale was executed. On the date of agreement, a sum of Rs. 2 lakhs is said to have been paid. It was also pleaded that the balance of Rs. 1,50,000/- was to be paid by 24-05-2001, and the defendants were under obligation to execute the sale deed and that if the balance of consideration is not paid, as stipulated, it shall carry interest at 24% per annum. The agreement also provided for removal of timber and saw-mill and other sheds from the suit schedule property and delivery of vacant possession thereof, at the time of execution of the sale deed.

4. The plaintiff further pleaded that though he was ready and willing to perform his part of the contract, the defendants refused to receive the consideration and to execute the sale deed. He has also pleaded that there is no obligation to pay interest at 24% per annum, since the breach was on the part of the defendants. Reference was made to the legal notice dated 06-06-2001. It was also pleaded that the property was mortgaged to the 3rd defendant (2nd respondent), despite the existence of the agreement of sale.

5. The suit was opposed by the defendants 1 and 2, by filing a written-statement. It was pleaded that the 1st defendant was the owner of the property and he mortgaged the same to the Indian Overseas Bank as a security for repayment of the loan, and that his wife, the 2nd defendant, and the plaintiff stood as guarantors. It was alleged that the agreement of sale was executed for nominal purpose, and no consideration was paid thereunder. The 3rd defendant did not file any written-statement.

6. The trial Court decreed the suit, through judgment dated 15-07-2009. The appeal preferred by the defendants 1 and 2 was dismissed.

7. Sri S. Subba Reddy, learned counsel for the defendants 1 and 2 submits that the plaintiff was very much aware of the existence of the mortgage, in respect of the suit schedule property in favour of M/s. Indian Overseas Bank, and that the absence of any reference to that transaction in the agreement of sale, would disclose that it was only nominal in nature. He submits that the plaintiff took advantage of a document, which was brought into existence, out of apprehension, and the equitable relief of specific performance ought not to have been granted in his favour.

8. Sri N. Subba Rao, learned counsel for the plaintiff, on the other hand, submits that the sale of the property in favour of the plaintiff was, in fact, to liquidate the loan to the M/s. Indian Overseas Bank and for other purposes, and that there is no legal infirmity in the transaction. He submits that once the execution of the agreement of sale is not denied, and the plaintiff expressed his readiness and willingness to perform his part of the contract, hardly there exists any alternative for the trial Court, other than the one, of decreeing the suit.

9. The suit filed by the plaintiff was the one, for specific performance of an agreement of sale. The 1st defendant did not dispute the agreement of sale, marked as Ex. A-1. Taking into account, the pleadings before it, the trial Court framed the following issues for its consideration:

1. Whether the contract of sale Dt. 9-4-01 is true, valid and binding?
2. Whether the defendants did not execute the contract with intention to sell the property?
3. Whether; the plaintiff is entitled to specific performance of contract as prayed for?

4. Whether the reconveyance agreement Dt. 15-4-01 alleged in the written statement is true, valid and binding?

Additional Issue:

Whether the registered mortgage deed Dt. 10.4.01 in favour of the 3rd defendant is true?

10. On behalf of the plaintiff, PWs 1 to 5 were examined and Exs. A-1 to A-8 were filed. On behalf of the defendants 1 and 2, D.W. s 1 to 3 were examined and Ex. B-1, re-conveyance agreement was filed.

11. The trial Court decreed the suit and in the appeal preferred by the defendants 1 and 2, the lower Appellate Court framed the following points for its consideration:

1. Whether the plaintiff is entitled for specific performance of contract of sale Dt. 9-4-2001 as prayed for?

2. Whether the judgment of the lower court is sustainable in law and on facts? and the appeal was dismissed.

12. It is not in dispute that the 1st defendant is the registered owner of the suit schedule property and there existed a saw-mill, upon it. The plaintiff pleaded that the 1st defendant and his wife, the 2nd defendant, executed the agreement of sale Ex. A-1 on 09-04-2001, in respect of the suit schedule property. The total consideration was said to be Rs. 3,50,000/- and a sum of Rs. 2 lakhs was said to have been paid on the date of agreement. 24-05-2001 was agreed as the date by which, the balance of consideration must be paid. There is also a clause to the effect that, in case the plaintiff fails to pay the balance of consideration, by the agreed date, he shall be under obligation to pay interest at 24% per annum thereon. Alleging that though he offered to pay the balance of consideration within the stipulated time, the defendants 1 and 2 failed to perform their obligation, the plaintiff got issued a legal notice dated 06-06-2001, Ex. A-2. The postal acknowledgements of receipt of the same, by defendants 1 and 2, are marked as Exs. A-3 and A-4.

13. The plea raised by the defendants 1 and 2 was that the property was already mortgaged by the 1st defendant to the Indian Overseas Bank, in the year 1996; the plaintiff himself figured as a guarantor along with D-2, and that Ex. A-1 was brought into existence only as a preemptive step, in the event of the Bank filing a suit for recovery. Assuming that there existed a mortgage deed in favour of the Indian Overseas Bank, vis-?-vis the suit schedule property, that does not come in the way of the 1st defendant selling the property. The only difference would be that what stands transferred is the equity of mortgage. The purchaser would be step into the shoes of the mortgagor, and the right of the mortgagee remains intact.

14. Apart from not denying the execution of Ex. A-1, the defendant No. 1 came

forward with the plea that the plaintiff executed a deed of re-conveyance dated 15-04-2001, marked as Ex. B-1. The trial Court recorded a clear finding to the effect that the defendants failed to prove the execution of Ex. B-1 by the plaintiff. The net result is that the execution of Ex. A-1 is proved and its legal enforceability remained intact.

15. The relief of specific performance of an agreement of sale is, no doubt, discretionary. However, the discretion is required to be guided by the facts, that are pleaded and proved before the Court, and not in an arbitrary manner. Once the plaintiff proves all the ingredients of a transaction, and makes out a case for specific performance, the Court cannot refuse the relief, taking the shelter under the concept of the relief of specific performance, being discretionary. This Court does not find any question, much less a substantial question of law. Both the trial Court as well as the lower Appellate Court have concurrently held all the issues and points in favour of the plaintiff.

16. One fact, however, that impresses this Court is that more than a decade has elapsed, ever since the agreement of sale was executed, and there is phenomenal increase in the value of the property. The fact that a provision is made for levy of interest at 24% per annum, the balance of consideration, if it is not paid within the stipulated time, discloses the intention of the parties. It is felt that ends of justice would be met, if the plaintiff is required to pay a sum of Rs. 1 lakh (Rupees one lakh only), over and above, the amount covered by Ex. A-1. The suggestion was readily accepted by the learned counsel for the plaintiff.

17. Therefore, the Second Appeal is partly allowed, modifying the decree passed by the trial Court to the extent that the balance of sale consideration payable by the plaintiff shall be Rs. 2,50,000/- instead of Rs. 1,50,000/-.

18. There shall be no order as to costs.