
(1997) 05 AP CK 0005

In the Andhra Pradesh High Court

Case No : L.P.A. No. 105 of 1996 and L.P.A.SR No. 39280 of 1996

Tatavarthi Jagannadham (died) per L.R. APPELLANT

Vs

Akkineni Radhakrishna (Plaintiff) and Another RESPONDENT

Date of Decision : 02-05-1997

Acts Referred:

Citation : (1997) 3 ALT 661 : (1997) 2 APLJ 276 : (1997) 2 CivCC 163 : (1998) 1 RCR(Civil) 177

Hon'ble Judges : M.N. Rao, J;C.V.N. Sastri, J

Bench : Division Bench

Advocate : M. Ravindranath Reddy, for the Appellant; K.V. Subrahmanya Narsu, for the Respondent

Judgement

C.V.N. Sastri, J.—These two L.P.As., one filed by the defendant and the other filed by the plaintiff respectively arise out of a suit filed for specific performance of an agreement of sale dated 15-12-1984 (Ex.A-1) executed by the defendant in favour of the plaintiff in respect of a total extent of Ac.0-43 cents of vacant land in Nuzvid town. The execution of the agreement was not disputed by the defendant. The defendant, however, resisted the suit mainly on two grounds. Firstly, time was of the essence of the contract and inasmuch as the plaintiff failed to perform his part of the contract within the time stipulated in the agreement, he was not entitled to enforce the contract. Secondly, the plaintiff came to Court with unclean hands making false allegations and setting up a false claim for Plot No. 21 which was not covered by the suit agreement and as such he was disentitled for the equitable relief of specific performance.

2. The trial Court decreed the suit in toto granting the relief of specific performance in respect of the entire extent of Ac.0-43 cents as claimed by the plaintiff. But on appeal the learned Single Judge, however, modified the decree restricting the relief to Ac. 0-25 cents only and negated the claim of the plaintiff for the remaining extent of Ac.0-18 cents holding that the plaintiff failed to establish that the suit agreement includes Plot No. 21. Dissatisfied with the

judgment of the learned Single Judge, both sides have filed the present Letters Patent Appeals.

3. Sri M.V. Ramana Reddy, the learned Counsel appearing for the defendant (appellant in L.P.A. No. 105 of 1996) has vehemently contended that the trial Court as well as the learned Single Judge erred in holding that time was not of the essence of the contract. According to him, having regard to the admitted fact that the suit agreement dated 15-12-1984 was the result of a mediation by which the prior disputes between the parties were settled and it was specifically stipulated in the agreement that the plaintiff had to pay the sale consideration of Rs. 36,900/- on or before 14-12-1985 (sic. 15-2-1985), time must be regarded as the essence of the contract. We are, however, not impressed with this submission. The normal principle is that in case of contracts relating to the sale of immovable property, time is not treated as the essence of the contract unless the parties have intended it to be so. Time can be made the essence of the contract either by an express stipulation to that effect in the contract or it may also be inferred from the facts and circumstances of the case. Even if time was not originally made the essence of the contract, it can be made so by a subsequent notice fixing a reasonable time for performance. In the instant case there is no express stipulation in the suit agreement making time the essence of the contract. The mere fact that a date was fixed in the agreement for performance does not by itself make the stipulation as to the time the essence of the contract. (See Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and Another, .

4. Time stipulated in the contract for performance is 15-2-1985. The plaintiff issued notices on 23-3-1985 and 25-3-1985 calling upon the defendant to execute the sale deeds in terms of the original agreements dated 22-9-1982 and 15-8-1983. To the said notices the defendant sent a reply dated 6-4-1985 taking the stand that as per the fresh agreement dated 15-12-1984 (Ex.A-1), the plaintiff had to pay the sale consideration on or before 15-2-1985, that time was the essence of the contract and that since the plaintiff committed breach of the contract the agreement stood cancelled. The suit itself was filed on 29-4-1985 without any delay. On these facts we are clearly of the opinion that the contention of the learned Counsel for the defendant that time "is of the essence of the contract has no force.

5. Sri Ramana Reddy has next contended that the learned Single Judge, having rightly come to the conclusion that Plot No. 21 was not covered by the suit agreement, erred in partly decreeing the suit instead of dismissing the suit in toto as the plaintiff has come to Court with unclean hands setting up a false case. In support of these submissions, Sri M.V. Ramana Reddy has placed reliance on the decisions reported in Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others, . and M.N. Mohammad Mirza alias Mirza Vs. B. Subhan Saheb, . On the other hand, Sri. K.V. Subrahmanya Narsu, the learned Counsel for the defendant (sic. plaintiff), has tried to canvass (sic. question) the correctness of the finding of the learned Single Judge that Plot No. 21 is not

covered by the suit agreement. He has also submitted that, in any case, failure of the plaintiff to substantiate his case fully does not amount to coming to the Court with unclean hands so as to disentitle him to the relief of specific performance and the rulings cited by the learned Advocate for the plaintiff (sic. defendant) have no application to the instant case. He further submitted that there are no valid grounds to interfere with the discretion exercised by the learned Single Judge in the absence of any substantial error committed by the learned Single Judge. In support of the said submission, the learned Counsel for defendant (sic. plaintiff) sought to place reliance on the judgment of a Division Bench of this Court in *Raja Ratan Gopal Sainchar (Died) and Others Vs. Rajendra Prasad and Others*, .

6. It is not in dispute that prior to Ex.A-1., the defendant executed two agreements of sale dated 22-9-1982 and 15-8-1983 agreeing to sell to the plaintiff Ac.1-50 cents and Ac.1-93 cents respectively. Pursuant to the said agreements, the defendant executed certain sale deeds in favour of the nominees of the plaintiff for a portion of the lands agreed to be sold. As the defendant failed to execute the sale deeds for the remaining extents, disputes cropped up between the parties and the same were ultimately resolved by mediation which resulted in the execution of the fresh agreement dated 15-12-1984 under which the defendant agreed to convey to the plaintiff a total extent of Ac.0-43 cents i.e., Ac.0-10 cents out of the land covered by the original agreement dated 22-9-1982 and Ac.0-33 cents out of the land covered by the agreement dated 15-8-1983. Admittedly the entire land which was the subject matter of the transactions between the parties was divided into plots and most of the plots were sold away to the nominees of the plaintiff by the defendant long prior to the execution of Ex.A-1. The plaintiff figured as an attestor in all those sale deeds. Ex.B-5 is one such sale deed. The plan attached to the said sale deed shows that the lands agreed to be sold by the defendant to the plaintiff comprised plots 1 to 20 only. Plot No. 21 was not included therein. However, Ex.A-1 does not specify the plots which are agreed to be sold thereunder. It merely mentions that a total extent of Ac.0-43 cents (Ac.6-33 (sic. 10) cents plus Ac.0-33 cents) was agreed to be conveyed by the defendant to the plaintiff. Two plans were appended to the plaint. Plan-A is in respect of Ac.0-10 cents of land and Plan-B is in respect of Ac.0-33 cents of land. In both the plans certain Plot Nos. are mentioned. According to the plaintiff Ac.0-10 cents of land, which is shown as Item No. 1 in the plaint schedule, corresponding to Plot No. 3 whereas Ac.0-33 cents of land corresponding to Plot Nos. 1, 2, 4, 10 and 17. It is his further case that as Plot Nos. 4, 10 and 17 were lost due to the formation of roads, it was agreed at the time of the suit agreement that the defendant should convey to the plaintiff Plot No. 21 of an extent of Ac.0-18 cents even though the same was not part of the lands originally agreed to be sold. The defendant disputed this version of the plaintiff and according to the defendant Plot No. 21 is not covered by the suit agreement at all. The version of the plaintiff with regard to Plot No. 21 is not at all borne out by the recitals in Ex.A-1. If really there was

any such agreement with regard to Plot No. 21 as pleaded by the plaintiff, the same should have been incorporated in Ex.A-1. Further the plaintiff has come forward with this, version for the first time in his evidence and it was not specifically pleaded in the plaint. The learned Single Judge, therefore, rightly held that Plot No. 21 is not covered by the suit agreement and as such the plaintiff has no claim over it. We do not, therefore, find any merit in .L.P.A.(SR) No. 39280 of 1996 and it has to fail.

7. It now remains to be seen whether the plaintiff is disentitled for the equitable relief of specific performance altogether on the ground that he has come to Court with unclean hands. In *Lourdu Mari David v. Louis Chinnaya Agogiaswamy* (2 supra), the Supreme Court held that it is settled law that the party who seeks to avail of the equitable jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands. In other words, the party, who makes false allegations, does not come with clean hands and is not entitled to the equitable relief. In the instant case the learned Single Judge, having rejected the claim of the plaintiff so far as Plot No. 21 is concerned, granted a decree for the remaining extent of Acs.0-25 cents observing that failure to establish a claim is different from setting up a false claim and a decree can be granted in favour of the plaintiff for the rest of the land as the defendant has admitted in his pleadings and evidence that he is willing to execute the sale deed. With respect, we are unable to agree with this view of the learned Single Judge. As already noticed above, the plaintiff was fully aware that Plot No. 21 was not part of the land agreed to be sold and yet he deliberately included the same in the plaint plans and set up a false claim for the said plot. Though he did not make any specific averments in this behalf in the notices issued by him before filing the suit or even in the plaint, in his evidence he came out with the version that before the mediators it was settled that because of certain plots of land being lost due to formation of roads, the defendant agreed that Plot No. 21, which did not form part of Ex.A. 1 agreement, should be given to him. Further we do not find from the pleadings or the evidence that the defendant made any admission that he is willing to execute the sale deed for the rest of the land as observed by the learned Single Judge. In reply to a specific question put to him whether he has to register Plot No. 3 in favour of the plaintiff, the defendant stated that he has to register Ac.0-10 cents of plot and unless he verifies he cannot say that it is Plot No. 3 or some other Number. He further stated that as per the agreement, he has to register Plot No. 3 of Plan-A attached to the plaint. He added that that was the position if the plaintiff performed his part by 15-2-1985. He also stated that as per Plan-B of the plaint, he has to execute sale deeds for Plot Nos. 1,2,4,10 and 17 and not Plot No. 21, as it is not a part of the sale agreement. The said evidence of the defendant cannot be construed as an admission that he is willing to execute the sale deed in favour of the plaintiff for the rest of the land excluding Plot No. 21. Even as per the judgment cited by Mr. Subramanya Narsu in *R.R. Gopal Sainchar v. Rajendra Prasad* (4 supra), it is open to the Division Bench exercising jurisdiction under Clause 15 of the Letters

Patent to disturb a finding of fact reached by the learned Single Judge which is against the evidence on record.

8. For all the aforesaid reasons, we are satisfied that the learned Single Judge erred in granting a decree for specific performance in respect of Ac.0-25 cents. We are of the view that the plaintiff is disentitled to the equitable relief of specific performance altogether as he deliberately set up a false case including Plot No. 21 which is not covered by the suit agreement.

9. In the result L.P.A. No. 105 of 1996 filed by the defendant is allowed and LPA. (SR) No. 39280 of 1996 filed by the plaintiff is dismissed. Each party shall bear its costs throughout.