

(2008) 05 SC CK 0063

In the Supreme Court Of India

Case No : Civil Appeal No. 3407 of 2008 (Arising out of SLP (C) No. 3658 of 2007)

Thota Lakshmi Venkata Bala

APPELLANT

Vs

Muttamsetti Seethamma

RESPONDENT

Date of Decision : 08-05-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2008) 4 AWC 3967 Supp : (2008) 11 JT 115 : (2008) 4 PLJR 69 : (2008) 8 SCALE 639 : (2008) 11 SCC 218

Hon'ble Judges : P. Sathasivam, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Annam D.N. Rao and Rita Kumari Gupta, for the Appellant; I. Venkatanarayana and T. Anamika Advocate, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Leave granted.

2. This appeal is directed against the judgment and order of the High Court of Judicature, Andhra Pradesh at Hyderabad dated 19.10.2006 in Appeal Suit No. 725 of 2000 whereby the High Court dismissed the appeal filed by the appellant herein u/s 96 of the C.P.C. against the judgment and decree dated 8.2.2000 passed by the Principal Senior Civil Judge, Vijayawada in O.S. No. 655 of 1992 directing the appellant herein to execute and register the sale deed in pursuance of the agreement of sale dated 19.8.1991 in favour of the respondent herein and deliver possession of the plaint schedule property to her within the prescribed time.

3. The short facts leading to the filing of the above appeal as stated in the SLP are as under:

On 06.11.1957, the grand father of the appellant herein settled an extent of Acres 0.62 cents of vacant land situated in Vidhyadahara puram, Vijaywada with

old demarcation No. 48/2A, Revenue Survey No. 12/23 in favour of the appellant herein. The appellant and her husband had borrowed amounts from the respondent herein from time to time for family expenses and other purposes which came to Rs. 1,50,000/-. When the respondent demanded the amount, the appellant showed her inability to pay the said amount and she made proposal to the respondent to join as a partner in the proposed partnership firm to be commenced by her. The respondent accepted for the same and the understanding between them came into writing in the year 1988. However, the firm was dissolved before its formation. Again, the respondent demanded the money. At that stage, the appellant had executed an agreement of sale in favour of the respondent on 19.8.1991 agreeing to sell the plaint schedule property to the respondent for a sum of Rs. 1,50,000/- in lieu of discharge of amount. The appellant had executed a General Power of Attorney in favour of her son permitting him to execute the sale deed on her behalf. However, she cancelled the sale deed on 06.08.1992 without informing the respondent. On 10.8.1992, the appellant got issued a notice demanding the balance amount of Rs. 50,000/- with interest @ 18% p.a. from 30.8.1986 and have the sale executed and registered. The respondent responded to the notice through her advocate denying any liability of making the payment of Rs. 50,000/- and that time cannot be made the essence of the contract. The respondent herein filed suit for specific performance of contract of sale based on the sale agreement dated 19.8.1991. On 8.2.2000, the trial Court decreed the suit and the defendant was directed to execute and register the sale deed within the time prescribed in the order. Aggrieved by the said order, the appellant herein filed Appeal Suit No. 725 of 2000 in the High Court. On 19.10.2006, the learned single Judge of the High Court dismissed the appeal suit. Against the aforesaid judgment and order of the learned single Judge, the appellant has preferred this appeal by way of special leave before this Court.

4. Heard Mr. A.D.N. Rao, learned Counsel appearing for the appellant and Mr. I. Venkatanarayana, learned senior counsel appearing for the respondent.

5. The only point for consideration in this appeal is whether the trial Court is justified in granting decree for specific performance in respect of the suit property and the High Court is right in affirming the same by dismissing the appeal filed by the defendant.

6. It is the specific case of the plaintiff that the defendant is the absolute owner of the plaint schedule property by virtue of a settlement deed executed by her grand-father on 06.11.1957 and the same is in her possession and enjoyment. Since the plaintiff and defendant are related, the defendant had agreed to sell the plaint schedule property to the plaintiff. The defendant had borrowed amount from the plaintiff for her family expenses and other purposes from time to time up to an extent of Rs. 1,50,000/-. When the plaintiff had demanded the said amount from the defendant, she conveyed her inability to pay the same. Instead of paying the amount to the plaintiff, the defendant requested her to join as a

partner in the proposed partnership firm to be commenced by her. This was accepted by the plaintiff. At this stage, according to the plaintiff, the defendant had executed an agreement to sell in her favour on 19.08.1991 agreeing to sell the plaint schedule property. It is the definite case of the plaintiff that in the said document, it is clearly recited that the defendant had received the entire consideration on installment basis and further recited that the consideration was moved from the plaintiff to the defendant. In the sale agreement, no specific period was mentioned to register the document in favour of the plaintiff. On the other hand, it was mentioned that whenever the plaintiff made a demand to register the document, the defendant has to register the same. It was her further case that in spite of several demands, the defendant failed to comply with the same which necessitated her to file a suit for specific performance and for possession of the plaint schedule property.

7. The defendant, in her written statement, admitted that the plaintiff is the wife of the defendant's senior paternal uncle. Though execution of the agreement dated 19.08.1991 was admitted, it was stated that she innocently executed the said agreement in favour of the plaintiff at the instance of plaintiffs son Kanakarao and plaintiff. She denied all the documents such as agreement dated 30.06.1986, partnership deed dated 25.09.1988 as well as agreement dated 19.08.1991 and special Power of Attorney deed dated 19.08.1991. It was also her case that neither the defendant nor her husband ever borrowed any amount for any purpose from the plaintiff or her son.

8. With the above pleadings, the Principal Senior Judge settled the following issues for trial:

1. Whether the plaintiff is entitled for specific performance of the agreement of sale dt. 19.08.1991?
2. Whether the suit sale agreement dt. 19.08.1991 is devoid of consideration as pleaded by the defendant?
3. Whether the plaintiff and her son were exercising their undue influence over the defendant and her husband in connection with the suit transaction?
4. Whether the plaintiff complied her part of the contract against the defendant?
5. Whether the suit sale agreement has stood rescinded and cancelled as pleaded by the defendant ?
6. Whether the plaintiff is entitled for possession of the plaint schedule property?
7. To what relief?
9. Before the trial Court, namely, Principal Senior Civil Judge, Vijayawada, three witnesses were examined as P.Ws 1 to 3 and Exh. A1 to A6 were marked on the side of the plaintiff, whereas the defendant herself was examined as D.W.I besides examining D.Ws 2 and 3 and marking documents Exh. B1 to B6.

10. By judgment and decree dated 08.02.2000, on consideration of the oral and documentary evidence, the learned trial Judge accepted the case of the plaintiff and granted decree for specific performance of agreement of sale dated 19.08.1991.

11. Aggrieved by the aforesaid decree of the trial Court, the defendant filed an appeal being A.S. No. 725 of 2000 before the High Court of Andhra Pradesh u/s 96 CPC. The learned Single Judge determined the following issues for consideration:

1. Whether the defendant executed Ex.A-1 agreement of sale having received the entire sale consideration as mentioned therein?
2. Whether the plaintiff is not entitled for the discretionary relief of specific performance?
3. Whether the plaintiff is entitled to costs awarded in the suit?

After analyzing the evidence let in by both parties and the judgment of the trial Court, the High Court accepted the conclusion and confirmed the judgment and decree of the trial Court and dismissed the appeal of the defendant.

12. As mentioned earlier, both parties are related, namely, the plaintiff is the paternal aunt of the defendant. Though the defendant had denied execution of all the documents including the suit agreement of sale as rightly pointed out by the High Court, D.W.I in her evidence has specifically stated that she received Rs. 1.00 lakh from the plaintiff out of the total sale price of Rs. 1,50,000/-. She also stated that the plaintiff has to pay the balance of Rs. 50,000/- and interest thereon at 18% p.a. to her. It is relevant to point out that because both the plaintiff and defendant are related, an agreement Exh.B2 dated 30.08.1986 was executed wherein the defendant agreed to sell her certain lands which remained unsold. They also entered into partnership under a partnership deed Exh.B1 dated 25.09.1988 in and by which both agreed to do business in partnership by constructing apartments and sell them to third parties and share profits equally. Exh. B2 to B5 support the same. However, since the project was not materialized, D.W.I executed the suit agreement of sale Exh.A1 dated 19.08.1991 in favour of the plaintiff admitting that she had received Rs. 1,50,000/- towards sale consideration. In the light of the assertion of the plaintiff that defendant had changed her stand, we also verified the recital in the sale agreement as well as the evidence let in by both parties. As rightly pointed out by Mr. I. Venkatanarayana, learned senior counsel for the respondent, now the defendant cannot be permitted to go against the contents of a document, namely, Exh.A1 P.W.I and her son P.W.2 proved the contents of Exh.A1 as well as Exh. B2. P.W.3, one of the attestors of Exh.A1, reiterated the specific stand taken by P.Ws.1 and 2. Though D.W.I and D.W.2 denied in their evidence about the execution of Exh.A1 and the amount mentioned therein, in the light of the recital in the agreement of sale (Exh.A1) as well as Power of Attorney (Exh.A6), the stand taken by the defendant is liable to be rejected. It is too late a day for the

defendant to contend that the defendant did not receive the entire sale consideration.

13. Another fallacy in the case of the defendant is that only in the witness box, the defendant as D.W.I altogether denied the sale consideration mentioned in Exh.A1. On the other hand, her earlier stand was that only Rs. 1.00 lakh was received and not Rs. 1,50,000/- as stated in Exh.A1. The conflicting stand of the defendant has been rightly rejected by the trial Court as well as the High Court.

14. In *Madhukar and Others Vs. Sangram and Others*, , three Judges Bench of this Court laid down principles and parameters as to how first appeal is to be disposed of. It is held that sitting as a Court of first appeal, duty is cast on the Court to deal with all the issues and the evidence led by the parties before recording its findings. The principle enunciated in this decision is that the first appeal is a valuable right and parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. In the case on hand, these principles have been fully complied with by the High Court.

15. On considering the materials, we are satisfied that the plaintiff has established her claim by placing acceptable oral and documentary evidence and proved that in lieu of debt amounting to Rs. 1,50,000/- the defendant executed initially Exh.B2 and later Exh.A1, agreements relating to the suit property. We are also satisfied that it was the defendant who failed to execute the sale deed and the trial Court has rightly granted a decree for specific performance in favour of the plaintiff which was affirmed by the High Court.

16. In the light of the above discussion, we do not find any merit in the appeal. Consequently, the same is dismissed with no order as to costs.