
(2000) 08 AP CK 0093
In the Andhra Pradesh High Court
Case No : Appeal No. 2872 of 1992

Voleti Rangaiah

APPELLANT

Vs

Adapa Satyanarayana and others

RESPONDENT

Date of Decision : 28-08-2000

Acts Referred:

Specific Relief Act, 1963 — Section 16

Citation : AIR 2001 AP 251 : (2000) 6 ALD 193 : (2000) 6 ALT 109 : (2001) 2 CivCC 64

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Mr. C.V. Mohan Reddy, for the Appellant; Mr. B. Veerabhadra Rao, for the Respondent

Judgement

1. This appeal suit is directed against the judgment dated 27-4-1992 in OS No.66 of 1989 on the file of the Sub-Judge, Sathupalli under which the plaintiffs suit for specific performance of the contract in respect of the plaint schedule property has been dismissed.

2. The relevant facts of this appeal may be stated briefly as follows:

The appellant is the plaintiff in the suit and the respondents are the defendants. The parties shall be referred to as arrayed in the suit. The plaintiff filed the instant suit for the specific performance of contract of sale in favour of the plaintiff in respect of the suit schedule property against the defendants. The case of the plaintiff is that the 2nd defendant is the mother and the third defendant is the wife and the fourth and fifth defendants are the sons of the first defendant. The first defendant on his behalf and on behalf of his sons, namely, 4th and 5th defendants, who were minors at the relevant time and the 2nd and 3rd defendants agreed to sell the suit property in favour of the plaintiff for a consideration of Rs.75,000/- on 19-5-1983. It is stated that the plaintiff was already in possession of the said house as a tenant. On the date of agreement, an amount of Rs.10,000/- was paid. A further sum of Rs.20,000/- was paid on

20-6-1983 to the vendors besides the plaintiff paid on amount of Rs.500/- on 26-6-1983 to Goltuparthy Satyanarayana upon the instructions of the first defendant.

3. On 25-8-1983 as contemplated under the agreement, the plaintiff was ready with the balance amount of Rs.43,500/- and a further amount of Rs.8,000/- for meeting the expenses of stamp duty and registration and he went with the said amount to the Sub-Registrar's office at Sathupalli. But, the defendants failed to go to Sub-Registrar's office. It is stated that the plaintiff kept the said amount in the State Bank of Hyderabad by depositing it to the account No.1688 standing in the name of his son. Thereafter, the plaintiff got issued a notice on 26-8-1983 showing his readiness with the remaining purchased amount and asking the defendants to go for registration. The first defendant gave a reply which did not disclose the presence of the 2nd and 3rd defendants for registration. The plaintiff got issued a rejoinder to that reply. It is stated that the first defendant got issued a notice dated 24-9-1983 treating the plaintiff as tenant and asking him to vacate the premises. It is stated that the first defendant also filed OS No.24 of 1994 for eviction. Thus, it is clear that the defendants had no intention to perform their part of the contract and hence the suit.

4. The 1st and 4th defendants contested the suit and filed their written statements while defendants 2, 3 and 5 remained ex parts. The defendant No.1 admits the execution of the agreement dated 19-5-1983 by him on his behalf and on behalf of his minor sons, 2nd and 3rd defendants. Payment of Rs.10,000/- on the date of agreement is also admitted. However, it is denied that the defendant No.1 instructed to pay a sum of Rs.500/-to one Gottuparthy Satyanarayana and that amount was paid at his instance on 26-6-1983.

5. It is stated that on 25-8-1983, the defendant No.1 went to the Sub-Registrar's office for the purpose of performing his part of the contract but the plaintiff himself did not turn up to perform his part. Issuing of legal notice, from the plaintiff on 26-6-1983, his having given a reply and the plaintiff having sent a rejoinder is admitted. It is also stated that in the notice dated 24-9-1983 it is mentioned that the plaintiff failed to pay the balance sale consideration on or before 24-5-1983 as agreed and therefore the agreement stands cancelled and hence it does not bind him.

6. The fourth defendant in his separate written statement took the plea that as on the date of alleged execution of agreement of sale by the first defendant in favour of the plaintiff, he was a major and that he has 1/3rd share in the suit property. Thus, it is pleaded that agreement of sale entered into by defendant No.1 is not binding on him to the extent of his share.

7. On these pleadings, the trial Court framed the following issues:

(i) Whether the plaintiff is entitled to the specific performance of the suit agreement of sale dated 19-5- 1983?

(ii) Whether the suit agreement of sale is binding on the fourth defendant in respect of his 1/3rd share in the property covered by the sale?

(iii) Whether the plaintiff is entitled to the relief of permanent injunction asked for?

(iv) To what relief?

8. On behalf of the plaintiff, he examined himself as PW1 and also examined PWs.2 and 3 besides Exs.A1 to A9 have been marked. The defendant No.1 examined himself as DW1 and another witness DW2 was examined. The certified copy of registered sale deed was marked as Ex.Bt.

9. On this evidence, the learned Subordinate Judge held that PW1 (plaintiff) has not established that he was ready with the amount on 25-8-1983 and subsequently also to perform his contractual obligations and on this basis refused to grant the relief of specific performance of the contract and accordingly dismissed the suit. It is this judgment which is now challenged in this appeal.

10. The learned Counsel for the appellant Sri C.V, Mohan Reddy contends that the finding of the trial Court that the plaintiff was not willing and ready to perform his part of the contract is erroneous and is at variance from the cogent evidence adduced on behalf of the plaintiff. It is contended that the Court below erred in holding that the defendant No.1 was ready to perform his part of the contract merely on the basis of defendant No.1 having attested a document Ex.B1 in the registration office on that day. The learned Counsel particularly stressed that the trial Court completely misconstrued the significance of Ex.B9- bank pass book.

11. The learned Counsel for the respondent on the other hand contends that the trial Court has rightly held from the evidence adduced that the plaintiff was not willing and ready to perform his part of the contract.

12. The question for consideration is whether the plaintiff has established that he was ready and willing to perform his part of the contract entitling him to the relief of the specific performance of the contract?

13. In regard to the plea of defendant No.4 that as on the date of agreement, he was major and the agreement of sale in favour of the plaintiff in respect of his share was not binding on him, the trial Court held that he was not a major and that Ex.A1 is binding on defendant No.4. This finding is not challenged in this appeal as is obvious from the memorandum of grounds of appeal.

14. it may be mentioned that there is no dispute between the parties that under the agreement, the plaintiff paid Rs. 10,000/- as advance along with agreement and subsequently paid another sum of Rs.20,000/-.

15. In regard to the plea of defendant No.4, who is the son of the defendant, that as on the date of agreement of sale, he was a major and the agreement of sale in favour of plaintiff in respect of his share is not binding him, the trial Court

held that he was a minor and inasmuch as there was no material and there was no plea and evidence that the alienation was not for family necessity, Ex.A1 is also binding on defendant No.4. But, this finding is not challenged in this appeal as is obvious from the memorandum of appeal. At any rate, the facts of the case show that the sale by defendant No.1 was effected in pursuance of a compromise for settling the disputes between the parties in the light of the earlier litigation between them.

16. It may be mentioned that admittedly the plaintiff paid Rs.10,000/- as advance at the time of agreement of sale and subsequently paid another sum of Rs.20,000/- within the period prescribed under the agreement.

17. The question whether the plaintiff was ready and willing to perform his part of the contract has been discussed by the trial Court in issue No.1, which is framed in general terms as to whether the plaintiff was entitled for specific performance of agreement of sale.

18. One of the pleas on behalf of the defendant was that defendant No.1 had not authorised payments of Rs.500/- to Gottupati Satynarayana. While discussing on the issue of readiness and willingness of the plaintiff in performing his part of the contract, the trial Court held that plaintiff has not established that he has paid a sum of Rs.500/- out of sale consideration to PW2 on the instructions of defendant No.1.

19. This finding does not appear to be inconsonance with the evidence on record. PW1 has specifically stated that he received the letter Ex.A3 from defendant No.1 asking him to pay a sum of Rs.500/- to PW2. In his cross-examination, defendant No.1 as DW1 admitted that Ex.A3 contains his signature and he has also admitted that PW2 approached for a loan of Rs.500/- and he wrote a letter Ex.A3 to the plaintiff to give an amount of Rs.500/- to PW2-G, Satyanarayana. PW2 has been examined on behalf of the plaintiff who stated that he wanted to borrow a sum of Rs.500/- from defendant No.1 who referred him to the plaintiff. DW1 also admitted that as on the date of Ex.A3, the agreement in Ex.A1 was in force and that there are no dealings between him and the plaintiff except the transaction covered by Ex.A1. In the light of these admissions and the evidence of PW2 and PW1-plaintiff, there can be no other inference except that he paid the amount on the instructions of defendant No.1 towards part payment of sale consideration under Agreement Ex.A1. The finding of the trial Court on this question is not inconsonance with the evidence on record.

20. Thus, the admitted facts are that the plaintiff paid a sum of Rs.10,000/- as on the date of agreement as advance and a sum of Rs.20,000/- before the date prescribed in the agreement for such part payment and besides it is proved that he also paid a sum of Rs.500/- to PW2, on the instructions of defendant No.1.

21. The ground on which the trial Court held that the plaintiff was not ready and willing to perform his part of the contract is as on the date stipulated in the agreement i.e., 25-8-1983, on which date the plaintiff was required to pay the

balance of sale consideration and obtain a registered sale deed from the defendants, the plaintiff was really not ready with the amount.

22. The evidence of PW3 assumes some significance in this regard. PW3 who is a document writer at the concerned Sub-Registrar's office stated that on that day i.e., 25-8-1983, PW1 went to Sub-Registrar's office at about 11 a.m. and stayed there till 2.30 p.m. and enquired with him about the coming of the defendants for the purpose of registration of the property and then left the place. PW3 has also stated defendant No.1 also went to Sub-Registrar's office after the plaintiff left the place and that he also made enquiries about PW1. He further states that defendant No.1 attested a document Ex.B1 drafted by him in order to create evidence of proof of his presence. The trial Court has accepted the evidence of PW3 and there is no reason to disagree with this finding.

23. The presence of the plaintiff between 11 a.m. and 2.30 p.m., at Sub-Registrar's office on that day in itself is not conclusive on question whether he was willing and ready to perform his part of the contract. An analytical scrutiny of the contents of the agreement Ex.A1 would disclose that both the parties agreed that the plaintiff shall pay the balance of sale consideration on 25-8-1983 and have the document registered on that date. Thus, 25-8-1983 was fixed as the date for the purpose of performing his part of the agreement by the plaintiff, namely, payment of balance of sale consideration.

24. Normally, time cannot be considered as the essence of the contract in respect of the agreements for sale of immovable properties. But, in this case, not only a date was fixed in the agreement for payment of balance of sale consideration but the parties had agreed that on the failure of the plaintiff to pay the balance of sale consideration on 25-8-1983, on the next day the agreement shall stand cancelled and the sale consideration already paid shall be refunded to the plaintiff after schedule property was sold away by the defendants. The conduct of the parties, as apparent from the evidence on record that both of them treated this date as crucial and adduced meticulous evidence to show that they went to Sub-Registrar's office on that day would also show that the date fixed in the agreement of sale was considered as determinative. Considering the terms in the agreement and the conduct of the parties and exchange of notice Exs.A4 to A6, in this case, time must be held to be the essence of the contract.

25. However, it would appear that a specific plea on behalf of the defendants that the time was of the essence of the contract has not been taken. But, in para 2 of the written statement of defendant No.1, a specific plea has been taken that if the plaintiff did not comply with the conditions of the agreement of sale, the same stands cancelled. The relevant portion of the plea is extracted below:

"For the failure on the part of the plaintiff, this defendant cannot be made responsible. As the plaintiff failed to comply with the conditions of the said agreement of sale, the same stands cancelled, and becomes null and void and it does not bind this defendant."

26. Even if it is not specifically stated that the time is of the essence of the contract, this plea does imply that the defendant proceeded on the basis that time was of the essence of the contract.

27. The question whether the time is of the essence of the contract comes up for consideration in the context of examining the question as to whether the plaintiff has proved that he was ready and willing to perform his part of the contract. A defence that the plaintiff was not ready and willing to perform his part of the contract may itself be based on the ground that the breach on the part of the plaintiff was on the basis that time was of the essence of the contract.

28. This plea therefore can be said to be included within the ambit of the broader plea that the plaintiff was not ready and willing to perform his part of the contract. Failure to take this specific plea that time was of the essence of contract does not prevent the Court from examining the issue in the broader context of plaintiff's willingness and readiness to perform his part of the contract.

29. The next question is whether the plaintiff has established that he was ready and willing to perform his part of the contract on 25-8-1983, the date fixed under the terms of the agreement for payment of balance of sale consideration by him.

30. The plaintiff adduced evidence to show that he attended the Sub-Registrar's office on that day. His evidence in this regard was corroborated by the evidence of PW2-the document writer at the said office. But, PW3's evidence distinctly discloses that the plaintiff stayed there only upto 2.30 p.m. and thereafter left the Sub-Registrar's office. It is pertinent to mention here that the defendant is said to be the resident of the Sathupalli where the Sub-Registrar's office is situated. While the plaintiff waited at the office upto 2.30 p.m., surprisingly, he has not made any attempt to contact the defendants informing them about his being ready with the money. In fact, the conduct of the plaintiff in leaving the Sub-Registrar's office by 2.30 p.m., itself is indicative of avoiding to see the defendants there. The plaintiff as PW1 has not given any reason why he did not try to contact the defendants or did not wait till the office hours of the Sub-Registrar's office.

31. At any rate, mere presence of the plaintiff at the Sub-Registrar office does not really amount to his being ready and willing to perform his part of the contract on the prescribed date. The plaintiff as PW1 has given contradictory version as to his being ready with the money. The averment in the plaint in this regard is that as stipulated in the agreement of sale, the plaintiff was ready on 25-8-1983 with Rs.43,500/- and with a further amount of Rs.8,000/- for expenses like stamp duty, registration fee etc. It is specifically pleaded that the plaintiff kept the cash ready in the savings bank account of his son with account No. 1688 with State Bank of Hyderabad, Sathupalli Branch. However, in his examination in chief, the plaintiff as PW1 stated that the defendant failed to turn up for registration and that he deposited the remaining amount of Rs.43,500/- in

the Bank along with registration charges.

32. On behalf of the plaintiff, the bank pass book showing the name "of the plaintiffs son is marked as Ex.A9. In regard to the entries of 25-8-1983 or 26-8-1983, it does not show that the amount of Rs.43,500/- and further amount towards expenses has been deposited in the Bank as stated by the plaintiff on the failure of the defendants to turn up for registration.

33. On the other hand, PW1 has stated that he has deposited an amount of Rs.48,000/- at State Bank of Hyderabad, Sathupalli before 25-8-1983 but he has not withdrawn the amount on 25-8-1983 from the said bank. This is corroborated by Ex.A9, which does not show any withdrawal of any amount on 25-8-1983 or the day earlier from the said account in the bank which was in the plaintiffs son's name. On the other hand, he stated that he borrowed a sum of Rs.50,000/- from his son-in-law Nalla Anandu and his father. But, Ex.A9 shows that various amounts were deposited on different dates. None of the persons from whom the plaintiff is said to have borrowed the money has been examined. The plaintiffs son, in whose name, the account stands has not been examined. It is stated during the cross-examination of PW1 that the bank where the account under Ex.A9 stands is just opposite to his house.

34. But no amount has been withdrawn from that account on 25-8-1983 before the plaintiff left for the registration office. But, on the other hand, P\\V 1 says that instead of withdrawing the money from the bank, he went to Tiruvuru for getting the amount of Rs.50,000/- at about 5.00 a.m. and returned to Sathupalli at 9.00 a.m., on the date of the registration of the premises as scheduled.

35. Considering the fact that the account lies in the name of the plaintiffs son who has not been examined, it is doubtful whether the amount shown in Ex.A9 was really available to the plaintiff for the purpose of payment to the defendants towards the balance of sale consideration. Had it been so, there would have been no need for the plaintiff to borrow the money from other persons on 25-8-1983 and omit to withdraw the amount readily available in the bank right opposite to his house.

36. Thus, the discrepant version as to the amount being ready with the plaintiff, his failure to contact the defendants on that date, even though they were residents of Sathupalli where the Sub-Registrar's office is located and his failure to wait at the Registrar's office, at any rate, till the office hours on that day raises a grave doubt as to plaintiffs genuineness of his claim that he was ready on 25-8-1983 with the money at the Sub-Registrar's office. His going to the Sub-Registration office at 10.30 a.m. and returning from there at 2.30 p.m., without trying to contact the defendants appears a little farcical.

37. Coupled with this, the fact that the plaintiff without even attempting to contact the defendants got issued a legal notice on the very next day i.e., 26-8-1983 without ascertaining anything from the defendants would go to show that there is something unreal about the plaintiffs claim of being present with the

money at the Sub-Registration office on the crucial date. All this is indicative of the fact that the plaintiff was more worried about creating some kind of evidence to show his readiness without being so. It also appears that by this method, the plaintiff was trying to gain some time for payment of balance of sale consideration.

38. Taking into consideration all these circumstances, the finding of the trial Court that the plaintiff has not succeeded in establishing that he was ready and willing to perform his part of the contract on the crucial date does not deserve to be disturbed and has to be upheld.

39. In the result, the appeal is dismissed. No costs.