

IN THE COURT OF THE IX ADDITIONAL DISTRICT JUDGE
WANAPARTHY

Wednesday the 8th day of August, 2018

Present:- Sri A.Srinivasa Kumar,
IX.Addl.District Judge,
Wanaparthi,

A.S.No.5 of 2018

And

A.S.No.7 of 2018

Between:

(A.S.No.5 of 2018)

1. Pothula Krishna Reddy son of Narayan Reddy, Age about 53 years, occupation agriculture resident of Chakalipally village of Gopalpet mandal.
2. Pothula Shyamsunder Reddy son of Narayan Reddy, Age about 46 years, occupation agriculture resident of Chakalipally village of Gopalpet mandal.
3. Dodla Balakistamma wife of Rami Reddy Age about 55 years, occupation agriculture resident of Yedutla village of Gopalpet mandal.
4. Dorreddy Rameshwaramma wife of Venkat Reddy, Age 52 years, resident of Kodair village and mandal.
5. Smt.Padma wife of Gundla Nageshwar Reddy, Age about 43 years, occupation agriculture resident of Janumpally village of Pebbair mandal.
6. Pothula Venkateswar Reddy son of Krishna reddy, age about 27 years, occupation agriculture resident of Chakalipally village of Gopalpet mandal.
7. Pothula Prashanti daughter of Krishna Reddy, age about 21 years, occupation agriculture resident of Chakalipally village of Gopalpet mandal.

.... Appellants

And,

M.Balaraju son of Balaswamy, Aged about 35 years, occupation RMP Doctor resident of Pangal village and mandal.

..Respondent

Appeal filed against the Judgment and Decree passed by the Senior Civil Judge, Wanaparthy in O.S.No.147 of 2013 Dated 23rd October, 2017.

Between:

(A.S.No.7 of 2018)

Pothula Krishna Reddy son of Narayan Reddy, Age about 53 years, occupation agriculture resident of Chakalipally village of Gopalpet mandal.

Appellant

And

M.Balaraju son of Balaswamy, Aged about 35 years, occupation RMP Doctor resident of Pangal village and mandal.

Respondent

Appeal filed against the Judgment and Decree passed by the Senior Civil Judge, Wanaparthy in O.S.No.147/2013, dt. 23rd October, 2017.

Appeal filed under Order XLI Rule 1 of CPC.

These appeals suits are coming before me for final hearing on 02.08.2018 in the presence of Sri V.V.Narsimha Rao, Sri K.Mohan Goud, Sri J.Brahmaiah Chary, Advocates for the appellants and of Sri S.Baleeshwaraiah, Advocate for the Respondent and upon perusing the material papers on record and having stood over for consideration till this day, this court delivered the following:

COMMON JUDGMENT

This common Judgment has arisen under the circumstances where the dispute involved in both the appeals was out of the same cause of action and between the same parties. The appellants and the respondent are common in both the appeals. A.S. No.5 of 2018 is the outcome of the Judgment in OS No.22 of 2009 on the file of Senior Civil Judge's Court, Wanaparthy and whereas AS No.7 of 2018 is the outcome of the Judgment in OS No.147 of 2013 on the file of Junior Civil Judge's Court, Kollapur. However, the learned Senior Civil Judge, Wanaparthy passed common Judgment in both the said OS No.22 of 2009 and OS No.147 of 2013 after clubbing both of them. Even a common trial was conducted on both the suits, but by recording the evidence in OS No.22 of 2009. To be more in clear, the respondent in both the appeals, is the plaintiff in OS No.22 of 2009 and whereas the appellants in both the appeals are the plaintiffs in the said OS No.147 of 2013.

2) The respondent herein instituted OS No.22 of 2009 for the relief of Specific Performance against the

appellants and whereas the appellants instituted OS No.147 of 2013 against the respondent for the relief of permanent injunction over the same property, which is the subject matter in both the cases. OS No.22 of 2009 has been decreed directing the appellants herein to execute a registered sale deed in favour of the respondent towards the suit schedule property and whereas OS No.147 of 2013 has been dismissed. Hence these appellants challenging such common Judgment and Decree dated 23rd October, 2017.

2) The appellants would contend in the grounds of appeal that the learned Senior Civil Judge failed to properly appreciate the oral and documentary evidence and came to a wrong conclusion regarding the payment of balance amount by the respondent to them though the respondent has not paid the said money. It is not out of context to state that the grounds of appeal are rather in an argumentative way than as pleadings. Anyway, the gist of the grounds of appeal is that the Lower Court failed to appreciate the oral and documentary evidence in a proper way. To better understand the controversy involved between the parties, it is inevitable on the part of this Court to have a glance at the facts and circumstances under which these appeals have

emerged. At the same time, this Court to avoid confusion in the matter would mention the status of the parties as they are arraigned in cause title of OS No.22 of 2009.

3) The plaintiff (Respondent herein) instituted OS No.22 of 2009 against the defendants (appellants herein) for the relief of Specific Performance based on two agreements of sale, one was allegedly executed on 23rd August, 2007 and another was on 6th March, 2010 before the elders. So far as the first agreement of sale dated 23rd August, 2007 is concerned, it is the case of the plaintiff that one Pothula Kista Reddy being the absolute owner of the suit schedule property which is the land to an extent of Ac.1-15 Gts., in Sy.No.760/C1 and 762 situated in the limits of Pangal village and mandal, entered into an agreement of sale with the Plaintiff, thereby agreeing to sell the said property for a total consideration of Rs.1,60,000/- and the plaintiff also paid Rs.80,000/- to him as earnest money and the said Kista Reddy also said to have delivered the possession of the property to him. It was further agreed, according to the plaintiff, the balance sale consideration shall be paid after Ugadi festival of year 2008 dated 7th April, 2008 and the said Kista Reddy should execute a registered

Sale deed in favour of the plaintiff. But, unfortunately for the plaintiff, the said Kista Reddy died on 7th April, 2008 and as such the liability fallen on the defendants herein as legal heirs of Kista Reddy to execute a Registered Sale Deed. According to the plaintiff, the defendant No.1 to 5 are the sons and daughters of the younger brother of Kista Reddy namely Narayan Reddy who had pre-deceased him.

4) It is the further case of the plaintiff that after death of Kista Reddy he demanded the defendants to execute a Registered Sale deed, but the defendants instead of obliging his request were said to have created a forged Will dated 19th October, 1990 allegedly executed by the said Kista Reddy in favour of the first Defendant bequeathing the entire suit schedule property including a house. The defendant apart from denying their liability to execute any registered sale deed instituted OS No.135 of 2008 through the first defendant on 21st July, 2008 on the file of Junior Civil Judge's Court, Kollapur for the relief of permanent injunction and they also preferred IA No.126 of 2008 for Temporary Injunction, but the same was dismissed. The plaintiff further contended that even he has issued a legal notice dated 3rd May, 2009 against the defendants calling upon

them to execute a registered Sale deed, but the first defendant gave a reply dated 18th May, 2009 by denying their liability to execute any sale deed. Finally, the plaintiff would contend that he had been ready and willing to perform his part of contract but defendants were not. The plaintiff filed photo-stat copy of the said first agreement of sale dated 23rd August, 2007 as the original was filed in O.S.No.135/2008.

So, far on the record agreement of sale dated 6th March, 2010 is concerned, it is the case of the plaintiff that pending the suit, the first defendant himself came forward with a proposal to settle the matter before the Lok Adalath on 1st February, 2010, but he took several adjournments to settle the matter and meanwhile the elders namely G.Bal Reddy and Konda Reddy, the Advocates of Wanaparthy settled the matter, thereby the second agreement of sale has been emerged, wherein the total consideration of Rs.5,50,000/-, was fixed and the plaintiff is said to have paid Rs.2,00,000/- to the first defendant on the same day. It is further agreed in the said agreement of sale that the remaining balance of Rs.3,50,000/- shall be paid to the first defendant on or before 15th April, 2010 and it was further agreed that OS No.35 of 2008 on the file of Junior Civil Judge's Court,

Kollapur and this OS No.22 of 2009 shall be withdrawn by the first defendant as a condition precedent. The plaintiff would further contend that he has even paid the balance amount of Rs.3,50,000/- to the first defendant in Pangal village in the presence of Kummary Balaswamy of Pangal and one Ram Murthy of Sreerangapur. But, according to the plaintiff, the first defendant did not prefer to issue any receipt to the said payment on the pretext that the matter before the Lok Adalath was posted on 17th April, 2010 and therefore, he would execute a registered Sale deed in his favour. But, according to the plaintiff, the first defendant did not come forward to execute a registered Sale deed though he has received the balance amount. Apart from such refused, the first defendant got his name mutated in the Revenue records as owner of the suit schedule property and further executed a registered Gift Deed in favour of the defendant No.6 and 7, who are his son and daughter respectively gifting the suit schedule property. Finally, the plaintiff prayed for the relief of specific performance against the defendants. Before closing the episode of the Plaintiff's case, this Court would like to mention that the plaint was amended based on the second agreement

of sale and the defendants also filed their additional written statement.

3) It was the common written statement of the defendants filed on 12th August, 2009, wherein the Defendants No.2 to 4 have expressed their opinion that the first defendant was the owner of the suit schedule property in lieu of a Will deed dated 19th October, 1990 executed by the said Kista Reddy bequeathing the said property. Therefore, we can conclude at this part of this Judgment itself, the Defendant No.2 to 4 are not contesting parties and the first defendant and after impleadment the Defendant No.6 and 7 alone are contesting this suit. However, the defendant No.1 to 4 have denied their liability to execute any registered sale deed in favour of the plaintiff and according to them the said Kista Reddy himself had no right to enter into the first agreement of sale as he had already executed the said will in favour of the first defendant bequeathing the entire suit schedule properties, including a house. So far as their written statement after amendment is concerned, the first defendant alone filed his written statement as well as an additional written statement by denying his liability to execute any registered sale deed in favour of the plaintiff even based on the second

agreement of sale dated 6th March, 2010. Though the first defendant has denied his liability, finally admitted in his written statement as well as in his additional written statement about such execution of second agreement of sale dated 6th March, 2010. His only defence for refusal to execute a registered sale deed even based on the admitted agreement of sale dated 6th March, 2010 was that the plaintiff failed to pay the balance amount of Rs.3,50,000/- and he has further denied the fact that the balance amount was paid in the presence of the said two persons i.e., Kummary Balaswamy, Rama Murthy. The first defendant further admitted about his execution of a registered Gift Deed in favour of the Defendant No.5 and 6 on 28th July, 2010 gifting away the suit schedule property. Finally, the first defendant prayed for dismissal of the suit.

4) Based on the above said pleadings, the Lower Court has settled the following issues for consideration:-

ISSUE NO.1:- Whether the suit agreement of sale dated 7th April, 2009 is true, valid and binding on the Defendant No.1 to 5 and also whether late Kista Reddy sold the suit property for Rs.1,60,000/- and received Rs.80,000/- as an

advance and executed the agreement of sale and delivered the possession of property to plaintiff?

ISSUE NO.2:- Whether the plaintiff was ready and willing to perform his part of contract during the life time of Kista Reddy and also thereafter till now?

ISSUE NO.3:- Whether the late Pothula Kista reddy and her wife by name P.Shankaramma jointly executed the stamped will dated 19th October, 1996 in favour of Defendant No.1 bequeathing the suit property and that it is binding on the plaintiff?

ISSUE NO.4:- Whether the plaintiff represented before Tahsildar of Pangal that late Kista Reddy borrowed the money and he has to get back the same and that he has no objection for mutating the land in favour of Defendant No.2 as contended in Written statement?

ISSUE No.5:- To what relief?

5) The following additional issues were also settled by the Lower Court which are as follows:

ISSUE NO.1:- Whether the agreement of sale dated 6th March, 2010 is true, valid and binding on the defendant?

ISSUE NO.2:- Whether the plaintiff has to file a separate suit for Specific Performance of agreement of sale dated 6th March, 2010?

ISSUE NO.3:- Whether the suit is barred under Order II Rule 2 CPC?

ISSUE NO.4:- To what relief?

6) In support of their respective cases, the plaintiff besides examining himself as P.W.1 also examined one Brahmaiah as P.W.2, the said Balaswamy as P.W.3, the said Rama Murthy as P.W.4, the said Advocates namely Konda Reddy and G.Bal Reddy as P.W.5 and P.W.5 and exhibits A1 to A-12 were marked on his side. On the otherhand, the first defendant besides examining himself as D.W.1 also examined one Ramulu as D.W.2 and One Venkateshwar Reddy as D.W.3. and Ex.B1 to B25 were marked on his side. The learned Senior Civil Judge, Wanaparthi finally decreed OS No.22 of 2009 and dismissed OS No.147 of 2013 with his finding that the defendants have liability to execute a registered Sale deed in favour of the plaintiffs. Hence this appeal.

7) Heard, the learned Advocates for both the parties.

8) The Advocate for the Defendants/appellants has admitted in his arguments itself about the first defendant entering into the second agreement of sale dated 6th March, 2010 with the Plaintiff/respondent by accepting Rs.2,00,000/- and his only contention is that the plaintiff/respondent did not pay the balance amount of Rs.3,50,000/- but the Lower Court decreed his suit without properly appreciating the oral and documentary evidence. On the otherhand, the Advocate for the respondent, as one could naturally expect, supported such findings of the Senior Civil Judge in the Judgment and requested this Court to dismiss both the appeals.

9) Before going into the crux of the matter, this Court would like to mention the admissions made by the first defendant as D.W.1. in his cross examination, which would help this Court to decided these two cases just is an easy way.

“.....Yes, I referred this case to Lok Adalath on 1st February, 2010. Before filing of Vakalath by Present counsel, I engaged Sri G.Bal Reddy,Advocate as my counsel. It is

true that on 6th March, 2010 I sold the said land to the Plaintiff under an agreement of sale. The sale price was fixed at Rs.5,50,000/- for the entire suit land. The same was drafted at the house of my counsel Bal Reddy. I signed on Ex.A6 at the house of my counsel and at that time my another Counsel Konda Reddy was also present. On the date of agreement I received the advance amount of 2 Lakhs from the Plaintiff in the presence of witness Balaswamy and Shanthanna. The said Konda Reddy also signed on Ex.A6, myself and Plaintiff also signed on it on condition that the remaining balance amount of Rs.3,50,000/- was to be paid on or before 15th April, 2010. It is not true to say that on both hearing written a condition on Ex.A6 that both the suit OS No.22 of 2009 and 135 of 2008 shall be with drawn so also CMA No.3 of 2009. So also there was a condition of Ex.A6 that there should be transfer of title in my name” It is true that after obtaining patta in my name I gifted the

same to my children Defendant No.6 and Defendant No.7.....”

9) Therefore, the first defendant in his cross examination has frankly admitted about his entering into the second agreement of sale dated 6th March, 2010 i.e., under Ex.A6 and he further admitted about his execution of registered Gift Deed in favour of the Defendant No.6 and 7. If we consider the said admissions, it would be clear that the earlier agreement of sale dated 23rd August, 2007 i.e., Ex.A1 has lost its efficacy and consequently, what all the defense took by the defendants on the said Ex.A1 Will also reach its dust bin. Therefore, according to this Court, the very cause of action has arisen for the plaintiff under Ex.A6. As the first defendant admitted in his cross examination about his receipt Rs.2,00,000/- from the plaintiff on the date of Ex.A6, the only fact for consideration is with regard to the payment of balance consideration of Rs.3,50,000/-. The plaintiff would contend that he has paid the balance amount in the presence of P.W.3 and P.W.4. Now the question would arise as to whether the finding of the Senior Civil Judge on this aspect is within the law and fact.

10) The learned Senior Civil Judge has simply believed the evidence of P.W.3 and P.W.4 to come to a conclusion about such payment of balance sale consideration of Rs.3,50,000/-. Admittedly there is no document to establish such payment of balance sale consideration in this case and the reason offered by the plaintiff was that the first defendant postponed the same on the pretext of impending adjournments in the Lok Adalath. But, such contention cannot be considered, particularly under the facts and circumstances of this case, where admittedly there were several rounds of litigations between the plaintiff and the first defendant regarding this issue in which it would have been improper on the part of the plaintiff for not obtaining any receipt from the first defendant. At least the plaintiff would have produced his source for paying the said money by way of Bank statements etc., Under these circumstances, this Court does not believe the evidence of P.W.3 and P.W.4. More over, P.W.3 has stated in his cross examination that the balance sale consideration was paid on 10th April, 2010 and whereas the plaintiff and P.W.4 have stated the date of payment of balance sale consideration as 15th April, 2010. The said inconsistency in the evidence of P.W.3 is also one of the

grounds to disbelieve his evidence. Finally, this Court has come to a conclusion that the plaintiff has not paid balance sale consideration of Rs.3,50,000/- to the Plaintiff. Now a second question would arise as to whether it should be a ground for this Court to deny the relief to the plaintiff for not paying balance sale consideration on or before 15th April, 2010.

11) In this regard, the Advocate for the first defendant has contended that since the plaintiff has not come to the Court with clean hands he is not entitled to any relief. But, such contention of the Advocate is not sustainable under the facts and circumstances of this case, as it has been proved against the first defendant that he too had come to court with un-clean hands. It is an admitted fact by the 6th defendant as D.W.3 in his cross examination that his father i.e., first defendant got his name mutated in the revenue record pending the suit and also executed a registered gift deed in their favour. Such attitude of the first defendant would indicate that he too was not fair in this case and he has caused multiplicity of proceedings by filing one suit after the other.

12) Therefore, for the reasons stated above, it is the finding of this Court that this appeals can be partly allowed with a direction to the plaintiff to pay the balance amount of Rs.3,50,000/- (Rupees Three Lakhs Fifty thousands only) with interest @ 6% per annum to the first defendant from the date of Ex.A6 i.e., 6th March, 2010.

13) **POINT NO.2:-**

In the result, these appeals are partly allowed with a direction to the respondent/plaintiff to pay the balance amount of Rs.3,50,000/- (Rupees Three Lakhs Fifty thousands only) to the first defendant with interest @ 6% per annum from the date of agreement of sale dated 6th March, 2010 within one month from today, failing to do so the said agreement of sale dated 6th March, 2010 shall be rescinded. The Gift Deed dated 28th July, 2010 executed in favour of the Defendant No.5 and 6 shall be became void, in case the Plaintiff deposited the balance amount with interest witin one month from today.

Dictated to Steno-Typist after transcribed by him, corrected and pronounced by me in open court on this the 3rd day of April,. 2018.

III Addl.District & Sessions

Judge,

Gadwal

Appendix of Evidence

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**III Addl.District & Sessions Judge,
Gadwal.**