

IN THE COURT OF THE PRINCIPAL JUNIOR CIVIL JUDGE:: CHODAVARAM

Present: MS DORA UMADEVI

Principal Junior Civil Judge-Cum-

Judicial Magistrate of First Class, Chodavaram

FRIDAY, THIS THE 12th DAY OF NOVEMBER, 2021

ORIGINAL SUIT NO.148/2021

Between:

Varri Joginaidu, S/o Appalanaidu, aged about 45 years, Hindu, Cultivation, r/o Kaligotla village, Devarapalli Mandal, Visakhapatnam District.

. . . Plaintiffs

AND:

1. Bondanki Demudamma, W/o late Sanyasinaidu, aged 57 years, Hindu Cultivation, resident of Pakeerasaheb peta Chodavaram Mandal, Visakhapatnam District.

2. Bondanki Kumar, S/o late Sanyasinaidu, aged 26 years, Hindu , Cultivation, resident of Pakeerasaheb peta Chodavaram Mandal, Visakhapatnam District.

3. Bandaru Naga Jyothi , W/o VVSS Prasadaraao, aged 24 years,Hindu , Cultivation, resident of Pakeerasaheb peta Chodavaram Mandal, Visakhapatnam District.

4. Singampalli Mutyalanaidu, S/o late Pentayya, aged 28 years,Hindu , Cultivation, resident of Vechalam Village, Devarapalli Mandal, Visakhapatnam District.

. . . Defendants

This suit came up on this day before me for final hearing in the presence of Sri K Venkata Rao, Advocate for plaintiff and defendants remained exparte, and after having been heard, this court made the following:

J U D G M E N T

1) The plaintiff filed the suit against the defendants for specific performance to direct the defendants to execute the registered sale deed in favour of the plaintiff in respect of the plaint schedule property based on agreement of sale dt. 05.09.2018 at the expenses of the plaintiff by taking balance of sale consideration and if the defendant fails to do so, the Hon'ble

Court may be pleased to execute the Registered Sale Deed in favour of the plaintiff on behalf of the plaint schedule property to the plaintiff and in the alternative, if the Hon'ble Court comes to the conclusion that relief of specific performance can not be ordered, the defendants may be ordered to refund the advance sale consideration of Rs.90,000/- with interest at the rate of 24% per annum from the date of agreement of sale till the entire amount is paid and direct the defendants to pay costs of the suit.

2) The brief averments of the plaint are that:

(a) One Singampalli Pentayya and 1st defendant are the parents of the 4th defendant. After the birth of 4th defendant the said Pentayya died intestate leaving behind the defendants 1 and 4 as his heirs. After the death of Pentayya the 1st defendant married one vudanki Sanyasi Naidu and blessed the defendants 2 and 3 through him. All the defendants and deceased husband's of the 1st defendant together constituted hindu un divided family and they have owned and possessed plaint schedule property. The plaintiff is a close relative of the 1st defendant and he had Ac. 0-16 cents of land and it is his ancestral property in the same survey number situated towards west of the plaint schedule property.

(b) The defendants intended to sell the plaint schedule property the plaintiff has negotiated with the defendants and after mutual deliberations and negotiations the defendants agreed to sell the plaint schedule property to the plaintiff for a sum of Rs. 6,000/- per cent. It was further agreed that the plaint schedule land shall be measured to arrive the actual extent and balance sale consideration to be paid to the defendants by the plaintiff. Accordingly with the agreed terms the defendants have executed the suit sale agreement dated 05.09.2018 in favour of the plaintiff for sale of plaint schedule property. The plaintiff has paid sum of Rs. 90,000/- (Rupees Ninety thousand Only) to the defendants towards advance sale consideration on the date of suit sale agreement itself.

The plaintiff has got measured the land recently and the total extent of the land is A. 0-16 cents on ground the total payable sale consideration is arrived at Rs. 96,000/- . Out of the total consideration the plaintiff has already paid

Rs. 90,000/- to the defendants on the date of the agreement of sale and has expressed his ready and willingness and requested the defendants to receive the balance of sale consideration of Rs. 6,000/- and requested them to come forward to execute a regular registered sale deed in his favour. The defendants with an ulterior motive to extract more money from the plaintiff under the guise of escalation of land prices have been demanding the plaintiff to pay more money towards sale consideration than the agreed amount and have been postponing to execute regular registered sale deed in favour of the plaintiff. The plaintiff personally through elders have been requesting and demanding the defendants since six months and expensed his willingness to them to perform his part of contract. The defendants though agreed to comply the terms of the sale agreement dated 05.09.2018 but have been postponing in performing his part of contract under some pretext or the other. The plaintiff is ready to deposit balance sale consideration. The plaintiff came to know that the defendants with an evil intention to get more sale consideration trying to alienate the plaintiff's scheduled property to some third parties by suppressing the existence of the sale agreement executed by them in favour of the plaintiff only with a view to make a wrongful gain and thereby causes wrongful loss to the plaintiff.

3. Upon sensing the illegal activities of the defendants the plaintiff got issued a lawyer's notice dated 29.06.2021 to the defendants demanding them come forward to obligate their part of contract and execute the Registered Sale Deed in his favour after receiving the balance of sale consideration, though defendants 1 and 2 received the said notice, 3rd defendant has refused with false allegation and 4th defendant must have received the said notice neither come forward to execute the registered sale deed nor sent any reply till date. Hence, the plaintiff constrained to file this suit for the relief of specific performance of contract and the plaintiffs are ready to deposit the balance of sale consideration to show their readiness, as and when ordered by this Court. Hence, this suit.

4. The defendants received summons and they were called absent. No representation on their behalf. Thereby they were set aside. Then posted the matter for plaintiff's evidence. Even though the defendants remained absent, under Section 101 of the Indian Evidence Act, 1872, the burden of proof initially lies on the plaintiff, who has to prove that there was a cause of action for the suit between himself and the defendant as contended by him by adducing consistent and cogent evidence.

5. The plaintiff himself examined as PW1 and got marked Ex.A.1 to A.5 documents on his behalf. Ex.A-1 is the Original agreement of Sale Deed dated 05.09.2018, Ex.A-2 is the Office copy of the Lawyer's notice dated 29.06.2021, Ex.A3 is the Postal Acknowledgment from D1, Ex.A4 is the Postal Acknowledgment from D2. Ex.A5 is the Postal Acknowledgment from D3

6. Heard the learned counsel for plaintiff.

7. Now the Point that arises for consideration in this case is:-

1) *Whether the plaintiff is entitled for specific performance of agreement of sale dt.05.09.2018 as prayed for?*

2) *To what relief?*

8. **Point No. 1:-** In order to prove the case of the plaintiff, plaintiff himself is examined as PW.1 got marked Ex.A-1 to A-5 documents. As seen from the evidence of PW.1 coupled with documentary evidence it is establishes that the defendants are the absolute owners of the plaint schedule property and they jointly executed Ex.A-1 agreement of sale agreeing to sell plaint schedule property wet land an extent of Ac. 0.16 cents compressed in S.No. 174-1 situated in Kaligotla Village, Devarapalli Mandal and they offered the same to the plaintiff for an amount of Rs.6,000/- per cent with an understanding that the plaintiff had paid advance sale consideration of Rs.90,000/- and the remaining sale consideration has to be paid after getting land measured and that the defendants have to execute Registered Sale Deed at his expenses and with the above terms and conditions and the defendant executed Agreement of Sale on 05.09.2018 by taking advance sale consideration of Rs.90,000/- from the plaintiff.

9. Subsequently, defendant failed to fulfill the terms and conditions under Ex.A-1 agreement of sale. On that plaintiffs got issued legal notice dated 29.06.2021 to the defendants demanding them to come forward to execute the Registered Sale Deed by taking balance of sale consideration from him. Though the defendants received the notice, under Ex. A.3 to Ex.A5 neither come forward to execute the sale deed nor sent any reply. The plaintiff proved his case preponderance of probabilities, defendants failed to appear before court and they

remained set exparte. Non appearance of the defendants itself shows that they admitted the case of the plaintiffs in all aspects.

10. In that circumstances, this Court has no other go, except to believe the case of the plaintiff in holding that defendants had executed Ex.A-1 agreement of sale in favour of plaintiff agreeing to sell the plaint schedule property to him for Rs.6,000/- per cent an extent of Ac. 0.16 cents of land and received advance sale consideration of Rs.90,000/- and subsequently failed to execute regular sale deed in favour of plaintiff. Though, he is ready and willing to perform his part of contract. Hence, certainly the defendants are liable to execute regular sale deed in favour of plaintiff in respect of plaint schedule property after receipt of balance sale consideration of Rs.6,000/- as agreed by them.

11. Point No.2:- *In view of the above discussion the court is of the view that the plaintiff is entitled to specific performance of contract for the plaint schedule property and costs of the suit. If the defendants are failed to execute the registered sale deed he is entitled to refund of advance sale consideration of Rs. 90,000/- with interest 12 % per annum from the defendants.*

12. In the result, suit is decreed with costs in favour of the plaintiff and against the defendants directing them to execute registered sale deed in respect of plaint schedule property within three months from this day. The plaintiff is directed to deposit balance sale consideration of Rs.6,000/- in this Court within two months from this day. Failing which, plaintiff is not entitled to get sale deed from the defendants. On payment of balance sale consideration by the plaintiff, if the defendants are failed to execute registered sale deed in favour of plaintiff in respect of plaint schedule property plaintiff is entitled to get execute the same by following due procedure.

Typed to dictation to the Stenographer, corrected and pronounced by me in the open court, this the 12th day of November, 2021.

Principal Junior Civil Judge,
Chodavaram

APPENDIX OF EVIDENCE

Witnesses Examined

For Plaintiff

For Defendants

PW.1: Varri Joginaidu

--None--

Documents Marked

For Plaintiff:-

Ex.A-1: Original agreement of Sale Deed dated 05.09.2018

Ex.A-2: Office copy of the Lawyer's notice dated 29.06.2021,

Ex.A3 is the Postal Acknowledgment from D1,

Ex.A4 is the Postal Acknowledgment from D2.

Ex.A5 is the Postal Acknowledgment from D3

For Defendants:-

---Nil----

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