

HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

MAIN CASE No.S.A.No.361 of 2023

PROCEEDING SHEET

Sl.No	DATE	ORDER	Office Note
04.	16.08.2023	<u>RRR, J</u> The respondent No.1 had filed O.S.No.71 of 1996 before the Learned Senior Civil Judge, Bhimavaram, for specific performance of an agreement of sale, for sale of a rice mill, dated 04.08.1988 said to have been executed between respondent No.1 on one hand and respondent Nos.2 & 3 on the other hand. This suit was resisted by respondent Nos.2 & 3, who are initially arrayed as defendants, on the ground that there was no agreement of sale executed by respondent Nos.2 & 3 and that respondent No.1 was their tenant, who had been evicted from the premises much prior to the filing of the suit and that respondent Nos.2 & 3 had filed O.S.No.36 of 1992 before the Learned Principal District Munsiff, Bhimavaram for a injunction restraining the respondent No.1 from interfering with their possession. During the pendency of this suit, respondent Nos.2 & 3 had withdrawn	

		O.S.No.36 of 1992 and had executed a deed of sale in favour of the present appellant on 21.06.1996. Thereafter, the present appellant was arrayed as defendant No.3 in the suit. Another development was that the respondent No.2 passed away during the pendency of the suit and his wife was impleaded as defendant No.4. The Trial Court allowed the suit on 23.01.2009. The decree, drawn up on the basis of the said Judgment, directed defendant Nos.2 & 4 in the suit (respondent Nos.3 & 4 herein) to execute a deed of sale in favour of respondent No.1. Aggrieved by the said Judgment and decree, the appellant herein moved the Court of the Learned III Additional District Judge, Bhimavaram by way of A.S.No.78 of 2009. This appeal came to be dismissed on 18.01.2023. It appears that during the pendency of the appeal, the Court had executed a deed of sale dated 14.02.2011 and registered the same in favour of respondent No.1. Smt. Nimmagadda Revathi, learned counsel appearing for the appellant submits that the substantial question of law that arises in the present case is on the question of	
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		limitation. She submits that both the Trial Court and the Appellant Court had taken the starting point of limitation, for purposes of Article 54 of Limitation Act, as the date on which a notice, dated 23.09.1993, calling upon respondent Nos.2 & 3 to execute a deed of sale in pursuance of the agreement of sale, was taken into account, whereas the date that should have been taken into account is the filing of O.S.No.36 of 1992 as the same amounts to notice of refusal of any agreement of sale. In the circumstances, she contends that the following question of law would arise for the consideration of this Court: “Whether the notice of the suit in O.S.No.36 of 1992 would have to be taken as the starting point of limitation under Article 54 of the Limitation Act, 1963, or whether the notice issued by respondent No.1 for performance of agreement of sale dated 04.08.1988 would be the starting point for limitation.” Sri M. Chalapati Rao, learned counsel for respondent No.1 raises two objections to the maintainability of the present appeal. The 1st objection is that there was no decree passed against the appellant and as such the appellant was not entitled to file either the First Appeal or the present Second Appeal. He	
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		relies upon the judgment of the Hon'ble Supreme Court in the case of <i>Smt. Ganga Bai Vs. Vijay Kumar and others</i>¹ and <i>Banarsi and others vs. Ram Phal</i>². Sri M. Chalapati Rao, learned counsel would contend that an appeal can be filed only against a decree and not against any finding of fact. He would submit that in the present case there is no decree against the appellant as there was no direction issued against the appellant for doing or refraining from doing anything and as such an appeal filed by the appellant would not be maintainable. Secondly, Sri M. Chalapati Rao, learned counsel would also contend that the appellant is not a party to the agreement of sale and would therefore be precluded from objecting against the performance of such an agreement. He would also raise a subsidiary ground that the appellant, who came into the picture pursuant to the alienation of the property to him by respondent Nos.2 & 3, cannot raise the question of limitation as the same can only be raised by the parties to the agreement.	
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¹ (1974) 2 SCC 393

² (2003) 9 SCC 606

		The first contention of Sri M. Chalapati Rao is that an appeal is not maintainable by a person against whom there is no direction in a decree. Paragraph 8 of the Judgment of the Hon'ble Supreme Court of India in the case of <i>Banarsi and others vs. Ram Phal</i>³ is as follows: <i>Sections 96 and 100 of the CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal (See Phoolchand and Anr. v. Gopal Lal, [1967] 3 SCR 153; Smt. Jatan Kanwar Golcha v. M/s Golcha Properties (P) Ltd., [1970] 3 SCC 573; Smt. Ganga Bai v. Vijay Kumar and Ors., [1974] 2 SCC 393. No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the CPC provide for an appeal against decree and not against judgment.</i> To the mind of this Court, <i>prima facie</i>, the test appears to be whether a person is aggrieved by the decree and not whether there is a specific direction against the person in the decree. In the circumstances, this Court would have to provisionally reject this	
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³ (2003) 9 SCC 909

		contention of Sri M. Chalapati Rao. It may also be noted that this contention is not being accepted only for the purpose of admission of the appeal and the same may be argued at the time of final hearing. The 2nd contention of Sri M. Chalapati Rao has been that a party to the suit, who is not a party to the agreement of sale, cannot object to the specific performance of an agreement to which he is not a party. The said contention cannot also be accepted as there would be situations where interests in property are created in favour of third parties who are either aware of the proceedings or are unaware of the proceedings and such a generalization would be too broad a generalization. Accordingly, this objection may also be reserved for hearing in the final hearing of the appeal. The contention of Smt. Nimmagadda Revathi, learned counsel for appellant that the commencement of limitation cannot be taken only from the date of service of notice if there is other notice of refusal, requires further consideration. This issue would revolve around an interpretation of Article 54 of the Schedule to the Limitation Act and would amount to a question of law.	
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		Sri M. Chalapati Rao has also raised a further objection that limitation is a mixed question of fact and law and as such it cannot be treated only as substantial question of law. I am afraid that I would have to reject this submission also. It is true that a question of limitation is a mixed question of fact and law. However, when the facts have already been laid out in the course of the trial, the consequence of such facts would be decided only as a question of law. Accordingly, the Second Appeal is admitted with the following question of law: “Whether the notice of the suit in O.S.No.36 of 1992 would have to be taken as the starting point of limitation under Article 54 of the Limitation Act, 1963, or whether the notice issued by respondent No.1 for performance of agreement of sale dated 04.08.1988 would be the starting point for limitation.” RRR, J MJA	
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