



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3397]

FRIDAY, THE FIFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

SECOND APPEAL NO: 188/2013

Between:

S.krishna Reddy

...APPELLANT

AND

K Lokanadha Reddy and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.D PURNACHANDRA REDDY

Counsel for the Respondent(S):

1.V JAYA KUMAR

2.VENKATASUBBAIAH V

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.188 of 2013

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure is filed aggrieved against the judgment and decree, dated 30.11.2012, in A.S.No.98 of 2006, on the file of the V Additional District Judge, Tirupati, reversing the judgment and decree, dated 11.08.2006, in O.S.No.89 of 2001 on the file of the Principal Senior Civil Judge, Tirupati.

2. Originally, the suit in O.S.No.89 of 2001 was filed by the plaintiff for seeking the relief to direct the defendant No.1 to execute and register the necessary agreement of sale in favour of the plaintiff in respect of the plaint schedule property. The learned trial Judge dismissed the suit for specific performance of agreement and granted refund of advance amount of Rs.20,000/- with proportionate costs against the defendant No.1 with subsequent interest @ 9% per annum from the date of filing the suit till the date of realization. Aggrieved against the judgment and decree passed in O.S.No.89 of 2001, the unsuccessful plaintiff filed an appeal *vide* A.S.No.98 of 2006, on the file of the V Additional District Judge, Tirupati. The learned first appellate Judge allowed the appeal with costs by setting aside the judgment and decree passed by the learned trial Judge. Aggrieved thereby, the defendant No.2 in the suit approached this Court by way of second appeal.

3. The appellant herein is the defendant No.2, the respondent No.1 is the plaintiff and the respondent No.2 is the defendant No.1 in O.S.No.89 of 2001.

4. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the suit O.S.No.89 of 2001.

5. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.89 of 2001, is as follows:

The defendant No.1 is the absolute owner of the plaint schedule land and offered to sell it to the plaintiff, after negotiations the defendant No.1 agreed to sell it for a valid consideration of Rs.2,15,000/- to the plaintiff on 14.02.2001. Thereafter, the defendant No.1 executed an agreement to execute the regular agreement of sale in favour of the plaintiff and received Rs.20,000/- as token advance out of the sale consideration and agreed to receive the balance sale consideration on or before 14.06.2001, and to execute a regular agreement of sale. The plaintiff pleaded that one week prior to the filing of the suit, he requested the defendant No.1 to execute a regular registered agreement of sale in respect of the plaint schedule property by receiving the balance sale consideration in pursuance of the contract dated 14.02.2001, but the defendant No.1 was postponing the same as the value of the schedule property has gone up. He further pleaded that he came to know that the defendant No.1 and her husband were trying to alienate the schedule property to defendant No.2 for wrongful gain. The plaintiff pleaded that one G.Sunil, who is the husband of the defendant No.1, himself, scribed the agreement dated 14.02.2001 and the defendants in collusion with each other are trying to create documents affecting the right of the plaintiff, as such, the plaintiff is constrained to file the present suit.

6. The 1st defendant filed written statement before the trial Court denying the material averments made in the plaint. The brief averments in the written statement of 1st defendant are as follows:

The defendant No.1 never intended to sell the schedule property to the plaintiff and had never executed any agreement dated 14.02.2001 and also did not receive any consideration. The defendant No.1 pleaded that the plaintiff is not entitled to the relief as claimed and the agreement dated 14.02.2001 is a created one and the same is inadmissible. The defendant No.1 further pleaded that she had sold the schedule property under a regular registered sale deed dated 16.04.2001 to the defendant No.2 for a valid sale consideration in pursuance of the agreement dated 18.01.2001 to execute an agreement of sale dated 03.03.2001 and delivered possession of the schedule property to the defendant No.2 and furthermore, the plaintiff is aware of the said transaction, in order to give trouble to the defendant No.1, the plaintiff has created the agreement dated 14.02.2001, and she prayed to dismiss the suit with costs.

7. The 2nd defendant filed a written statement by denying the plaint averments and further contended that the documents relied upon by the plaintiff are all fabricated and false and he is not entitled to the discretionary relief of specific performance under the provisions of the Specific Relief Act. The defendant No.2 pleaded that the defendant No.1 agreed to sell the schedule property to him for a valid consideration of Rs.2,15,000/- and executed an agreement on 18.01.2001 by receiving a sum of Rs.10,000/- and

agreed to execute a regular agreement of sale. The defendant No.2 further pleaded that in terms of the agreement dated 18.01.2001, the defendant No.1 executed a regular registered sale deed dated 03.03.2001 by receiving balance sale consideration of Rs.90,000/- totaling to Rs.1,00,000/- and agreed to receive the balance of Rs.15,000/- within four months i.e. on or before 02.07.2001. The defendant No.2 pleaded that since the date of purchase, he is in absolute possession and enjoyment of the schedule land and he is the bona fide purchaser for value without the knowledge of any alleged unconcluded contract between the plaintiff and the defendant No.1 and the defendant No.2 had no prior notice of the same. The defendant No.2 further pleaded that the plaintiff in collusion with the defendant No.1 filed the present suit in order to defeat his legal rights, the defendant No.2 had paid valuable consideration to the defendant No.1 and acquired legal rights through a registered instrument, which cannot be disputed by the plaintiff or the defendant No.1 by creating false documents, as such, he prayed to dismiss the suit with costs.

8. On the basis of above pleadings, the learned trial Judge framed the following issues for trial:

- 1) Whether the plaintiff is entitled for specific performance of contract on the basis of agreement of sale?
- 2) Whether the suit claim is barred by limitation?

- 3) Whether the plaintiff is entitled to get back the earnest money paid in case the plaintiff failed to establish the principal relief of specific performance of contract?
- 4) Whether the agreement of sale is not true, valid and binding on the defendant? and
- 5) To what relief the plaintiff is entitled to?

9. During the course of trial in the trial Court, on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A-1 to A-4 were marked. On behalf of the defendant No.2, D.Ws.1 and 2 were examined and Exs.B-1 to B-2 were marked.

10. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit for specific performance agreement and granted refund of advance amount of Rs.20,000/- with proportionate costs against the defendant No.1 with subsequent interest @ 9% per annum for the date of filing the suit till the date of realization. Felt aggrieved thereby, the unsuccessful plaintiff filed A.S.No.98 of 2006, on the file of the V Additional District Judge, Tirupati and the defendant No.2, who is the subsequent purchaser also filed his cross-objections in A.S.No.98 of 2006, wherein the following points came up for consideration:

- 1) Whether the appellant is entitled for a decree for specific performance of agreement or agreement of sale?

- 2) Whether the lower court was justified in holding all the issues, except issue No.4 in favour of the defendants and whether the lower court had committed any jurisdictional error in dismissing the suit? and
- 3) To what relief?

11. The learned first appellate Judge after hearing the arguments, answered the points, as above, against the defendants and allowed the appeal by setting aside the judgment and decree passed by the learned trial Judge. Felt aggrieved of the same, the unsuccessful defendant No.2 in O.S.No.89 of 2001 filed the present second appeal before this Court.

12. On hearing both sides' counsel at the time of admission of the second appeal on 22.02.2013, this Court framed the following substantial questions of law:

- 1) Whether Ex.A-1 is a contract to sell under Section 2(g) of the contract Act or a mere contract to enter into a contract to sell and is unenforceable?
- 2) Whether a suit for specific performance by way of execution of an agreement to enter into an agreement is maintainable? and
- 3) Whether the judgment of the lower appellate court is perverse in granting a decree for execution of sale deed, which is beyond the relief sought in the suit?

14. Heard Sri O.Manohar Reddy, learned Senior Counsel appearing on behalf of Sri D.Purnachandra Reddy, learned counsel for the appellant and

Sri V.Venugopal, learned Senior Counsel appearing on behalf of Sri V.Venkata Subbaiah, learned counsel for the respondents.

15. The law is well settled that under Section 100 of CPC, High Court cannot interfere with findings of fact arrived at by first appellate Court, which is final Court of facts, except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

In the case of ***Bhagwan Sharma v. Bani Ghosh***¹, the Apex Court held as follows:

“The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature.”

In the case of ***Kondira Dagadu Kadam v. Savitribai Sopan Gujar***², the Apex Court held as follows:

“The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

16. The appellant herein is the defendant No.2 in O.S.No.89 of 2001 on the file of the Principal Senior Civil Judge, Tirupati and the respondents herein are the plaintiff and the defendant No.1 in the suit. After a full-fledged trial, on hearing both sides, the learned trial Judge dismissed the main relief of specific

¹ AIR 1993 SC 398

² AIR 1999 SC 471

performance of agreement of sale and granted the alternative relief of refund of advance amount. Aggrieved against the said judgment, the plaintiff filed the first appeal *vide* A.S.No.98 of 2006 and the defendant No.2 also filed the cross-objections challenging certain findings given by the trial Court in its judgment and the First Appellate Court *vide* its judgment and decree dated 30.11.2012, allowed the appeal filed by the plaintiff and dismissed the cross-objections filed by the defendant No.2. Aggrieved against the said judgment and decree, the defendant No.2 filed the present second appeal.

17. Learned counsel for the respondent /plaintiff contended that the appellant/defendant No.2 herein filed the second appeal against the judgment and decree passed in A.S.No.98 of 2006, on the file of the V Additional District Judge, Tirupati, and no appeal has been filed by the defendant No.2 challenging the dismissal of the cross-objections filed by him and therefore, the decree operates *res judicata*.

18. In a case of ***Rajbansh Dubey @ Jagdish Dubey Vs. State of Bihar***³, a Division Bench of High Court of Patna held as follows:

"When there is only one suit, the question of res judicata does not arise at all and in the present case, both the decrees are in the same case and based on the same judgment, and the matter decided concerns the entire suit. As such, there is no question of the application of the principle of res judicata. The same judgment cannot remain effective just because it was appealed against with a different number or a copy of it was attached to a different appeal. The two decrees in substance are one."

³ AIR 1969 ALLAHABAD 504

19. In a case of **Narhari and others Vs. Shanker and others**⁴, a Full Bench of the Apex Court held as follows:

"The question of 'res judicata' arose only when there were two suits. As there was one suit and both the decrees were in the same case and based on the same judgment and the matter decided concerned the entire suit the principle of 'res judicata' did not apply."

20. In a case of **Hansi Town Improvement Trust Vs. Sham Sunder**⁵, by referring to various case laws of the Apex Court, Punjab and Haryana High Court held as follows:

"Though a counter-claim by a legal fiction is treated as a separate suit, however, under Order 8 R 6A, the counterclaim is maintainable against the claim of the plaintiff which accrues to the defendant against the plaintiff. The counterclaim has to be intricately interwoven with the claim of the plaintiff. Hence, though by legal fiction, it is a cross suit, however, in substance, it is a part of the same suit filed by the plaintiff. Order 8 Rule 6A enables the Court to pronounce a final judgment in the same suit both on the original claim and on the counterclaim. Hence, the judgment as well as decree envisaged are composite judgment and decree and not separate judgments and decrees. Hence, for the purpose of filing an appeal, the counterclaim is required to be treated as a part of the entire claim which has been decided by a composite judgment and decree. Order 8 Rule 6A (2) enables the Court to pronounce a final judgment in the same suit both on the original claim and on the counterclaim. Hence, the judgment as well as decree envisaged are composite judgment and decree and not separate judgments and decrees. Hence, for the purpose of filing an appeal, the counterclaim is required to be treated as a part of the entire claim which has been decided by a composite judgment and decree. Thus, when the composite decree is passed while deciding both suit and counterclaim, there is no use of filing two separate appeals. A single memorandum of appeal filed for challenging the correctness of composite judgment and decree would be maintainable."

⁴ AIR 1953 SC 419

⁵ AIR Online 2024 P & H 759

21. In the case at hand, the first appeal filed by the plaintiff is allowed and the counter-claim filed by the defendant No.2 is dismissed by the First Appellate Court by passing one decree and one judgment. No separate decree is passed for dismissal of the counter-claim by the First Appellate Court, only one decree is passed by the First Appellate Court for both the first appeal and the counter claim and a common judgment is also pronounced by the First Appellate Court, against which the defendant No.2 herein, who got defeated in both the first appeal and the counter-claim filed the present second appeal. As such, there is no question of application of principles of *res judicata*. The question of *res judicata* arose only when there are two suits or two appeal suits. As there is only one appeal suit against one suit and the first appeal is filed by the plaintiff, against the judgment and decree passed in the suit, wherein to challenge certain findings, the defendant No.2 in the same suit filed a counter-claim and both the appeal suit and the counter-claim were decided by the First Appellate Court in entire one appeal. Therefore, the principles of *res judicata* are not applicable to the present facts of the case.

22. The learned counsel for respondents placed reliance in ***K.Krishnan and Ors. Vs. Tirumala Tirupati Devasthanams***⁶. The facts in the aforesaid case law are that, by a common judgment, the Civil Court has disposed of four (04) suits, but separate decrees were drawn up in each suit. In the aforesaid case law it was held as follows:

⁶ 1995 SCC OnLine AP 166

" 32. By reason of the judgment and decree in O.S.No.4 of 1987 becoming final, can it be said that this appeal is barred by res judicata? We think, the answer is in the affirmative. In **Sheodan Singh v. Daryao Kunwar, (14) AIR 1966 SC 1332**, four suits were consolidated and tried together with the consent of the parties. By a common judgment, the civil Court disposed of the four suits but separate decrees were drawn up in each suit. Five issues were common in all the suits, and there were other issues in each case separately. One of the common issues related to the respective rights of the parties to the suit property. Against the decrees in the four suits, two appeals were preferred to the High Court and two appeals to the District Court and later the appeals were transferred from the District Court to the High Court to be heard along with the other two connected appeals. Two of the four appeals were dismissed by the High Court - one on the ground of limitation and the other on account of failure to apply for translation and printing of the record as required by the rules of the High Court."

In the case at hand, against one judgment and decree of the trial Court, the first appeal was filed by the plaintiff, to challenge certain findings, the defendant No.2 in the same suit filed the counter-claim in the first appeal itself. The learned First Appellate Judge passed one decree and one judgment by disposing of both the first appeal and the counter-claim. The defendant No.2, who got defeated in both the first appeal suit and also in the counter-claim filed the second appeal herein.

23. Learned counsel for the appellant/defendant No.2 would contend that Ex.A-1 is not a contract to sell under Section 2(g) of the Indian Contract Act, it is a mere contract to enter into a contract to sell, therefore, it is unenforceable. The recitals in Ex.A-1 go to show, it is not a contract to sell the property. Ex.A-1 is a mere agreement to enter into an agreement of sale between both the parties. An agreement to enter into an agreement cannot be enforceable and one cannot compel another to enter into an agreement. It is also evident that

Ex.A-1 is not a concluded contract, it is a *“mere agreement dated 14.02.2001, to enter into an agreement on a particular date i.e. 14.06.2001”*.

24. The recitals in Ex.A-1 goes to show that the said agreement is dated 14.02.2001, to enter into an agreement on 14.06.2001, the plaintiff herein filed a suit to enforce Ex.A-1 without waiting for the period which was prescribed in Ex.A-1 i.e. till 14.06.2001. The recitals in Ex.A-1 goes to show that the defendant No.1 entered into an agreement to alienate the property for an amount of Rs.2,15,000/- and a poultry amount of Rs.20,000/- was paid on 14.02.2001, with a condition to enter an agreement on 14.06.2001. Further, the Ex.A-2 notice is said to have been issued by the plaintiff to the defendant No.1 by marking a copy to the defendant No.2, since Ex.A-1 is not a concluded contract, a suit for specific performance by way of execution of agreement to enter into another agreement on 14.06.2001 is not maintainable. Both the Courts below arrived at the concurrent finding that Ex.A-1 is true.

25. As per the recitals of Ex.A-1, the agreed sale consideration to execute an agreement is Rs.2,15,000/-. But, it was drafted on a one rupee stamp paper and it was marked subject to proof, relevancy and admissibility by the trial Court. By giving reasons, the learned trial Judge held that Ex.A-1 is an inadmissible document in view of deficit payment of stamp duty. The learned trial Judge by giving cogent reasons held in its judgment in the suit that *“the suit agreement is not a concluded contract and not enforceable under law and as it is believed that the defendant No.1 executed it after receiving the money, it can be said that it is a simple receipt acknowledging the receipt of money*

from the plaintiff” and the learned trial Judge granted a decree by directing the defendant No.1 to refund an amount of Rs.20,000/- with interest @ 9% per annum from the date of suit till the date of realization.

26. The First Appellate Judge held in its judgment that *“in villages, whenever people agree to purchase the property, they write the same on some papers then and there only, agreeing to execute agreement of sale in future and thus accordingly, the defendant No.1 had executed Ex.A-1 in favour of the plaintiff”*. The said finding of the First Appellate Judge is nothing but a pervasive finding. *The law is one and the same and it is applicable to all and there is no separate law for the villagers.*

27. Learned counsel for the respondents placed reliance on ***Gaiv Dinshaw Irani and Others Vs. Tehmtan Irani and Others***⁷, wherein the Apex Court held as follows:

"48. Considering the aforementioned changed circumstances, the High Court taking note of the subsequent events moulded the relief in the appeal under Section 96 of the Code of Civil Procedure and the same has been challenged by the appellants before us. In ordinary course of litigation, the rights of parties are crystallized on the date the suit is instituted and only the same set of facts must be considered. However, in the interest of justice, a court including a court of appeal under Section 96 of the Code of Civil Procedure is not precluded from taking note of developments subsequent to the commencement of the litigation, when such events have a direct bearing on the relief claimed by a party or one the entire

⁷ (2014) 8 Supreme Court Cases 294

purpose of the suit the Courts taking note of the same should mould the relief accordingly."

In the case at hand, as on the date of the suit, the appellant is impleaded as defendant No.2 in the suit itself and the suit is filed against both the defendants. The facts and circumstances in the aforesaid case law are different to the instant case.

28. Learned Senior Counsel for the respondents placed reliance on ***Muruganandam Vs. Muniyandi (Died) through Lrs.***⁸. The facts in the aforesaid case law are that the photo copy of the document dated 01.01.2000, referred in the plaint is filed along with the suit and its original is not filed. But, in the case at hand, no original document is filed by the plaintiff along with the plaint; therefore, the facts in the aforesaid case law are different to the instant case.

29. Learned Senior Counsel for the respondents placed reliance on ***R.Hemalatha Vs. Kasthuri***⁹. The facts in the aforesaid case law are applicable to the Registration Act, 1908 of Tamil Nadu Amendment Act, 2012. In the case at hand, Ex.A-1 is not a concluded contract.

30. The learned Senior Counsel for the appellant would contend that the First Appellate Court granted a decree for execution of sale deed and also recovery of possession, which is beyond the relief sought by the plaintiff in the suit. The plaintiff herein filed a suit for specific performance of agreement of

⁸ 2025 SCC OnLine SC 1067

⁹ (2023) AIR (SC) 1895

sale to enter into a registered agreement of sale. The relief sought by the plaintiff in the suit is to direct the defendant No.1 to execute a registered agreement of sale in favour of the plaintiff on 14.06.2001, in respect of the plaint schedule property. The learned trial Judge dismissed the main relief for specific performance of agreement of sale, whereas, the First Appellate Judge allowed the appeal filed by the plaintiff and directed the defendant No.1 to execute a registered sale deed in favour of the appellant after receipt of the balance sale consideration from the appellant with his expense. Another direction was also given by the First Appellate Judge in the said judgment is that *"the defendant No.1 is directed to deliver the physical possession to the plaintiff"*. It is well settled that *"as per Section 22 of the Specific Relief Act, the Court cannot grant possession unless it is specifically prayed for"*. If the First Appellate Court wants to decree the suit, at best, the First Appellate Court can award the relief sought for by the plaintiff in the suit, but the First Appellate Court is not supposed to grant any other relief beyond the relief sought by the plaintiff in the suit. Therefore, the said finding of the First Appellate Judge is nothing but a pervasive finding.

31. Learned counsel for the respondents placed reliance on ***Hindalco Industries Ltd. Vs. Union of India and Others***¹⁰, wherein the Apex Court held as follows:

"7. It is settled law that it is no longer necessary to specifically ask for general or other relief apart from the specific relief

¹⁰ (1994) 2 Supreme Court Cases 594

asked for. Such a relief may always be given to the same extent as if it has been asked for provided that it is not inconsistent with that specific claim which the case raised by the pleadings. The court must have regard for all the relief and look at the substance of the matter and not its forms. It is equally settled law that grant of declaring relief is always one of discretion and the court is not bound to grant the relief merely because it is lawful to do so. Based on the facts and circumstances the court may on sound and reasonable judicial principles grant such declaration as the facts and circumstances may so warrant. Exercise of discretion is not arbitrary. If the relief asked for is as of right, something is included in his cause of action and if he establishes his cause of action, the court perhaps has been left with no discretion to refuse the same. But when it is not as of right, then it is one of the exercise of discretion by the court. In the event the court may in given circumstances grant which includes 'may refuse' the relief."

The ratio in the aforesaid case law is not related to specific performance of agreement of sale and it relates to a complaint made to a tribunal under Section 36(b) of the Railways Act.

32. For the aforesaid reasons, I am of the considered view that Ex.A-1 is not a concluded contract and it is an agreement to enter into an agreement on a future date and it is a mere contract to enter into a contract of sale on 14.06.2001. The plaintiff herein filed a suit on 27.03.2001, to enforce Ex.A-1 without waiting till 14.06.2001. As stated *supra*, an agreement to enter into another agreement cannot be enforceable; one cannot compel another to enter into an agreement. Since, Ex.A-1 is not a concluded contract, it cannot be enforceable. On appreciation of the entire evidence on record, the learned

trial Judge rightly dismissed the main relief and granted alternative relief of refund of amount. The learned First Appellate Judge without appreciating the evidence on record in a proper manner granted the relief of possession and also to execute a registered sale deed, which is beyond the relief sought in the suit itself. Therefore, the said finding of the First Appellate Judge is nothing but a pervasive finding. The First Appellate Court without appreciating the entire evidence on record in a proper manner came to a wrong conclusion and allowed the first appeal filed by the plaintiff. Therefore, the judgment and decree passed by the First Appellate Court is liable to be set aside.

33. In the result, the second appeal is **allowed** and the judgment and decree dated 30.11.2012, in A.S.No.98 of 2006, passed by the learned V Additional District Judge, Tirupati, is hereby set aside and the judgment and decree, dated 11.08.2006, in O.S.No.89 of 2001, passed by the learned Principal Senior Civil Judge, Tirupati, is hereby confirmed. Considering the facts and circumstances of the case, each party do bear their own costs in the second appeal.

As a sequel, miscellaneous petitions, if any, pending in the Second Appeal shall stand closed.

V. GOPALA KRISHNA RAO, J.

Date: 05.12.2025

SRT