IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

***

APPEAL SUIT No. 543 of 2008

Between:

1. Sri Patel Shivanagappa, and another

……Appellants

AND

1. Mohd Chand Pasha

…….Respondents

Date of Judgment pronounced on : 28.09.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes / No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes / No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes / No

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

APPEAL SUIT No. 543 of 2009

% 28.09.2018

1. Sri Patel Shivanagappa, and another

……Appellants

Versus

$ 1. Mohd Chand Pasha

….. Respondents.

< GIST:

> HEAD NOTE:

! Counsel for the Appellants : Sri G. Sanjeeva Reddy

^ Counsel for the Respondents : Sri K. Lakshmi Manohar

? Cases referred

1 2009 (6) ALT 709
2 2009 (3) ALT 610

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

APPEAL SUIT No.543 of 2008

JUDGMENT:

This appeal arises out of the judgment dated 29.02.2008 in O.S.No.87 of 2004 on the file of Senior Civil Judge, at Vikarabad, Ranga Reddy District. O.S.No.87 of 2004 was filed by the plaintiff for the relief of specific performance of agreement of sale and to put in vacant possession of the suit land. The suit is decreed by the trial Court in favour of the plaintiff directing the defendant to execute the registered sale deed in favour of the plaintiff within two months from the date of judgment, by receiving the balance of sale consideration of Rs.5,47,300/-.

Aggrieved by the impugned judgment, this appeal has been preferred by the appellant-defendant.

2. Brief facts of the case are that defendant No.1 has entered into an agreement of sale with plaintiff to sell Ac.15-36 guntas of his land at the rate of Rs.46,000/- per acre. The plaintiff, as per agreement dated 31.05.2000, paid earnest money of Rs.1,00,000/- on the date of agreement and D1 issued a receipt acknowledging part payment of sale consideration. At the time of agreement of sale, it was agreed by both parties that D1 has to execute the registered sale deed by receiving the balance of sale consideration of Rs.6,47,300/- by 31.03.2001. Thereafter, D1 has received further amount of

Rs.1,00,000/- on 08.06.2001 and entered a Continuous agreement and passed a receipt of acknowledgment Ex.A4 on 08.06.2001, the second defendant who is son of D1 has also signed on the agreement and the receipt along with his father. According to plaintiffs, the defendants 1 and 2 waived the date 31.06.2001 stipulated in the agreement dated 31.05.2000, as the brother of D1, by name, Shivarajappa, filed a suit for partition in O.S.No.12 of 2001 against his brother Patel Baswant Rao, the first defendant and obtained injunction order and got published in Eenadu News paper dated 16.02.2003.

The plaintiff requested to execute registered sale deed by receiving balance of sale consideration of Rs.5,47,300/- in the month of August, 2001. D1 has disclosed about the injunction order and promised to execute the sale deed immediately after final disposal of the proceedings and the said suit was withdrawn by Shivarajappa, on 25.01.2009.

The plaintiff came to know about the disposal of the suit and approached defendant No.1 on 15.04.2004 requesting to receive the balance of sale consideration and execute the sale deed in favour of plaintiff. The defendant Nos.1 and 2, instead of receiving balance of sale consideration and executing the sale deed, has filed O.S.No.53 of 2004 against the plaintiff.

Aggrieved by the same, the plaintiff filed the suit O.S.No.87 of 2004 before the trial Court.

The defendants filed their written statement contending that the defendants along with family members

are the owners of the suit land and it is ancestral property. The suit land was actually in the name of Patel Baswanth Rao, who is the elder member of the joint family, and after partition of joint family properties, the suit land fell to the share of the defendants family. Defendant No.1 has never offered to sell the suit land at Rs.47,000/- per acre to the plaintiff and he never executed any agreement of sale dated 31.05.2000 nor he received earnest money of Rs.1,00,000/-, and that the plaintiff never paid balance of sale consideration of Rs.6,47,300/- to the defendants by 31.03.2001 as per the agreement dated 31.05.2000 and as such the agreement deemed to be cancelled as there is no agreement of sale dated 31.05.2000 as the plaintiff has not complied the conditions stipulated therein. The defendant No.1 never received Rs.1,00,000/- on 08.06.2001 and never executed further continuation agreement or passed a receipt of acknowledgement, and that defendant No.2 has never signed on the second agreement of sale and receipt.

In support of his claim, the plaintiff examined himself as PW.1, and also examined PWs.2 and 3 and marked Exs.A1 to A5. The second defendant examined himself as DW.1 and also examined DW.2 and marked Ex.B1.

The trial Court, on consideration of the oral and documentary evidence available on record, decreed the suit with costs by order dated 29.02.2008 and directed the defendants to execute registered sale deed in favour of the plaintiff within two months from the date of order by receiving balance of sale consideration of Rs.5,47,300/-;

and if the defendants fail to execute the registered sale deed within the said period, the plaintiff was at liberty to take recourse to law.

Aggrieved by the order passed by the trial Court, the defendants 1 and 2 preferred the present appeal.

Heard the learned counsel for the appellants-defendants, and the learned counsel for the respondent-plaintiff.

Learned counsel for the appellants-defendants has, firstly, submitted that time is essence of contract. It is submitted that the respondent has failed to pay the balance of sale consideration by 31.03.2001, as per the terms of agreement Ex.A1 so the suit is barred by limitation. Secondly, it is submitted that receipt of Rs.1,00,000/- dated 08.06.2001 under Ex.A4 cannot be considered as continuous agreement. Thirdly, the plaintiff had not made an averment that he was ready and willing to perform his part of contract, which is not in accordance with Section 16(c) of the Specific Relief Act. Fourthly, the respondent has not paid the balance of sale consideration to prove his ready and willingness.

Learned counsel for respondent-plaintiff contended that the respondent has been demanding the appellants to receive the balance of sale consideration, and perform their part of contract by registering sale deed. The appellants have been postponing the registration of sale deed on the pretext that the brother of defendant has

filed a suit for permanent injunction, and temporary injunction was granted in their favour. So the defendants informed the plaintiff to wait till disposal of the suit. Thereafter, the suit was disposed of as the same was withdrawn. The respondent-plaintiff has demanded the appellants to execute registered sale deed by receiving balance of sale consideration. Therefore, the appellants have executed an agreement of sale on receipt of Rs.1,00,000/- and issued a receipt to that effect. The appellants have failed to perform their part of contract so the respondent has filed a suit for specific performance of agreement of sale. The respondent has been ready and willing to pay the balance of sale consideration.

On considering the arguments advanced by the learned counsel for the appellants, and the learned counsel for the respondent, the following points arise for consideration.

(i) Whether Ex.A3 is continuation agreement to Ex.A1?
(ii) Whether the suit is barred by limitation; and
(iii) Whether the respondent-plaintiff was ready and willing to perform his part of the contract?

Learned counsel for the respondent-plaintiff submits that on 31.05.2000 the appellant No.1 entered into an agreement of sale Ex.A1 with the respondent, and the respondent paid an advance amount of Rs.1,00,000/- towards earnest money on the same date and Ex.A2 is the Receipt for the payment. On 08.06.2001, the appellant No.1 has

received further amount of Rs.1,00,000/-, and executed a Continuation Agreement under Ex.A3, and passed a Receipt of Acknowledgement on the same date, under Ex.A4. The appellant No.1, and his son appellant No.2, have signed on Exs.A3 and A4 and, therefore, the appellants waived the date of payment of balance sale consideration payable on or before 31.03.2001, as per the stipulation in the initial agreement of sale Ex.A1. Therefore, it is argued that Ex.A3 is the agreement in continuation of the initial agreement of sale under Ex.A1.

The evidence on record reveals that the parties originally entered into an agreement of sale under Ex.A1, dated 31.05.2000, and later they entered into another agreement of sale in continuation of earlier one under Ex.A3 dated 08.06.2000. The plaintiff has filed a suit basing on both the agreements of sale for specific performance of agreement of sale. The contention raised by the appellants/defendants is that the suit is barred by limitation under Section 54 of the Limitation Act. The suit filed basing on the second agreement of sale dated 08.06.2000, whereas the first agreement of sale was dated 31.05.2000. As per Schedule Part I (Suits Relating to Accounts), 54 of the Limitation Act, 1963, which reads as under:

> *54. For specific performance of a contract. Three years. The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused*

In the instant case, there are two agreements of sale before this Court, which are Ex.A1 and A3. The limitation was taken from the date of the second agreement of sale. Therefore, it is pleaded by the plaintiff that the suit is well within the limitation.

Whether the first agreement of sale is to be taken into consideration or the second agreement of sale is to be taken, for the purpose of calculation of limitation, is to be considered in this appeal.

The trial Court has not framed any issue in respect of limitation. In issue No.5, the question was whether the agreement dated 08.06.2001 is an independent agreement and has no link with the agreement dated 31.05.2000 as alleged by the defendants.

On consideration of the oral testimony of PW.1-plaintiff, PW.2-one of the attester of Ex.A3 and A4, and PW.3-another attester of Ex.A1 to A4, the trial Court came to the conclusion that the defendant No.1 originally entered into agreement of sale, and later the defendant No.2 also joined in Ex.A1 and A3 to sell the suit schedule property in favour of plaintiff. Both of them have received Rs.2,00,000/- under Ex.A2 and A4. It is also observed by the trial Court that there is no reliable evidence on behalf of defendants to dispute the correctness of Exs.A1 and A3.

The findings of the trial Court with regard to the execution of agreements of Ex.A1 and A3 by defendant No.1

and 2 do not require any interference as they are based on the evidence of witnesses PWs.1 to 3 and they were not disputed.

There is evidence on record to show that there was a contract of sale between the parties under Ex.A1, and subsequently, as the contract could not be performed due to filing of an injunction suit, and a partition suit by the defendants, the parties entered into another contract under Ex.A3 by receiving further amount of Rs.1,00,000/-. It is the continuation of the original contract for the sale of the property. It is appropriate to refer to the contents of documents Exs.A1 and A3 for better appreciation of evidence.

The contents of the Ex.A1 dated 31.05.2000 are as under:

> *Whereas the vendor is the absolute owner and possessor of agricultural land admeasuring Ac.15.36 guntas in Survey No.158, known as Gadda Chenu situated at Chandravancha village, Tandur mandal, R.R. District, the Purchaser due to his family necessities has offered to sell the Schedule Property i.e., Ac.15.36 guntas at the rate of Rs.47,000/ per acre for a total sale consideration of Rs.7,47,300/- to the purchaser.*
>
> *The purchaser has agreed to purchase the same and paid a sum of Rs.1,00,000/- as an advance in cash to the Vendor and the Vendor has received and acknowledged the said amount of Rs.1,00,000/-. The Purchaser has promised to pay the balance sale consideration of Rs.6,47,300/- to the Vendor on or before 31.03.2001 and has agreed to get the sale deed executed and registered by the vendor.*

The contents of Ex.A3 dated 08.06.2001 are as under:

> *Whereas the Vendors have agreed to sell the agricultural land admeasuring Ac.15.36 guntas in Survey No.158, known as Gadda Chenu situated at Chandravancha Village, Tandur Mandal, R.R. District, to the Purchaser on 31.05.2000 and accordingly Agreemnt of Sale was executed. In terms of the Agreement of Sale an amount of Rs.1,00,000/- was paid as an advance out of the total sale consideration.*

Originally, Ex.A1 was executed by appellant No.1 and later Ex.A3 was executed by appellant No.1 and his son appellant No.2. There is evidence on record to show that the appellants have executed the agreements Exs.A1 and A2 and, therefore, they cannot contend that the agreement of sale under Ex.A1 is barred by limitation. As a matter of fact, Ex.A3 is in continuation of Ex.A1. The intention of the parties was to execute the agreement Ex.A3 in continuation of Ex.A1. By the conduct of the parties, they entered into continuation of agreement. The appellants have not taken any defence under Section 62 of the Indian Contract Act, in respect of novation, alteration or rescission. The appellants have totally denied the execution of agreements Ex.A1 and A3 but the same is disbelieved by the trial Court basing on the evidence of witnesses PWs.1 to 3, which does not require any interference. Thus the suit is within limitation. The agreement Ex.A3 is in continuation of Ex.A1 agreement of sale.

Learned counsel for appellants contended that Section 16(c) of Specific Relief Act has not been complied with

and the respondent has not averred and proved his readiness and willingness to perform his part of contract.

Section 16(c) of the Specific Relief Act, reads as under:

> *(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.*
>
> **Explanation.**— For the purposes of clause (c),—
>
> *(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;*
>
> *(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.*

As far as Section 16(c) Explanation (i) is concerned, the plaintiff need not deposit the sale consideration in the Court except when so directed by the Court. As far as Explanation (ii) is concerned, the plaintiff must aver performance of or readiness and willingness to perform the contract according to its true construction.

In the instant case, the plaintiff has averred in paragraph 7 of the plaint as under:

> *"7. That the plaintiff came to know about the disposal of the suit filed by Shivarajappa in the month of March 2004 and approached the defendant No.1 on 15-04-2004 showing his readiness of payment of balance consideration and demanded the defendant No.1 to execute the sale deed in his favour and on*

that also the defendant No.1 promised to execute the sale deed after obtaining copies of the disposal order in the suit filed by the Shivarajappa and in the 1st week of May 2004 the plaintiff approached Patel Baswanth Rao who mediated the transaction requesting him to get the suit land registered in favour of the plaintiff on receipt of balance consideration by Shivanagappa. On the advice of Patel Baswanth Rao the plaintiff along with Syed Aqtar the another attester of Agreemnt and receipt along with Baswanth Rao approached the defendant No.1 on 16-02-2004 and demanded defendant No.1 to receive balance consideration of sale and to execute the registered sale deed, on that the defendant No.1 and 2 denied to execute the sale deed. The plaintiff even ready to deposit the balance consideration of Rs.5,47,300/- in this Hon'ble Court towards the performance of his contract if the court is ordered."

As far as explanation (i) of Section 16(c) is concerned, it is complied. As far as explanation (ii) is concerned, the plaintiff averred in the plaint with regard to performance of his part of contract, and his readiness and willingness to perform the same as per the true construction of the contract.

As per Ex.A1 terms of contract, the defendant No.1 has to perform his part of contract, on or before 31.03.2001. But the defendants did not perform their part of contract on the plea that the injunction suit O.S.No.53 of 2004, and partition suit O.S.No.12 of 2001 filed by brother of D1 (Shivarajappa) for partition of ancestral properties are pending before the Court. and subsequently the said suits were disposed of. The defendants have raised this plea before the trial Court and the same was answered in para 18, 19, 20 and 21 of the

trial Court judgment. It is observed by the trial Court in the impugned judgment that the plaintiff has averred in para 7 of the plaint that he had approached the defendant time and again and requested him to receive the balance sale consideration and register the sale deed. The plaintiff has also averred that he is ready to deposit the balance sale consideration before the Court if so directed by the Court. These averments indicate that the plaintiff was ready and willing to pay the balance sale consideration.

The conduct of the parties clearly indicates that the contract could not be performed by the defendants and the plaintiff was ready and willing to perform his part of contract.

Learned counsel for the appellants relied on a decision in **M. Rangaiah v. T.V. Satyanarayana Rao**[1], wherein this Court has set aside the decree passed by the trial Court for specific performance and directed for refund of the earnest money to the respondent with interest at 12% per annum by invoking the provision under Section 20 of the Specific Relief Act.

In the facts and circumstances of the case, Section 20 of Specific Relief Act, need not be invoked in view of the clear and categorical findings of the trial Court on the two aspects of Section 16(c) and the Limitation and also the appellants failure to prove that the suit schedule property was a joint family property.

[1] 2009 (6) ALT 709

Learned counsel for the appellants has relied on another decision in **Kolli Satyanarayana v. Valluripalli Kesava Rao Chowdary**[2], wherein this Court directed to refund the advance amount of Rs.15,000/-with accrued interest or a sum of Rs.3,00,000/- in all.

The facts and circumstances of the present case are different from the facts in **Kolli Satyanarayana** and, therefore, the above decision is not applicable to this case.

In view of the foregoing reasons, the points (i) to (iii) are answered in favour of the respondent-plaintiff and against the appellants-defendants. There are no valid grounds to interfere with the findings of the trial Court in granting the relief of specific performance in the suit.

IN THE RESULT, the appeal is dismissed and the judgment of the trial Court in O.S.No.87 of 2004, dated 29.02.2008, is confirmed. The appellants are directed to execute registered sale deed within two months from the date of receipt of a copy of this order. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

28th September, 2018
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[2] 2009 (3) ALT 610

HIGH COURT OF JUDICATURE AT HYDERABAD
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