

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.403 OF 2007

Dated 12-3-2015

Between:

C.R.Ranjana Devi.

..Appellant.

And:

K.Kailash Behara.

..Respondent.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.403 OF 2007

JUDGMENT:

This appeal is against judgment dated 27-11-2006 in A.S.No.103 of 2005 on the file of Principal District Judge, Visakhapatnam whereunder judgment dated 18-2-2005 in O.S.No.150 of 1999 on the file of Senior Civil Judge, Gajuwaka, is confirmed.

Appellant herein is defendant and respondent herein is plaintiff in above referred O.S.No.150 of 1999 and they are hereinafter referred to as plaintiff and defendant as arrayed in the suit for convenience sake.

Plaintiff filed O.S.No.150 of 1999 for specific performance of sale agreement dated 19-1-1997 contending that defendant is absolute owner of RCC building bearing door No.3-112, plot No. MIG-II B/40 situated at VUDA colony, Pedagantyada village, Mandal, Visakhapatnam which is the plaint schedule property. According to plaintiff, defendant offered the schedule property for sale, for which, plaintiff agreed and accordingly, both of them entered into sale agreement dated 19-1-1997 with the plaintiff for the sale of schedule property for consideration of Rs.1,40,000/-, out of which, plaintiff paid

a sum of Rs.50,000/- as advance at the time of execution of sale agreement and that subsequently, on 20th January, 1997, defendant received Res.10,000/- from plaintiff and defendant passed receipt for it and that in the agreement, time was fixed for three months from the date of execution of agreement and that the plaintiff was ready to pay the balance consideration within stipulated time but the defendant postponed registration on the ground that she has to get permission from the concerned authorities and that plaintiff requested the defendant to come and execute regular sale deed but she postponed the same on some pretext or the other and plaintiff wrote several letters but finally issued a legal notice on 6-4-1998, for which, a reply dated 22-4-1998 was given with false and untenable allegations.

Defendant resisted the claim of plaintiff contending that after execution of agreement of sale, possession of the building was delivered to the plaintiff as a lessee and that he has to pay monthly rent of Rs.1200/- till registration, for which, plaintiff accepted to pay rent from February, 1997 and that defendant purchased the property from VUDA and as per the conditions, she cannot sell the same within five years and therefore, she applied for permission and she asked the plaintiff to give the copy of HBA sanction and agreement of sale but the plaintiff failed to comply it. She further contended that as the property was purchased by obtaining loan from department unless the loan is discharged, defendant cannot take original document from the department and the same was informed to the plaintiff and that, she is awaiting permission from the higher authorities and requested the plaintiff to pay the balance sale consideration and also the arrears of rent but the plaintiff did not care for the same. It is further contended that plaintiff is not entitled for the relief of specific performance.

On these contentions, trial court framed appropriate issues and during trial, one witness is examined as P.W.1 and eight documents are marked on plaintiff's side and one witness is examined and no documents are marked on the defendant's side.

On an over all consideration of oral and documentary evidence, trial court decreed the suit in favour of plaintiff and aggrieved by which, defendant preferred appeal to the District Court and the Principal District Judge on reversal of evidence dismissed the appeal and confirmed the decree and judgment of the trial court. Now aggrieved by the same, present appeal is preferred.

The following are the substantial questions of law that are urged by the defendant-appellant.

- a. *Whether the courts below committed manifest illegality in impliedly holding that parties by consent can*

circumvent the specific embargo or alienation of suit property within five years of its allotment?

- b. *Whether the courts below did not commit gross error of law in ignoring the facts that the suits for specific performance can be decreed only when the agreement is valid and enforceable as on the date of the agreement?*

Heard arguments.

From the submissions of both sides, the main point that has to be considered by this court is about enforceability of sale agreement dated 19-1-1997.

Now the point that would arise for my consideration in this appeal is whether there is any substantial question of law involved in this appeal.

POINT:

Admittedly, the defendant is owner of house bearing plot No. MIG-II B/40 situated at VUDA colony, Pedagantyada village, Mandal, Visakhapatnam. Defendant entered into an agreement with plaintiff through which she agreed to sell suit property for a total consideration of Rs.1,40,000/- and received an advance of Rs.50,000/- on the date of agreement and another sum of Rs.10,000/- on 20-1-1997 from the plaintiff. According to plaintiff, he is always ready and willing to perform his part of contract and pay the balance sale consideration within the stipulated time but the defendant has been postponing registration on the ground that she has to get permission from VUDA (Visakha Urban Development Authority) for the reasons, she cannot alienate the plaint schedule property within five years of period. According to plaintiff, she also postponed registration on the ground that she has to get necessary permission from her employer for sale of property. Plaintiff is examined as P.W.1 and defendant is examined as D.W.1 and both of them deposed in their evidence in support of their respective pleadings. The main objection of the defendant is that the agreement of sale dated 19-1-1997 is not enforceable because of the condition in the sale deed executed by VUDA in favour of the defendant, as per which, she cannot alienate the property within five years. This objection was raised before the lower appellate court also. But the appellate court negatived the objection after assessing the evidence on record.

As seen from the recitals of agreement of sale and also evidence of both parties, it is clear that at the time of entering into agreement and

receiving advance from the plaintiff, the defendant did not disclose about this restriction for alienation. It is clear from the evidence that defendant is well aware of the restriction but she did not intimate the same to plaintiff. There is no recital in the sale agreement about the alleged restriction. Prior to the suit, there was exchange of correspondence between the parties including legal notice and in this correspondence also, defendant never contended that there is a restriction for alienation. Contrary to that, possession was also delivered to the plaintiff subsequent to execution of agreement of sale. Therefore, as rightly held by both courts, as the defendant intentionally suppressed certain material facts at the time of execution of sale agreement, she cannot claim benefit of such suppressed material facts.

On a scrutiny of the evidence of both parties, I am of the view that the objection of defendant with regard to enforceability of the sale agreement is not at all tenable, particularly, when the sale agreement do not refer to any restriction on the part of defendant in alienating property.

Learned counsel for appellant, referred to many rulings on the point of readiness and willingness and on the point time is essence of contract, on the point of discretion of court to grant specific performance and on the point of statutory prohibition for grant of relief of specific performance.

They are:

DHARAMBIR PRASAD v. DEVENDAR GOPE AND OTHERS (), *SHAIK MAHABOOB SAHEB v. KAMPASATI NAGESWARA RAO ()*, *KANNUBHAI JASHBHAI PATEL & OTHERS Vs. TIRUMALA VENKATESWARA CO-OP.HOUSING SOCIETY LTD., HYDERABAD & OTHERS ()*, *M.MEENAKSHI AND ORS. Vs.METADIN AGARWAL (D) BY LR.s. & ORS.()*, *CHENNUPATI SATYANARAYANA Versus MUNDRU VENKATESHWARLU & OTHERS ()*, *SMT. THAKAMMA MATHEW Versus M.AZAMATHULLA KHAN AND OTHERS ()*, *LOURDU MARI DAVID & ORS. versus LOUIS CHINNAYA AROGIASWAMY & ORS. ()*, *PUSHPARANI S. SUNDARAM & Ors. versus PAULINE MANOMANI JAMES (Deceased) & Ors.()*, *PANDURANG GANPAT TANAWADE versus GANPAT BHAIRU KADAM & ORS.()*, *N.P.NAGARAJA v. TIRUMALA TIRUPATHI DEVASTHANAMS, TIRUPATHI, CHITTOOR DISTRICT ()*, *SURISETI SURYANARAYANA Vs.SARASA MAHALAXMAMMA () AND KRISHNA DEVLOOR (D.S.KRISHNA) (DIED) PER L.R. VERSUS N.MADHAVI & OTHERS ()*.

But all those decisions are noway relevant for the point involved in this case and therefore, I am not specifically referring to each of

them.

Learned counsel for the appellant-defendant also cited following rulings on the point what aspects are to be treated as substantial questions of law. The sum and substance of these decisions are that any perverse findings not based on record and non-application of mind can be taken as substantial question of law in a Second Appeal and any legal issue relating to interpretation of document also constitutes a substantial question of law.

They are:

RAJESWARI VERSUS PURAN INDORIA (), *SHRI BHAGWAN SHARMA VERSUS SMT.BANI GHOSH ()*, *E.AMARNATH RAO AND OTHERS v. SMT. G.VIJAYA GOWRI()*, *D.R.RATHNA MURTHY VERSUS RAMAPPA()*, *AYITHI APPALANAIDU v. PETLA PAPAMMA ()*, *NALAMATHU VENKAYYA (DIED) PER LR v. B.S.NEELKANTA AND ANOTHER()*, *SABITRI MISHRA v. PURNA CHANDRA MOHANTY()*, *MANOHAR LAL v. RAMNIHORE AND ORS.()*, *SMT. KAMAL RANI v. SMT. CHAND RANI()*, *DHARAMBIR PRASAD v. DEVENDAR GOPE AND OTHERS ()*, *VUMMALANENI BASAVAYYA AND OTHERS Vs. MYNENI VENKAYYA (DIED) PER L.Rs. AND OTHERS ()*, *SURESH KUMAR LAL v. SMT. LALTI DEVI ()*, *NIBASH CH. SAHA AND ANR v. CHAMPA LAL LADHAR()*, *HUSENABIBI AND ANR. v. ABDULMIYA KASAMMIYA KURESHI AND ORS. ()*, *MALIREDDY BUTHIRAMANNA DORA AND ANOTHER v. DASARI VEERABHADRA RAO AND ANOTHER ()* and *VIMALESHWAR NAGAPPA SHET v. NOOR AHMED SHERIFF AND ORS. ()*.

But in our case, findings of both courts are completely based on evidence and there is no non-application of mind by either courts in evaluating evidence of both parties. So also, no interpretation of document is involved because the plea taken by defendant with regard to restriction of alienation is not the recital in the document and it is only a plea taken for the first time in the written statement. As already referred above, there is neither such condition in the sale agreement nor in the legal notice exchanged between the parties nor in the correspondence exchanged between the parties prior to legal notices. Both trial court and appellate court have rightly appreciated the evidence on record and came to a right conclusion that the sale agreement is a enforceable document and as plaintiff was ready and willing to perform his part of contract rightly granted decree for specific performance and I do not find any wrong appreciation of evidence or incorrect findings in the judgments of the courts below.

For these reasons, it is held that there is no substantial question of law involved in this case and all the objections are in respect of factual aspects and hence this Second Appeal is liable to be dismissed as devoid of merits.

In the result, Second Appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 12-3-2015.

Dvs.

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Dated 12-3-2015

Dvs