

*HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

+C.R.P.Nos.3591 of 2013 & 1400 of 2014

% 20-3-2015

C.R.P.No.3591 of 2013

M/s. Narne Estates Pvt. Ltd. .. Petitioner

Vs.

\$ Smt. Raj Kumari .. Respondent

<GIST:

<HEAD NOTE:

! Counsel for petitioner : Mr. K.R. Koteswara Rao

^ Counsel for respondent : Mr. V.L.N.G.K. Murthy

?CASES REFERRED:

1. (2005)5 SCC 548
2. 1991(1) ALT 575
3. AIR 2008 A.P. 25
4. AIR 1957 A.P. 854

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

C.R.P.Nos.3591 of 2013 & 1400 of 2014

Date : 20-3-2015

C.R.P.No.3591 of 2013

Between:

M/s. Narne Estates Pvt. Ltd. .. Petitioner

And

Smt. Raj Kumari .. Respondent

Counsel for petitioner : Mr. K.R. Koteswara Rao

Counsel for respondent : Mr. V.L.N.G.K. Murthy

The Court made the following :

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COMMON ORDER:

These two Civil Revision Petitions arise between the same parties, albeit, under different suits.

For convenience, the parties are referred as they are arrayed in C.R.P.No.3591 of 2013.

One P. Shankar Lal was the original owner of the suit schedule property. He has died leaving behind his wife Smt. Jamuna Bai and two daughters, who include the respondent. One Khairunnisa Begum has filed O.S.No.304 of 1983 in the Court of the Additional Subordinate Judge, Ranga Reddy District at HUDA complex, Saroornagar, for specific performance of agreement of sale dated 11-8-1978 in respect of the suit schedule properties against the legal heirs of late P. Shankarlal including the respondent. It is her case that late P. Shankar Lal has entered into the said agreement of sale with her for sale of the property. By Judgment and decree dated 27-4-1985 the said suit was decreed directing the defendants to execute sale deed in respect of Ac.14-25 gts. of land in Sy.No.218/6 of Kondapur village and register the same and put the plaintiff in possession of the suit schedule properties within two months from that date and that if the defendants fail to execute the sale deed, the Court will execute the same.

The petitioner filed O.S.No.1697 of 2011 in the Court of the VIII Additional Senior Civil Judge, Ranga Reddy District for permanent injunction restraining the respondent and her sister from interfering with its possession of the suit schedule property. It is the pleaded case of the petitioner that it has purchased the suit schedule property under agreements of sale-cum-General Power of Attorney from Khairunnisa Begum, the respondent and her sister Munna Bai. It appears, defendant No.2, died and her legal representatives were brought on record. In that suit, the respondent has filed I.A.No.1796 of 2012 under Order VII Rule 11 CPC and defendant Nos.3 to 7 have filed I.A.No.439 of 2012, for rejection of the plaint.

The respondent has filed O.S.No.53 of 2001 in the court of the Additional Junior Civil Judge, Ranga reddy District, which was

renumbered as O.S.No.864 of 2012 on the file of the learned VIII Additional Senior Civil Judge, Ranga Reddy District, for permanent injunction restraining the petitioner from interfering with her possession. In that suit, the petitioner, which is the sole defendant, filed I.A.No.1874 of 2012 under Order VII Rule 11(a) CPC for rejection of the plaint. By common order dated 1-4-2013, the lower Court has dismissed both the I.As. Assailing the order in I.A.No.1796 of 2012, the respondent filed C.R.P.No.1400 of 2014. Feeling aggrieved by the order in I.A.No.1874 of 2012, the petitioner filed C.R.P.No.3591 of 2013.

I have heard the learned Counsel for both the parties and perused the record.

As regards C.R.P.No.3591 of 2013, the learned Counsel for the petitioner submitted that a perusal of the copy of the plaint served on the petitioner would show that the same was prepared intending to file the suit against Khairunnisa Begum w/o. Mirza Osman Baig, that pleadings were raised keeping the said person in mind and that her name was struck off and the petitioner was added in manuscript in the place of the said Khairunnisa Begum as the defendant. The learned Counsel has taken this Court through various averments of the plaint including the cause of action part, which undoubtedly, support his plea. However, the respondent has filed CRPMP No.4477 of 2014 in C.R.P.No.1400 of 2014 for receiving a certified copy of the plaint in O.S.No.864 of 2012. By a separate order passed today, this Court has allowed this application. Along with the said application, the respondent has filed a certified copy of the plaint, a perusal of which shows that there is a huge variation in the contents between the copy of the plaint filed by the petitioner and the certified copy produced by the respondent. Mr. V.L.N.G.K. Murthy, learned Counsel for the respondent, submitted that as per his instructions, before the plaint was fully settled and filed, a draft copy was supplied to the petitioner which has entered caveat in the lower Court and that thereafter corrections were effected to the draft plaint and the corrected plaint was filed in the suit.

On a careful perusal of the certified copy of the plaint, I am of the opinion that the averments which constitute cause of action against the petitioner have been made in paragraphs such as (g) and (i) thereof. No doubt, certain paras of the averments in the plaint supplied to the petitioner have remained uncorrected, which are referable to Khairunnisa Begum.

The settled legal position is that in order to examine whether the plaint discloses cause of action or not, the same has to be read as a whole and not in isolation. So read, I have no hesitation to hold that the plaint in O.S.No.864 of 2012 sufficiently discloses cause of action against the petitioner. Therefore, I do not find any merit in C.R.P.No.3591 of 2013.

As regards C.R.P.No.1400 of 2014, the learned Counsel for the respondent has strenuously submitted that as it is the case of the petitioner that Khairunnisa Begum, the respondent and her sister have entered into an agreement of sale, the suit filed by the petitioner for injunction simplicitor without seeking the relief of specific performance of agreement of sale is barred by Order II Rule 2 CPC. In support of his submission, the learned Counsel has relied upon the Judgment of the Supreme Court in **N.V. Srinivasa Murthy and others Vs. Mariamma (dead) by proposed L.Rs. and others** and of this Court in **Mohd. Jahangir Vs. M/s. Mallikharjuna Coop. Housing Society Ltd.**, and **Chellingi Narayanamurthy Vs. Chillingi Satyanarayana**.

In **N.V. Srinivasa Murthy (1-supra)**, the plaintiff executed a sale deed in favour of the defendant. He has filed the suit for declaration of his title. He has pleaded that as a security to the loan transaction between him and the defendant, he executed the sale deed and that as he has repaid the loan, title is revested in him. The Supreme Court held that the suit filed for declaration of title without seeking the relief of declaration that the sale deed is only a loan transaction and for specific performance of oral agreement of reconveyance is barred by Order II Rule 2 CPC. The facts in the

instant case bear no similarity to the case in **N.V. Srinivasa Murthy (1-supra)**. Of course, in **Mohd. Jahangir (2-supra)** and **Chellingi Narayana Murthy (3-supra)**, this Court held that a decree for injunction simplicitor based on agreement of sale is not maintainable unless the plaintiff seeks the relief of specific performance of agreement of sale.

In my opinion, these Judgments do not apply in all fours to the present case for the reason that in those cases, the documents entered between the parties were mere agreements of sale whereas in the present case the document is in the nature of agreement of sale-cum-General Power of Attorney. The learned Counsel for the petitioner submitted that being a company carrying on the activity of development of land and sale of the developed properties, it is not commercially expedient for his client to seek specific performance of agreement of sale and that because of this reason his client has obtained the General Power of Attorney, which enables it to execute sale deeds in favour of its customers to whom developed properties are sold. In my opinion, the variation in the nature of document between the case on hand and those considered by this Court referred to above makes those Judgments inapplicable to the present case. However, this aspect needs to be adjudicated in the suit and the plaint cannot be rejected on that ground at this stage.

In **Yenugu Acharya Vs. Ernaki Venkata Subba Rao**, Subba Rao, CJ, (as his Lordships then was) speaking for the Bench consisting of himself and Viswanatha Sastry, J held that the right conferred under Section 53-A of the Transfer of Property Act, 1882 to protect a person's possession can be availed both as a plaintiff as well as defendant, provided, he is using his right as a shield and not as a sword. It was also held, as under an agreement of sale title does not pass to a transferee, he cannot seek the relief of declaration of title to property or recovery of possession. Where, therefore, if the holder of an agreement of sale shows valid and acceptable reason for not claiming the relief of specific performance of agreement of sale, the suit cannot be thrown out on the principle underlying Order II Rule 2

CPC.

For the above mentioned reasons, both the Civil Revision Petitions fail and the same are accordingly dismissed.

As a sequel to the dismissal of the Civil Revision Petition, interim order dated 30-8-2013 is vacated and CRPMP Nos.4802 of 2013 and 1929 of 2014 in C.R.P.No.3591 of 2013 and CRPMP No.1957 in C.R.P.No.1400 of 2014 are disposed of as infructuous.

Justice C.V. Nagarjuna Reddy

Date : 20-3-2015

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