

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

-

SECOND APPEAL No.1429 of 2007

Date:01.05.2015

Between:

Smt. R. Vijaya

... Appellant.

AND

J. Balakrishna and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

-

SECOND APPEAL No.1429 of 2007

JUDGMENT:

This appeal is preferred against judgment dated 22-03-2007 in A.S.No.26/2004 on the file of V Additional District Judge (Fast Track Court), Ranga Reddy District whereunder judgment dated 17-12-2003 in O.S.No.748/1997 on the file of Principal Junior Civil Judge, East & North, Ranga Reddy District is reversed.

2. Appellant herein is plaintiff and respondents herein are defendants in O.S.No.748/1997. Originally, suit was filed against ten defendants and D11 & D12 are added subsequently in the year 2001. Parties are hereinafter referred to as plaintiff and defendants as arrayed in the suit. According to plaintiff, D2 approached plaintiff and represented that he is owner and possessor of plots covered by layout plan under the name and style of M/s.Bhavani Nagar, situated at Mallapur Village and offered to sell plot bearing No.22 to the plaintiff. According to plaintiff averments, believing the representation of D2, plaintiff paid Rs.5,000/- on 12-05-1994, Rs.10,000/- on 20-06-1994, Rs.5,000/- on 26-08-1994, Rs.15,000/- on 26-9-1994 and Rs.10,000/- on 18-02-1995 totalling to a sum of Rs.45,000/-, which is sale consideration and registration charges. According to plaintiff, out of this Rs.45,000/-, Rs.40,000/- is paid towards sale consideration and Rs.5,000/- was paid towards registration charges. It is the contention of plaintiff that she approached D2 on many occasions for execution of registered sale deed, but he postponed on some pretext or the other and that plaintiff came to know on 31-03-1995 when a sale deed is executed in favour of Kumari Ankam Archana in respect of Plot No.124, that D2 is transacting on behalf of D3 to D10 and that he is authorised representative of them and also GPA Holder. According to plaintiff, a legal notice was issued on 10-09-1997 to D2 and his associates to execute and register plot bearing No.22, but the defendants issued a reply with all false and untenable allegations and therefore, suit is filed for specific performance of agreement of sale and execution of registered sale deed. Plaintiff added D11 & D12 contending that D11

is the subsequent purchaser and D12 is the Sub-Registrar, who registered the sale deed in favour of D11. D1, D2, D8 & D11 contested the suit and trial Court, after considering the evidence of P.Ws.1 to 3 and documents Exs.A1 to A22 produced on behalf of plaintiff and considering D.Ws.1 to 5 and documents Exs.B1 to B8 produced on behalf of defendants, decreed the suit granting decree of specific performance in favour of plaintiff and also granted cancellation of sale deed in favour of D11. Aggrieved by the said decree, D11 preferred appeal to the District Court and V Additional District Judge, Ranga Reddy, on a reappraisal of evidence on record, held that D11 is a bonafide purchaser and accordingly, set aside the decree granted by the trial Court. Now aggrieved by the same, plaintiff preferred the present appeal.

3. This Court admitted second appeal treating the following as substantial question of law *“whether the appreciation of evidence by the appellate Court for reversing the decree of the trial Court is proper or not?”*

4. Heard both sides.

5. Advocate for appellant vehemently argued that the lower appellate Court committed error in appreciating evidence on record and that the findings of the lower appellate Court have to be treated as perverse. He submitted that D2 as agent of the owners of the property agreed to sell the property to plaintiff and the evidence on record would disclose that D2 used to bring customers, collect advance amounts, issue receipts and take them to sub-Registrar Office and complete all the formalities of registration and that he would attest the document. He submitted that the same is proved through Exs.B1, A4 & A22, where D2 is figured as attesting witness. He further submitted that D2 admitted that he is GPA for one of the owners and acted as attesting

witness for about 150 sale deeds out of 200 transactions. He submitted that D11 is a subsequent purchaser and the burden is on him to prove that he is a bonafide purchaser, but he has not proved the same. He submitted that as per Section 19 (b) of Specific Relief Act, it is for the subsequent purchaser to prove that he purchased the property without notice of earlier agreement. He submitted that D11 is examined as D.W.3 and nowhere, he stated that he is a innocent purchaser without notice of earlier agreement. He submitted that D11 examined D.Ws.4 & 5, but their evidence cannot be accepted without positive assertion from D11 being party. He submitted that trial Court has rightly appreciated evidence on record, but the appellate Court, on presumptions and surmises, accepted the plea of D11 and dismissed the suit and the findings of the appellate Court are contrary to the material on record, therefore, its findings have to be set aside.

6. On the other hand, Advocate for D11 submitted that there is no written agreement in favour of the plaintiff executed by the real owners of the property and the entire claim of plaintiff is based on the receipts issued by D2 contending that they were issued on behalf of owners.

He submitted that there is no recital in any of these receipts that D2 received money as agent of the owners, on the other hand, the recitals would show that D2 received money in his personal capacity as owner of D1. He submitted that it is admitted case of plaintiff that D2 and husband of plaintiff are colleagues, working in NFC since last 20 years.

He submitted that D8 clearly stated that the receipts issued by D2 are not binding them and that they are no way concerned with those receipts. He submitted that D11 through his evidence and through D.Ws.4 & 5 duly proved that he purchased the property for a valid sale consideration from the real owners and that he has no knowledge of any earlier agreements. He further submitted that in fact there is no written agreement between the plaintiff and real owners and therefore, the suit for specific performance is not maintainable.

He submitted that the appellate Court has thoroughly scanned the evidence of both parties and came to a right conclusion and that there are no grounds to interfere with the findings of the appellate Court. He further submitted that this being a second appeal, without showing any substantial question of law, the appeal cannot be entertained. He submitted that in the entire grounds of appeal, no substantial question of law is pleaded and the point framed by this Court at the time of admission is concerning facts only and concerning law, therefore, the appeal is not maintainable.

7. Now the point that would arise for my consideration in this second appeal is whether there is any substantial question of law to be considered by this Court and that the point formulated by this Court can be treated as substantial question of law?

8. **Point:-** As already referred above, arguments are advanced on behalf of plaintiff at length and most of submissions are on factual aspects. This Court, while considering the second appeal, can look into factual aspects only, if the Court is satisfied that findings of the first appellate Court are perverse or that they are not based on any material evidence. So for that it is necessary to examine the judgment of the appellate Court with reference to material evidence. As already referred above, the suit was originally filed against ten defendants only and D11 & D12 were impleaded in the year 2001. As seen from the pleadings, no specific allegation is made against D11 even after impleading him as a defendant to the suit. The only change in the plaint, after impleading D11 & D12 adding relief to cancel the sale deed in favour of D11. There is no consequential amendment in the plaint pleadings as to when plaintiff came to know about the sale deed in favour of D11 and how D11 has notice of the alleged agreement in favour of plaintiff. Even the cause of action in the plaint also remained as it was when the suit was filed and no fresh date is included even after impleading D11 & D12. This was specifically

pointed out by the appellate Court in its judgment. As seen from the evidence, plaintiff stated that she came to know about purchase of suit plot by D11 only after D8 filed his written statement. Plaintiff was given opportunity to file a rejoinder, after D8 filed his written statement and in fact plaintiff did file rejoinder, but nothing is whispered in the rejoinder as to when D11 had notice or knowledge about the alleged agreement in favour of plaintiff. In fact, as already referred above, there is no agreement in favour of plaintiff from the real owners and the entire suit is based on the receipts passed by D2. According to plaintiff, she paid entire sale consideration including registration charges to D2 even without verifying as to who are the real owners of the property. As seen from the material, the suit was filed on 4-11-1997, whereas D11 purchased the suit property from the real owners through a registered sale deed dated 05-02-1997 that means the transaction in favour of D11 with the original owners was almost nine months prior to filing of the suit.

D11 as D.W.3 deposed in clear terms as to how he purchased the property from the real owners on payment of consideration etc. His evidence is fully supported and corroborated with the evidence of D.Ws.4 & 5. From the evidence, it is also clear that D11 had no knowledge of the alleged agreement between plaintiff and D2 in respect of the suit property and that he came to know about the suit, only after he was impleaded as party. Thus he has discharged his burden that he was a bonafide purchaser without notice of earlier agreement and therefore, the burden is shifted on the plaintiff to show that D11 had notice of her agreement with D2 in respect of suit property, but there is absolutely no evidence of any kind on plaintiff side to show that D11 had knowledge of even the alleged agreement between plaintiff and D2 in respect of the property purchased by him. In the absence of that any length of agreement is of no use. As seen from the material, it is crystal clear that the plaintiff without any enquiry and without even taking the minimum precautions entered into transaction with D2, who is no way concerned with the suit property and for that plaintiff has to suffer and she cannot complain against D11.

The lower appellate Court has elaborately discussed each and every aspect without leaving any point unanswered and came to right conclusion that D11 is a bonafide purchaser. Learned counsel for appellant cited following rulings to support his submission with regard to claim of plaintiff:-

“Simanchal Mahapatro and another vs. Budhiram Padhi and another, Ravinder Kumar Sharma vs. State of Assam and others, Sampatbai Shaitanmal vs. Rameshchandra Veerbhan & Others, V. Radhakrishnan vs. Jagannathan and others, R.K. Mohammed Ubaidullah and others vs. Hajee C. Abdul Wahab (died) by L.Rs. and others, Ram Niwas (dead) through L.Rs vs. Smt. Bano and others.”

But principles laid down in above rulings are no way relevant to the case on hand as the plaintiff failed to rebut the fact that D11 is not a bonafide purchaser. On a scrutiny of the entire material, I do not find any wrong findings or incorrect appreciation of material by the lower appellate Court and as such there are no grounds to interfere with the findings of the appellate Court. On a scrutiny of the entire material, I have no hesitation in holding that plaintiff is rightly non- suited and that there is no substantial question of law to be considered by this Court.

10. Hence, Second Appeal is dismissed with costs and as a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:01.05.2015

mr**b**