

HONOURABLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.295 of 2013

J U D G M E N T:

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This appeal is preferred against concurrent findings of two Courts. The suit is filed for specific performance of contract of sale against three defendants. Appellant herein is third defendant in the suit, who is a subsequent purchaser. As seen from record suit is based on non-possessory agreement of sale dated 05-11-1996. According to plaint pleadings subsequent payment was made on 09-04-1997 and as the defendants 1 and 2 failed to execute regular and proper sale deed, plaintiff filed suit for specific performance including D-3 also contending that D-3 purchased property on 27-03-2003. The suit was resisted by original executants and D-3. According to D-3 she is a bonafide purchaser without notice of earlier non-possessory agreement dated 05-11-1996 and subsequent possessory agreement dated 09-04-1997 and that she raised sugarcane crop in the schedule property and she is in possession and enjoyment of the same. Trial Court framed appropriate issues basing on the pleadings of both parties and on a consideration of oral and documentary evidence, disbelieved the plea of appellant herein, that she is a bonafide purchaser without notice of earlier agreement and decreed the suit directing defendants 1 and 2 to execute a regular and proper sale deed in favour of plaintiff in respect of plaint schedule property at the expenses of plaintiff within three months from the date of decree. Aggrieved by the judgment of the trial Court, appeal is preferred and 8th Additional District and Sessions Judge, Vijayawada, on a reappraisal of oral and documentary evidence confirmed the findings of the trial Court and dismissed

the appeal. Aggrieved by the same, present second appeal is preferred and substantial questions of law urged in the grounds of appeal is “that lower appellate Court failed to frame an issue with regard to period of limitation and also that the time is essence of contract and, subsequent possessory agreement will supersede the time stipulation”, therefore findings of the Courts below, is not correct.

Heard arguments.

As seen from the material placed and the judgments of both the Courts, no plea of limitation is taken either in the trial Court or in the first appellate Court and for the first time, it is contended, in the second appeal that too as a substantial question of law. According to appellant, time is the essence of contract under the agreement and thereby, the claim of the plaintiff is barred by limitation. Here the appellant is only a subsequent purchaser and the defence available for her under the provisions of Specific Relief Act is only under Section 19, according to which she can only contend that she is a bonafide purchaser without notice of earlier agreement for a valuable consideration and her contention with regard to terms of the agreement and essence of contract cannot be permitted, particularly, when she pleads that she is a purchaser without notice of the agreement. Therefore, the substantial questions of law as urged in the grounds of appeal are not

in respect of questions of law, they are only mixed with facts and as both the Courts concurrently held on facts that the appellant is not a bonafide purchaser, therefore no question of law is involved. For these reasons, I am of the view that there is absolutely no question of law is involved, leave alone substantial questions of

law to be determined by this Court in a Second appeal. Therefore, the appeal is dismissed at admission stage.

Miscellaneous petitions, if any pending, in this appeal shall stand closed.

S. RAVI KUMAR, J

02-02-2015

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