

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

A.S. No. 526 OF 1997

BETWEEN

Rekapalli Krishna Rao

...Appellant

And

Kodavati Satyanarayana and anr

...Respondents

DATE OF JUDGMENT PRONOUNCED: 18.08.2015.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.SATYANARANA MURTY

1. Whether reports of Local newspapers
may be allowed to see the judgments?
YES/NO

2. Whether the copies of judgments may be
marked to Law Reporters/Journals.
YES/NO

3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment ?
YES/NO.

HONOURABLE SRI JUSTICE M.SATYANARANA MURTY

A.S. No. 526 OF 1997

JUDGMENT:

Dissatisfied with the award of interest and damages in the decree and judgment dated 31.12.1996 passed in O.S.No.54 of 1994 by the learned Subordinate Judge, Narsapur (for short, 'the trial Court'), this appeal is preferred.

The ranks given to the parties as referred to before the trial Court as 'plaintiff' and 'defendants' will be continued throughout in the present judgment.

The plaintiff filed the aforesaid suit for specific performance of the agreement of sale dated 17.03.1993 alleging that the plaintiff purchased the plaint schedule property under the agreement of sale dated 17.3.1993 and in pursuance thereof, the plaintiff paid an amount of Rs.1,00,000/- as advance to the first defendant on different dates and agreed to pay the balance sale consideration on the date of execution of the regular sale deed. It appears that the possession of the plaint schedule property was also delivered to the plaintiff by the first defendant. Since the first defendant did not cooperate for executing regular registered sale deed, having received balance of sale consideration as per endorsements made on 20.03.1993 and 25.3.1993 *vide* Exs.A3 and A4 respectively, the plaintiff having no other alternative except to file the aforesaid suit seeking specific performance of the agreement of sale dated 17.3.1993 or alternatively to pass decree in favour of the plaintiff for refund of the amount paid to the first defendant with

interest at 24% per annum and payment of damages of Rs.66,650/- with further interest thereon for breach of the contract.

The first defendant filed written statement denying the material allegations *inter alia* contending that the second defendant filed A.T.C.No. 10 of 1993 and there was no collusion between the first defendant and second defendant. Similarly, the first defendant denied other allegations while admitting the receipt of advance sale consideration of Rs.1,00,000/- and also denied his liability to pay damages for breach of contract and also payment of interest at 24% per annum.

The second defendant also filed a separate written statement contending that he was a cultivating tenant of first defendant and filed ATC No. 10 of 1993 on the file of the Tenancy Special Officer-cum-Prl. Junior Civil Judge, Narsapur, in respect of the plaint schedule property and obtained injunction order against the first defendant and others from interfering with the alleged tenancy and possession of the plaint schedule property. It was further alleged that after obtaining the *ex parte* orders in the said ATC, the plaintiff filed suit in O.S.No.107 of 1993 against the second defendant seeking permanent injunction from interfering with his possession and enjoyment of the plaint schedule property and that the plaintiff also filed I.A.No.762 of 1993 in O.S.No.107 of 1993 seeking temporary injunction. The second defendant contended that he purchased the suit schedule property for Rs.44,100/- from the first defendant and, therefore, question of purchase of the property by the plaintiff under the agreement of sale does not

arise. He further alleged that the agreement of sale dated 17.3.1993 is not enforceable under law and finally he prayed for dismissal of the suit.

Basing on the above pleadings, the trial Court initially framed five issues and thereafter, as per the orders dt.9.10.1006 in I.A.No.1142 of 1993, four additional issues were framed. All the issues are extracted hereunder:

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ISSUES:

1. Whether the schedule property is not the exclusive property of the first defendant ?
2. Whether the suit is bad for non-joinder of necessary parties ?
3. Whether the endorsement on the reverse of suit agreement of sale was brought into existence under the circumstances as mentioned at paragraph 22 of the written statement of 1st defendant ?
4. Whether the plaintiff is entitled to the specific performance of agreement of sale as prayed for ?
5. Whether the plaintiff is entitled to the alternative relief as prayed for ?

ADDITIONAL ISSUES:

6. Whether the second defendant has taken the plaint schedule property on lease from Kodavati Venkata Reddy Naidu as pleaded by him in his written statement?
7. Whether the ATC 10/93 on the file of Special Officer, Narasapur is a collusive proceedings as contended by the plaintiff ?

8. Whether the oral agreement of sale under which the second defendant agreed to purchase the plaint schedule property from Kodavati Venkata Reddi Naidu, father of first defendant is true and valid ?
9. Whether the 2nd defendant purchased the plaint schedule property under the sale deed dated 13.8.1993 for valuable consideration in good faith and without notice of the agreement of sale dated 17.3.1993 executed by the 1st defendant in favour of the plaintiff ?

During the course of trial, P.Ws.1 to 5 were examined on behalf of the plaintiff and Exs.A.1 to A.15 were marked on his behalf. On behalf of the defendants, D.Ws.1 to 5 were examined and Exs.B.1 to B.9 were marked on their behalf. The trial Court on its own marked Ex.C.1, dated 12.6.1996.

Upon perusal of the oral and documentary evidence, the trial Court granted alternative relief for payment of a sum of Rs.1,00,000/- with interest at 12% per annum from the date of actual payment of respective amounts till the date of realization while awarding damages of Rs.10,000/- for breach of the contract.

Dissatisfied with the judgment and decree more particularly with regard to award of interest and damages, the plaintiff preferred the present appeal on various grounds, mainly contending that the rate of interest awarded by the trial Court at 12% per annum is not in agreement with the terms and conditions of the agreement of sale and the same is too low. It

is further contended that the plaintiff incurred an amount of Rs.66,650/- for raising crop, however, the trial Court, instead of awarding the said amount towards damages, only awarded Rs.10,000/- for the breach of contract and finally prayed for grant of damages at Rs.66,650/- and interest at 24% per annum.

During the course of arguments, learned Counsel for the appellant, Sri P. Chandrasekar, drawn attention of this Court to the contents of Ex.A.1 agreement of sale dated 17.3.1993 wherein interest at the rate of Rs.3/- per Rs.100/- per annum (i.e. 36% per annum) was agreed to be paid by the first defendant in case of failure to perform the contract. Therefore, award of interest at 12% per annum is erroneous and too low.

Learned counsel for the appellant/plaintiff fairly stated that no satisfactory evidence is placed on record to prove the damages quantifying at Rs.66,650/- but requested to grant interest at 24% per annum on the advance sale consideration.

The learned Counsel for the respondents/defendants did not advance any argument.

Considering above argument of learned counsel for the appellant/plaintiff and perusing oral and documentary evidence, decree and judgment under challenge, the only point that arises for consideration is

"Whether the appellant/plaintiff is entitled to claim interest at 24% per annum on the advance sale consideration of Rs.1,00,000/- from the respective dates

of actual payment till the date of repayment by first defendant?"

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In Re. Point:

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The agreement of sale dated 17.3.1993 (Ex.A.1) and receipt of advance sale consideration of Rs.1,00,000/- by the first defendant are not in dispute. However, the trial Court, believing the same, while declining to grant the relief of specific performance, it granted alternative relief of refund of advance sale consideration which is appropriate under Section 22 of the Specific Relief Act, 1963. But the trial Court granted only interest at 12% per annum instead of granting at 24% per annum. Award of interest at 12% is only challenged in the present appeal. To decide the said issue, it is necessary to advert to the terms and conditions of agreement of sale Ex.A.1, wherein it was agreed between the parties for payment of interest at Rs.3/-per Rs.100/-per annum (36% per annum) by the first defendant in the event of failure to perform his obligation but the trial Court, instead of granting interest at Rs.2/-per Rs.100/-per annum (24% per annum) as claimed by the plaintiff, only granted interest at 12% per annum. The only reason assigned by the trial Court for granting interest at 12% per annum is that the plaintiff initially claimed interest at 12% per annum and, later, it was corrected as 24% per annum. As seen from the plaint, interest was calculated at 24% per annum and Court fee was paid on the said interest amount to project his claim for award of interest at 24% per annum. Further when there is a written agreement between the parties, the parties are

bound by the terms and conditions of the agreement and, therefore, the first defendant is liable to pay interest at 36% per annum as he was unable to perform his obligation under the agreement of sale. However, the plaintiff claimed interest at 24% per annum only. Therefore, the reason assigned by the trial Court for granting interest at 12% per annum is against the terms and conditions of the agreement between the parties and does not stand to legal scrutiny. Hence, in the event of failure to perform the obligation, the interest payable by the first defendant on the advance sale consideration is 36% per annum which is settled in between the parties as per Agreement of sale, Ex.A.1. Therefore, the interest awarded by the trial Court on the advance sale consideration is modified to 24% per annum payable from the respective dates of payment till the date of repayment to the plaintiff. Accordingly, the point is answered in favour of the plaintiff and against the defendants.

In the result, the appeal is allowed in part, with costs, modifying the judgment and decree insofar as the payment of interest as follows:

“The first defendant is directed to repay advance sale consideration of Rs.1,00,000/- (Rupees only lakh only) together with interest at 24% per annum from the respective dates of payment till the date of repayment to the plaintiff.”

Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE M.SATYANARANA MURTHY

DATED 18TH August, 2015.

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