

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CCCA No.54 of 1997

Judgment:

The unsuccessful defendants in the Court below preferred the instant appeal aggrieved by the decree and judgment dated 13.12.1996 in O.S.No.588 of 1987 on the file of V Additional Judge, City Civil Court, Hyderabad whereby and whereunder the learned Judge decreed the suit filed by plaintiff for specific performance of suit agreement of sale dated 17.01.1980 directing the plaintiff to deposit the balance sale consideration in the Court within four weeks from the date of judgment and thereupon the defendants 2 and 3 shall pursue and obtain necessary exemption from the competent authority in respect of alienation of the suit land under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (for short "ULCR Act") and execute the registered sale deed and deliver vacant possession of the suit land in favour of plaintiff.

2) Factual matrix of the case is thus:

a) The plaintiff agreed to purchase the suit land under an agreement of sale dated 17.01.1980 (Ex.A1) for a total sale consideration of Rs.60,000/- and paid a sum of Rs.1,000/- on 17.01.1980 towards advance. Thereafter, he issued a cheque for a sum of Rs.50,000/- along with draft sale deed and covering letters dated 16.10.1980 and

30.10.1980 (Exs.A2 and A3) requesting the defendant No.1 to get the Income Tax clearance but defendant No.1 did not realise the cheque with an ulterior motive to deprive the plaintiff's rights and sent a letter dated 12.12.1980 (Ex.A4) stating that he did not receive any communication from the Urban Land Ceiling Authority to complete the sale transaction. Thereafter, the plaintiff requested defendant No.1 several times to get the Urban Land Ceiling and Income Tax clearances, but there is no response from defendant No.1. Hence, the plaintiff got issued legal notice dated 16.07.1981 (Ex.A5). Defendant No.1 sent a letter dated 12.11.1983 (Ex.A6) refusing to perform his part of contract and sent a cheque for Rs.1,000/- treating the transaction as cancelled. Then plaintiff sent a letter dated 18.11.1983 (Ex.A7) to defendant No.1 and returned back the said cheque stating that the question of cancellation of sale transaction does not arise and thereafter, the plaintiff received another letter dated 22.11.1983 (Ex.A8) from defendant No.1. Subsequently plaintiff sent letters dated 22.11.1983 (Ex.A10), 30.11.1983 (Ex.A9) and 20.12.1983 (Ex.A15) asking defendant No.1 to get required permissions from the concerned authorities. As defendant No.1 did not pursue the application for exemption before the Government in obtaining clearance under the Urban Land Ceiling in terms of Clause 5 of agreement of sale, plaintiff got issued legal notice on 30.01.1984 (Ex.A12)

demanding defendant No.1 to get the required permission from the Government, but defendant No.1 did not respond for the same. Therefore, the plaintiff issued another legal notice dated 02.06.19986 (Ex.A13) asking defendant No.1 to execute the sale deed in respect of suit property by duly obtaining permission from the Government. Then defendant No.1 sent a reply notice on 20.06.1986 (Ex.A14) with false and frivolous allegations. In fact the plaintiff was always ready and willing to perform his part of contract, but defendant No.1 refused for the same.

Hence, the suit.

3) Defendant No.1 filed a detailed written statement opposing the suit. Shorn of unnecessary details, the contention of defendant No1 is as follows:

a) Defendant No.1, his two brothers and mother purchased a house bearing No.12-5-28 with appurtenant land admeasuring 8,893.1 sq. yards at Bathkamma Kunta, Lalaguda, Secunderabad for consideration of Rs.72,000/- from A.V.Vedammal under Ex.B3—sale deed dated 15.07.1963. Thereafter, in the year 1965 an extent of 1570 sq. yards of land out of above mentioned property was exchanged with one Yasin Ali Khan by defendant No.1, his two brothers and mother. Ex.B5 is the registered exchange deed dated 21.06.1965. After few months thereafter a family settlement-cum-arrangement took place between defendant No.1 on one part and his two

brothers and mother on other part wherein defendant No.1 got the remaining extent of property admeasuring 7223 sq. yards on payment of Rs.10,000/- to his two brothers and mother. Ex.B4 is the registered relinquishment deed. The suit land 1840 sq. yards is a part and parcel of the said property got by defendant No.1 under Ex.B4.

b) While so, in the year 1974, the plaintiff, his brother and father purchased the house bearing No.12-5-28 from defendant No.1 for a consideration of Rs.95,000/- through a registered sale deed. At the same time they also entered into an agreement dated 25.02.1974 with defendant No.1 to purchase the suit land also for a consideration of Rs.35,000/- and earnest money of Rs.11,000/- was paid to defendant No.1. But due to some difficulties in obtaining permission from the Government for alienation of open land, the agreement was cancelled through letter dated 07.03.1977 (Ex.B6) addressed by the plaintiff to defendant No.1 narrating the circumstances which led to cancellation of said agreement.

c) While so, again defendant No.1 and plaintiff entered into a modified agreement of sale dated 17.01.1980 under Ex.A1 in respect of suit land for a consideration of Rs.60,000/- and amount of Rs.1,000/- was paid. The sale deed was agreed to be executed within one month after getting the order of exemption from ULC authority for which purpose defendant No.1 had already made an

application. At that time the dispute in O.S.No.1304 of 1978 on the file of I Assistant Judge, City Civil Court, Secunderabad was pending and the vendor has taken the responsibility to get cleared the said litigation in the event of any difficulty in title, defendant No.1 agreed to refund the sale consideration.

d) Be that it may, according to defendant No.1, the market value of the suit land at the time of agreement was Rs.5,50,000/- and the amount of Rs.60,000/- mentioned in the agreement was not real consideration and it was an illusory and nominal one. The reason in mentioning the said amount according to defendant No.1 is that defendant, his two brothers and his paternal uncle owned Ac.16.10 gts. of land in Sy.No.93/1 and Ac.12.22 gts. of land in Sy.No.93/2 in Thokatta village, Ranga Reddy District and the said lands were taken on hire by Defence Department of Government in II World War, but did not vacate nor paid any rent and hence defendant No.1 and his co-sharer filed O.S.No.1775 of 1973 in the Court of V Assistant Judge, City Civil Court, Hyderabad for recovery of possession of land in Sy.No.93/1. The Government claimed ownership over the said land but the said suit was decreed in favour of defendant No.1 and his brothers. Thereafter, the Government filed AS (Sr) No.4545 of 1979 before the Chief Judge, City Civil Court, Hyderabad with a delay condonation petition and the said petition was dismissed but the Government threatened to carry on

further litigation. So far as Sy.No.93/2 is concerned, it was notified for acquisition under the Land Acquisition Act (for short "LA Act") and after declaration was given under Section 6 of LA Act enquiry was conducted and the matter was referred to the District Collector for approval of the statement. The District Collector expressed doubt that it was a Government land. Hence, the matter was pending for long time without paying any compensation to defendant No.1's family. The plaintiff's father was the Chief Minister at that time and he was residing in H.No.12-5-28/29, Bathkammakunta, Tarnaka which was earlier purchased by them from defendant No.1. The security guards of the plaintiff's father set up a picket in the suit land which was vacant. Defendant No.1 requested the plaintiff to take out the security guard and vacate the suit land. At the same time, some third party also laid a claim on the suit land hence, defendant No.1 filed OS.No.1304 of 1978 on the file of I assistant Judge, City Civil Court, Secunderabad. At that time plaintiff broached that the land was needed to his father and requested defendant No.1 to sell it. The suit land abutting to highway leading from Tarnaka to Moulali and it was worth about Rs.5,50,000/-. The plaintiff represented that his father's influence will be used for securing the award for compensation to defendant No.1 in Sy.No.93/2 and also for recovery of possession in Sy.No.93/1 or alternatively it will be seen that the said land was also acquired. By such promise

defendant No.1 agreed to sell the suit land for a nominal price of Rs.60,000/-. The plaintiff further promised that he would pursue the matter for getting exemption under ULCR Act since his father was holding the said portfolio. On such assurance made by plaintiff, defendant No.1 applied for exemption under ULCR Act on 28.11.1979 (Ex.B7) under those circumstances suit agreement dated 17.01.1980 was entered. Its performance was depending on the plaintiff fulfilling his promise and exemption under ULCR Act. However, plaintiff's father resigned in the year 1980 and entire arrangement was collapsed. The plaintiff tried to take advantage of the suit agreement to sell wrote letters seeking performance of the sale agreement. The alleged draft sale deed or enclosure of cheque was not correct. Defendant No.1 in his letter dated 12.12.1980 (Ex.A4) pointed out those facts and made it clear that agreement cannot be pushed thorough without performing the other obligations by the plaintiff.

e) The further contention of defendant 1 was that in view of G.O.Ms.No.964 UC-II dated 27.06.1983 whereunder the Government declared not to give any more exemption to the application filed by defendant No.1 for exemption, it has become inoperative and sale agreement dated 17.01.1980 became void and this fact was informed by defendant No.1 through his letters dated 12.11.1983 and 31.12.1983 (Exs.A6 and A11). Defendant

No.1 denied that plaintiff was in possession of the suit property in part performance of the agreement and that he was ever ready and willing to perform his part of obligation.

4) Pending suit first defendant died and his wife and son were added as defendant Nos.2 and 3 and they filed written statement opposing the suit contending that the agreement was nominal, not supported by any consideration and it was not for the benefit of joint family and as such not binding on minor defendant No.3 and further, defendant No.3 got a share in the suit land and therefore, the agreement executed by defendant No.1 was null and void.

5) Basing on the above pleadings, the following issues were framed for trial:

- 1) Whether the plaintiff has to perform the obligation referred to in the written statement?
- 2) Whether the plaintiff was always ready to perform his part of the contract?
- 3) Whether the suit is barred by limitation?
- 4) Whether the plaintiff is entitled for the relief of specific performance of contract.
- 5) To what relief?

The trial Court framed the following additional issues on 23.06.1994.

- 1) Whether the suit agreement is supported by

consideration?

- 2) Whether the suit agreement is nominal and executed for the reasons mentioned in the written statement of defendant No.1?
- 3) Whether the suit property is joint family property of defendant No.1 and 3 and if so whether it is for necessity and benefit on the family and binding on defendant No.3?
- 4) Whether the agreement is invalid and became inexecutable by rejection of application for exemption under Urban Land Ceiling Act?
- 5) Whether exemption under Urban Land Ceiling Act for alienation of suit property, can be obtained under the law, and the agreement is unenforceable?
- 6) To what relief?

6) During trial, plaintiff himself was examined as PW1 and documents produced by him were marked as Exs.A1 to A15. Second defendant was examined as DW1 and her documents were marked as Exs.B1 to B21.

7) After full-fledged trial and upon hearing both sides the trial Court decreed the plaintiff's suit as stated in para-1 of this judgment. The important findings of trial Court are thus:

- (i) With regard to contention of defendants that performance of Ex.A1—agreement was contingent upon the plaintiff performing his part of contract i.e. helping defendant No.1 to secure the award and payment of compensation in Sy.No.93/2 and further

securing possession of another land in Sy.No.93/1 in Thokatta Village from the custody of Government or alternatively get it cleared and arranged for early payment of compensation by using the influence of his father who was the Chief Minister by then and with the resignation of plaintiff's father, plaintiff failed to fulfil his obligation, the trial Court negated the said contention firstly for the reason that Ex.A1 was totally silent about any such alleged understanding between the parties as to plaintiff securing official help to defendant No.1 in respect of lands in Sy.Nos.93/1 and 93/2 with the influence of his father and secondly for the reason that the disputes relating to those two lands were already resolved in view of defendant No.1 filing suit—O.S.No.1775 of 1973 in respect of Sy.No.93/1 and winning the suit and also filing EP for recovery of possession and also their filing W.P.No.4462 of 1986 to direct the Government to pass award under LA Act in respect of land in Sy.No.93/2 and a direction was passed in the said writ petition to the Land Acquisition Officer to pass award by 20.08.1986.

ii) Contention of defendants that suit property is situated abutting to road leading Tarnaka—Moulali and it is a costly property which would cost about 5,50,000/- by the date of agreement but it was agreed to be sold at an illusory prices of Rs.60,000/-

because the plaintiff agreed to help defendant No.1 in respect of disputes relating to his lands in Sy.Nos.93/1 and 93/2 and so Ex.A1 was not supported by adequate consideration and if specific performance was ordered, the defendants would be put to irreparable loss and hardship is concerned, the trial Court held that as per Ex.B10 plaintiff, his brother and father sold 1915 sq. yards of land which is adjacent to suit land which is part and parcel of the premises bearing No.12-5-28 to one A.Narahari Rao and A.Krishna Rao on 11.08.1975 for Rs.40,000/- and the land covered by Ex.B10 was more in extent than the suit land and the suit transaction is of the year 1980 whereas the sale transaction under Ex.B10 was of the year 1975 and in view of the same, it cannot be said that sale consideration of the suit land was nominal and less than the prevailing market rates during the relevant period and further, defendants did not produce any evidence to establish the prevailing market rates at the time of Ex.A1 in the vicinity of suit land. The trial Court thus negated this contention.

(iii) Regarding the contention of defendants that permission from the Urban Land Ceiling Authority could not be secured to alienate the suit land as the permission was rejected under Ex.B21 and so the

suit agreement became in-executable, inoperative and void, as its performance was contingent upon the said condition, the trial Court held that though defendant No.1 was aware that major part of his land was located within the jurisdiction of Central Government he did not take any steps by approaching the proper authority i.e. Defence Estate Officer, Urban Land Ceiling, Secunderabad Cantonment to secure necessary exemption under ULCR Act but he approached the State Government with an ulterior motive even though in the Memo of Government of Andhra Pradesh (Rev.Department) in Ex.B18 it was observed that Military Estate Officer, Secunderabad alone has to deal with the entire relevant properties held by defendant No.1 including the suit property and even after proceedings under Ex.B21 the LRs. of defendant No.1 did not take any steps to secure exemption and therefore, their contention cannot be upheld. The trial Court relying upon the judgment of Apex Court in ***Jambu Rao Satappa Kocheri vs. Neminath Appayya Hanamannaver***^[1] has further held that a contract for purchase of land entered into with the knowledge that the purchaser may hold the land in excess of the ceiling is not void and the seller cannot resist enforcement thereof on the ground that if permitted, it will result in transgression of the land. Therefore,

the defendants cannot put obstruction by taking shelter of Section 15 of ULCR Act and it is for the plaintiff to purchase the suit land at his own risk subject to the provisions of law.

(iv) Regarding defence contention that plaintiff could not show he was ready and willing to perform his part of contract, the trial Court having regard to the letter correspondence between the parties has observed that plaintiff was always ready and willing to perform his part of contract.

(v) Regarding the claim of defendants 2 and 3 that defendant No.1 did not sell the suit property for any family necessity in the capacity of Kartha of joint family and that defendant No.3 being the son of defendant No.1 has got right in suit property as it being the joint family property and hence the suit transaction does not bind defendant No.3, the trial Court observed that the suit property was purchased not by the father of defendant No.1 but by defendant No.1, his two brothers and mother under Ex.B3 and so, it cannot be treated as joint family property and such plea was not raised by defendant No.1 in his written statement or in the correspondence made by him with the plaintiff and said plea was raised for the first time by defendants 2 and 3 and further, Ex.B13 —memorandum of oral partition was subsequent to

Ex.A1 and hence the said contention is not tenable.

The trial Court accordingly decreed the suit. Hence, the instant appeal. Pending appeal appellant No.3— B.Ashwini Kumar Reddy died and his wife and daughter are brought on record as his LRs. as appellants 4 and 5.

8) Heard argument of Sri B.Vijayasen Reddy, learned counsel for appellants and Sri Y.Rama Rao, learned counsel for respondent.

9) The parties in the appeal are referred as they were arrayed before the trial Court.

10) It may be noted that though several arguments were mentioned in the grounds of appeal, learned counsel for appellants gave main thrust to his argument that ordering specific performance of suit agreement will cause undue hardship to defendants at this stage long after suit agreement in view of inadequacy of consideration and subsequent increase in the prices etc. and therefore appeal may be allowed and the decree may be set aside.

11) Per contra, learned counsel for respondent/plaintiff argued trial Court has exhaustively dealt with the contention of inadequacy of consideration and ultimately held that sale consideration was adequate in view of previous sales held in respect of adjacent property during the relevant period. He thus submitted that the argument of appellant has no teeth.

12) Then, both sides submitted that in case the appeal is dismissed upholding the decree passed by the trial Court, the condition imposed in the judgment and decree to the effect that defendants 2 and 3 shall pursue and obtain necessary permission from the competent authority in respect of alienation under the provisions of ULCR Act needs to be struck down since Urban Land (Ceiling & Regulation) Act, 1976 has been repealed by the Urban Land (Ceiling & Regulation) Repeal Act, 1999 which was adopted by the State of Andhra Pradesh with effect from 27.03.2008.

13) In the light of above respective arguments, the point for determination in this appeal is:

“Whether the judgment of the trial Court is factually and legally maintainable?”

14) **POINT:** I have gone through the pleadings, evidence and judgment of the trial Court and the findings given by it on various issues. Its specific findings are already mentioned precisely in the earlier paragraphs of this judgment. It must be stated that the trial Court has exhaustively dealt with all the defences raised by the defendants with reference to the evidence on record and gave its findings cogently and in my considered view, the findings are factually and legally right and hence sustainable.

15) Sofaras the specific argument of appellants that

specific performance of the suit agreement would cause hardship and irreparable loss is concerned, the said aspect was also adequately dealt with by the trial Court. Though it was contended by the defendants that suit property was abutting to Tarnaka—Moulali road and worth Rs.5,50,000/- even by the date of Ex.A1—agreement to sell and hence consideration of Rs.60,000/- mentioned in the agreement was illusory and nominal one, as rightly observed by the trial Court, the defendants have not adduced any evidence by placing on record the documents of alienations relating to adjacent properties showing the value as projected by them for appreciation of the Court. On the other hand, Ex.B10—sale deed shows that plaintiff, his brother and father sold an extent of 1915 sq. yards of land, which is on the southern side of the suit land and part and parcel of premises bearing No.12-5-28, to one A.Narahari Rao and A.Krishna Rao on 11.08.1975 for Rs.40,000/-. Thus, Ex.B10 would show that the adjacent vacant site of the suit property which was more in extent was sold for Rs.40,000/- in the year 1975, whereas the suit property which is in an extent of 1840 sq. yards was agreed to be sold for Rs.60,000/- in the year 1980. In that view of the matter, the sale consideration under Ex.A1 cannot be said to be grossly low or illusory. As already observed, the defendants did not produce any cogent evidence to establish prevalent market rate in the vicinity of suit property at the time of suit

transaction. When the sale consideration was found adequate by all means at the time of entering into sale agreement, subsequent increase in the prices during the pendency of litigation cannot be treated as hardship to the vendors to reject specific performance. Hence, this argument of the appellants cannot be countenanced. So, on a conspectus of facts and evidence I hold that the judgment of the trial Court is factually and legally sustainable.

16) Now, coming to decreetal condition, the trial Court while decreeing the suit ordered that the plaintiff shall deposit the balance sale consideration in the Court within four weeks from the date of judgment on which defendants 2 and 3 shall pursue and obtain necessary exemption from the competent authority for alienation of suit property under ULCR Act and then execute registered sale deed and deliver vacant possession of the suit property to the plaintiff. So far as the condition of defendants 2 and 3 obtaining exemption from the competent authority under ULCR Act is concerned, it is the submission of both sides that at the time of passing decree the ULCR Act was in force and so such condition was imposed by the trial Court but pending appeal the aforesaid act was repealed by the Parliament by enacting Urban Land (Ceiling & Regulation) Repeal Act, 1999 (for short "Repeal Act, 1999) and the then Andhra Pradesh State has adopted the Repeal Act, 1999 by passing a

resolution in the Andhra Pradesh State Legislature on 27.03.2008 which was published in G.O.Ms.No.603 dated 22.04.2008 and the present case do not fall within the exceptions provided under Section 3 of Repeal Act, 1999 and in view of the same, the condition with regard to defendants 2 and 3 obtaining necessary exemption under ULCR Act as imposed by the trial Court became redundant and so the said condition may be struck down.

17) In the light of above submission, I perused G.O.Ms.No.603 dated 22.04.2008 issued by Revenue (UC.I) Department, Government of Andhra Pradesh. It shows that the Andhra Pradesh State Legislature has adopted the Urban Land (Ceiling & Regulation) Repeal Act, 1999 (Central Act 59/1999) by repealing the Urban Land (Ceiling & Regulation) Act, 1976 (Central Act 33/1976) with effect from 27.03.2008. The present case does not appear to fall in any of the exceptions provided under Section 3 of Repeal Act, 1999 as no possession of the land has been taken by the State Government by then. Therefore, the condition imposed by the trial Court directing defendants 2 and 3 to obtain necessary exemption from competent authority under the provisions of ULCR Act for alienation of suit land becomes redundant. Hence, the said condition is struck down.

18) In the result, this appeal is dismissed by confirming the decree and judgment passed by the trial Court in

O.S.No.588 of 1987. Consequently, the plaintiff shall deposit the balance sale consideration before the trial Court within four (4) weeks from the date of this judgment, if he has not already done the same pursuant to the judgment of the trial Court, upon which the appellants/defendants 2, 4 and 5 shall execute a regular registered sale deed in respect of plaint schedule property and put the plaintiff in possession thereof. No costs in the appeal.

As a sequel, miscellaneous petitions pending if any shall stand closed.

U. DURGA PRASAD RAO, J

Date: 28.09.2015

Murthy

[\[1\]](#) AIR 1968 SC 1358