

HON'BLE MR JUSTICE R. KANTHA RAO

SECOND APPEAL No.303 OF 2000

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ORDER:

This second appeal is directed against the decree and judgment dated 12.04.1999 passed by the II Additional District Judge, West Godavari District at Eluru in A.S.No.103 of 1992 whereby and whereunder the learned Additional District Judge dismissed the appeal confirming the judgment and decree dated 15.06.1992 passed by the Subordinate Judge, Eluru in O.S.No.94 of 1981.

2. I have heard Smt. N(P) Anjana Devi, learned counsel appearing for the appellant. None appeared for the respondents.

3. For the sake of convenience, the parties will be referred to as "the plaintiff and the defendants" as referred in the suit.

4. The plaintiff is the appellant. He filed the suit for specific performance of agreement of sale dated 05.05.1981 against the defendants in O.S.No. 94 of 1981 on the file of the Subordinate Judge, Eluru and the same was dismissed. Against the said judgment and decree, he preferred an appeal A.S.No.103 of 1992 before the II Additional District Judge, West Godavari at Eluru. The appeal was also dismissed by learned the Additional District Judge. Feeling aggrieved, he preferred the present second appeal.

5. The second appeal was admitted considering the following substantial question of law involved for consideration:

"Whether the lower appellate Court is not wrong in not complying the mandatory requirements of Rule 31 of Order 41 of C.P.C. not formulating any points for condonation deciding the points?"

6. There are certain undisputed facts in the present appeal.

7. The plaintiff was the tenant under the defendants in respect of suit schedule shop.

The first defendant is the mother of the second defendant. The defendants filed RCC No.7 of 1977 on the file of the Rent Controller, Eluru seeking eviction of the plaintiff on the ground that the premises were required for their personal occupation and also on the ground that the plaintiff committed willful default in payment of rent. The R.C.C. was allowed and eviction of the plaintiff was ordered by the Rent Controller. Against the said order, the plaintiff preferred R.C.A.No.11 of 1978 before the Subordinate Judge, Eluru. The R.C.A. was dismissed confirming the eviction order passed by the Rent Controller. Thereafter, the plaintiff preferred revision before this Court and this Court in C.M.P.No.6295 of 1980 confirmed the findings recorded by both the courts below and directed the plaintiff to vacate the premises within a period of three months.

8. The version of the plaintiff is that after the conclusion of the proceedings before this Court confirming the eviction order passed by the courts below, at the intervention of elders, the first defendant entered into an agreement with the plaintiff to sell away the plaint schedule shop for an amount of Rs.25,000/- and an agreement was executed on a white paper in favour of the plaintiff agreeing to sell the plaint schedule shop and received an advance of Rs.5,000/- on the same day. Thereafter, it is said that on 08.05.1981 the second defendant received a sum of Rs.5,000/- as part of sale consideration and passed a receipt in favour of the plaintiff. It is the version of the plaintiff that as the defendants failed to execute the registered sale deed in terms of Ex.A-1 agreement of sale and were trying to dispossess him by taking recourse to execution pursuant to the orders passed by this Court in the revision petition, he filed the suit for specific performance after issuing registered notice to the defendants.

9. The suit was opposed by the defendants stoutly contending that they fought the litigation till the High Court to evict the plaintiff from the suit schedule shop. There was absolutely no necessity for them to sell away the property to the plaintiff for an amount of Rs.25,000/-, while the actual cost of the property at that time was Rs.50,000/-.

10. Before the trial Court, PWs.1 to 9 were examined and Exs.A-1 to A-20 were marked on behalf of the plaintiff and DWs.1 to 4 were examined and Exs.B-1 to B-14 were marked.

11. The trial Court framed proper issues extensively, dealt with the said issues and

on proper appreciation of evidence and on analyzing the facts, disbelieved the evidence adduced by the plaintiff, having regard to the material inconsistencies between the witnesses examined on behalf of the plaintiff and mostly in view of the fact that there was absolutely no necessity for the defendants to execute the agreement of sale in favour of the plaintiff in the above stated circumstances. The trial Court also found that the documents relied on by the plaintiff were fabricated for the purpose of filing the suit against the defendants.

12. The appellate Court concurred with the findings recorded by the trial Court in all respects and gave adequate reasons for the findings recorded in the appeal. The findings recorded by both the courts below are on proper understanding of the facts pleaded by both parties and are strictly in conformity with the evidence forthcoming.

13. In the second appeal, this Court would interfere with the concurrent findings recorded by both the Courts below only if the findings are perverse and are not based on evidence. Therefore, the findings recorded by the trial Court as well as the appellate Court do not call for any interference in this second appeal. However, the ground on which the appeal is admitted is that under Rule 31 of Order XLI of CPC the appellate Court shall state the points for determination, render the decision thereon by giving reasons for the decision. Though the appellate Court is required to formulate the points for determination, it is now well settled that even if the points for determination are not formulated, if the appellate Court deals with the issues involved in the appeal and records specific findings in relation to all the issues with adequate reasoning, the judgment of the appellate Court is not liable to be set aside by this Court. Not formulating points for determination by the appellate Court cannot be said to be a substantial question of law which requires determination in the second appeal.

14. For the aforesaid reasons, the second appeal fails and the same is dismissed without any order as to costs. The miscellaneous petitions, if any, pending in this appeal shall stand closed.

R.KANTHA RAO, J

Date:04.12.2015

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THE HON'BLE SRI JUSTICE R.KANTHA RAO

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