HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CCCA No. 178 of 1998

JUDGMENT:

The unsuccessful plaintiff in the Court below preferred the instant appeal aggrieved by the judgment dated 30.06.1998 in O.S.No.82 of 1990 passed by III Senior Civil Judge, City Civil Court, Secunderabad, whereby and whereunder learned Judge dismissed the plaintiff's suit filed for declaration that suit agreement dated 23.12.1989 is null and void and not binding on him and direct the defendants to register a sale deed in his favour and deliver possession of the suit schedule property.

2) The factual matrix of the case is thus:

a) As per the plaintiff, the suit property admeasuring 142 sq. yards situated at Subhash Road, Secunderabad originally belongs to six persons and the first defendant representing as their GPA holder executed sale deed dated 11.04.1986 in favour of defendant No.3 for a total consideration of Rs.89,000/-. The suit property was in occupation of tenant—M/s.Irania Medical Stories. The vendors of third defendant filed eviction petition in R.C.No.242 of 1976 on the file of Principal Rent Controller, Secunderabad for eviction of the tenant which was dismissed and the matter was carried in appeal in R.A.No.73 of 1980 which was allowed by Chief Judge, City small Causes Court, Hyderabad. Aggrieved, the tenant—M/s.Irania Medial Stores preferred C.R.P.No.2568 of 1994 which was dismissed and the eviction proceedings became final. Meanwhile, Mrs. J.N.Irani claiming to be the part of M/s.Irania Medical Stores filed a suit—O.S.No.2567 of 1985 on the file of I Assistant Judge, City Civil Court, Secunderabad for injunction to restrain the vendors of 3rd defendant from executing the order of eviction. It also filed I.A.No.601 of 1985 and obtained interim injunction. Subsequently the said suit was dismissed, but the sale could not be completed in favour of third defendant because of pendency of above proceedings.

b) The further case of plaintiff is that meanwhile, the third defendant entered into an agreement dated 07.09.1987 vide Ex.B3 in favour of plaintiff to sell the suit schedule property for Rs.4,40,000/-. The plaintiff paid Rs.1,40,000/- as advance to the third defendant and agreed to pay the balance consideration at the time of registration. Defendant No.3 represented that the sale deed entered in his favour by the 1st defendant as GPA holder has not yet been registered for want of necessary certificates from the urban Land Ceiling Authorities and the said fact was also incorporated in the agreement of sale. Because the agreement of sale was in his favour, the plaintiff took effective steps and got vacated the interim order in I.A.No.601 of 1985 in OS.No.2567 of 1985. The plaintiff got prepared the E.P.No7 of 1988. The first defendant while leaving for Delhi to see his sick mother instructed his counsel to authorize the plaintiff to obtain delivery of possession of suit premises in E.P.No.7 of 1988. The warrant for delivery of possession in the said EP was issued on 04.04.1988. Learned counsel for defendants 1 and 2 gave authorization letter vide Ex.A7 to the bailiff to hand over possession of the suit premises to the plaintiff because of instructions given by defendant Nos.1 and 2. Thus the plaintiff came into possession of the suit premises on 04.04.1988. It is stated that subsequent to obtaining possession the plaintiff paid Rs.1,00,000/- to the third defendant and he acknowledged the same. The plaintiffs was then about to obtain registered sale deed from third defendant having cleared all obstacles.

c) Further the case of plaintiff is that in the meantime, the third defendant colluded with his vendors and some how managed that the sale deed dated 11.04.1986 was rejected by the Sub-registrar in favour of third defendant. Thereafter, two applications were filed in E.A.No.14 of 1988 and 15 of 1988 in E.P.No.7 of 1988 in R.C.No.242 of 1976 challenging the possession taken by the plaintiff on behalf of decree holder. The said execution applications were allowed. Thereby plaintiff received mental shock and depression. Thereafter, C.R.P.Nos.1459 and 1598 of 1989 were preferred by the plaintiff which were dismissed on 28.11.1989 vide Ex.B8. Thereby plaintiff received a further mental shock. However, the plaintiff filed two suits in O.S.Nos.1664 of 1989 and 1574 of 1988 against defendants 1 to 3 —one is to restrain the vendors of the third defendant from taking delivery of possession as per the orders in E.A.Nos.14 and 15 of 1988 and the other to restrain the third defendant from interfering with the peaceful possession of the suit property.

d) The plaintiff further submits that during the pendency of above suits, since the value of the property has been increased substantially the defendants hatched a plan and induced the plaintiff and made him to sign an agreement under coercion and threat and also made the plaintiff to accept a sum of Rs.3,00,000/-. The amount was given by way of six demand drafts dated 23.12.1989 to plaintiff to part with the property for ever. The plaintiff after recovery from mental disease, filed the present suit for declaration that the said agreement dated 23.12.1989 is null and void and for registration of sale deed and for possession. The plaintiff submits that he is ready and willing to deposit the sum of Rs.3,00,000/- as and when the Court decrees the suit in his favour.

Hence the suit.

e) The third defendant filed the written statement and defendants 1 and 2 filed a memo adopting the same. It is averred that sale deed dated 11.04.1986 was executed by defendants 1 and 2 in his favour, but subsequently Sub-Registrar, Secunderabad refused to register the same and the sale deed was returned back on 23.04.1988. Since the registration of the document was refused, he has not acquired any right, title or interest in the suit schedule property and the property was also not in his possession since the same was in occupation of a tenant—M/s.Irania medical Stores. He admits about filing of eviction petition in R.C.No.242 of 1976 against M/s.Irania Medical Stores and he has knowledge about preferring appeal R.A.No.73 of 1980 which was allowed. The revision filed against the said order was dismissed. He also admits that Mrs. J.Irani filed

O.S.No.2567 of 1985 for injunction which was subsequently dismissed. The sale deed executed in his favour was incomplete and subsequently it was rejected by the Sub-Registrar on 23.04.1988. In the meanwhile, he entered into an agreement of sale with the plaintiff. Since the agreement was cancelled on 23.12.1989, the plaintiff has received the earnest money and also the compensation which was paid to him by way of demand drafts. Therefore, there is no sale agreement subsisting between the parties in respect of suit property. He submits that the plaintiff with full knowledge cancelled the earlier agreement and received the advance money of Rs.2,40,000/- paid by him besides compensation of Rs.60,000/-. He submits that after canceling the agreement of sale the plaintiff filed a memo in O.S.Nos.1564 of 1988 and 1660 of 1989 and withdrawn the suits as not pressed. It is averred that the suit is liable to be dismissed for non-joinder of appropriate parties. He thus prayed to dismiss the suit.

f) Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled for the relief of declaration that the agreement dt. 12.12.1989 is null and void as prayed for?

2. Whether the plaintiff is not entitled for declaration since the agreement between the defendant No.3 and the plaintiff stands terminated in the circumstances stated by D3 in the Written Statement?

3. Whether the suit is bad for non-joinder of necessary parties as contended by the defendant?

4. To what relief?

g) The trial Court after full-fledged trial and hearing both sides dismissed the suit filed by the plaintiff.

Hence, the appeal.

3) Heard arguments of Sri Hari Sreedhar, learned counsel for

appellant; Sri B.Srinivas, learned counsel for respondents 1 and 2 and Sri B.Adinarayana Rao, learned counsel for respondent No.3.

4) The parties in the appeal are referred as they stood before the trial Court.

5a) Impugning the judgment learned counsel for appellant/plaintiff firstly argued that the trial Court could have seen defendants 1 to 3 obtained Ex.B5—agreement dated 23.12.1989 from the appellant cancelling his earlier agreement dated 07.09.1987 vide Ex.B3 executed by defendant No.3 in his favour when the appellant was reeling under acute reactive depression and so Ex.B5 was null and void. He argued that the plaintiff by examining PW4 who treated him has discharged his burden showing that during the relevant period he was suffering with mental disease and hence unable to take decisions but however, the trial Court on an erroneous appreciation of facts and evidence, disbelieved the evidence of PW4 and held the plaintiff was in fit state of mind and voluntarily entered into Ex.B5 agreement and withdrawn the two suits filed by him against defendants 1 to 3. He argued that Ex.B5 was tainted due to the threat and coercion applied by defendants on one hand and due to the mental disease of the plaintiff on the other hand. When such was the state of affairs the trial Court under law should not have given credence to Ex.B5. In this regard, he relied upon the decisions of the Apex Court reported in ***Sona Bala Bora v. Jyotirindra Bhatacharjee*** and ***Chacko v. Mahadevan***.

b) Secondly, he argued that the trial Court could have seen defendants 1 to 3 colluded together to nullify the agreement entered into by defendant No.3 with plaintiff and with that nefarious intention, defendants 1 and 2 did not furnish required documents before the Sub-Registrar to enable him to register the sale deed entered into by defendants 1 and 2 with defendant No.3. The trial Court could have also seen, immediately after getting the cancellation of plaintiff's sale agreement through Ex.B5, defendants 1 to 3 completed their sale transaction under Ex.A5. All these would show the conspiracy hatched by defendants 1 to 3 against plaintiff to see that his sale agreement is some how nullified. He argued that trial Court failed to consider these aspects in a proper perspective. He thus prayed to allow the appeal.

6) Per contra, while supporting the judgment, learned counsel for respondents/defendants argued that the plaintiff challenged Ex.B5—agreement mainly on the ground of his alleged mental illness stating as if he was deprived of his cognitive faculties and unable to understand the consequences of his acts due to the said mental illness but however, the evidence of PW4 who treated the plaintiff would not indicate any such severe form of mental disease except some suicidal tendency on the part of plaintiff. His evidence clearly showed that plaintiff was otherwise normal and his memory was also perfect during the relevant period and considering the said evidence only the trial Court came to the conclusion that plaintiff entered into Ex.B5—agreement with full knowledge and consent. Further, the plaintiff though alleged that the defendants applied threat and coercion on him, he could not establish the said fact. The plaintiff and his son were present at the time of execution of Ex.B5 and his son i.e. PW3 acted as attestor of Ex.B5. If really any threat or coercion was employed by the defendants and plaintiff was suffering with acute mental disease, PW3 would not have allowed his father to sign on Ex.B5. Added to it, neither the plaintiff nor PW3 gave any complaint to police or took any civil action against defendants against the alleged threat and coercion. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the points that arise for determination in this appeal are:

> *1) Whether the appellant/plaintiff was suffering with such mental disease so as to unable to understand the consequences of his acts during the relevant period and whether the defendants applied threat and coercion and obtained Ex.B.5, thereby rendering Ex.B5—agreement null*

and void?

2) Whether the appellant/plaintiff is entitled to the reliefs as prayed for?

8) **<u>POINT No.1</u>**: Needless to emphasise the burden is on the appellant/plaintiff to establish that he was suffering with such form of mental disease during the relevant time that he was deprived of the knowledge as to the consequences of his acts and in that mental condition he entered into Ex.B5 and further defendants applied threat and coercion and forced him to enter the said agreement.

a) In the above context, Sections 11 and 12 of Indian Contract Act, 1872 are worth perusal. Section 11 deals with the aspect who are competent to enter into contract whereas Section 12 illustrate as to what is a sound mind for the purpose of contracting. Hence they are extracted below:

> ***<u>"Section 11. Who are competent to contract</u>***.*—Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject.*
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> ***<u>Section 12. What is a sound mind for the purposes of contracting.</u>***— *A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.*
>
> *A person is usually of unsound mind, but occasionally of sound mind, may make a contract when is of sound mind.*
>
> *A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.*

So as per Section 11 a person who is of sound mind is competent to contract. Then section 12 illustrates what is a sound mind for the purpose of contracting and it lays down that a person can be said to be a sound mind for entering into contract if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. Briefly stating, if a person who is entering into contract is able to understand the consequences of that contract upon his interest, then he is said to be of sound mind to enter into the contract. Since the plaintiff claims that he was suffering with mental disease and unable to form a rational judgment on the consequences of Ex.B5, it has to be seen whether he could discharge the burden by placing cogent evidence.

b) Plaintiff examined PW4—doctor who treated him. PW4 deposed that plaintiff was referred to him with acute reactive depression with suicidal ideation. He started treating him from 02.12.1989 and he last saw him in February, 1990 and during the said period plaintiff was suffering with the said disease. Speaking on the symptoms of said disease, PW4 deposed that the plaintiff was very much depressed and withdrawn and he was having suicidal ideas and he was pre-occupied with his own problems. Regarding the nature of treatment, PW4 further deposed that he thought of giving electric shocks if he were not to show improvement. Vivifying on the mental condition of patients of aforesaid disease, PW4 stated that persons who are suffering from such a disease would think of killing themselves and they may not care for anything.

c) In the cross-examination PW4 admitted that the plaintiff used to attend his normal duties by then i.e. during the period of treatment and there was no defect in his memory. He stated that any social stress would lead to such a complication. He deposed that he advised the plaintiff to take rest but not a total bed rest. He further admitted that he did not advise PW1 to be accompanied by any other persons due to his ideas which are different from normal life. This is precisely the evidence of PW4 relating to the nature of mental disease of the plaintiff during the relevant period.

d) A careful scrutiny of evidence of PW4 would show that during the relevant period when Ex.B5 was entered the plaintiff was no doubt suffering with acute reactive depression. The symptom of disease was such that the plaintiff developed with suicidal ideation i.e. to kill himself because of depression. Except that, in the voice of PW4 the plaintiff was OK and he used to attend his normal duties and there was no defect in his memory. Therefore, even if the evidence of PW4 is accepted in toto, it would not even remotely indicate that the plaintiff was suffering with such sort of mental disease so as to be incapable of understanding the nature of Ex.B5 entered into by him with defendants to form a rational judgment as to its effect upon his interest. Such is his case, it is hard to believe that due to acute reactive depression whose symptom was only suicidal ideation, the plaintiff was deprived of his cognitive faculties to form rational judgment on the consequences of Ex.B5—agreement he entered into.

e) On the other hand, the facts and evidence would show that plaintiff as a party and his son—Sri Gopal (PW3) as attestor have signed on Ex.B5. No doubt, PWs.1 and 3 claimed that defendant No.3 threatened them and obtained their signatures on Ex.B5. However, in the cross-examination of PW3 he admitted that he has not informed to D1 or D3 about the mental condition of his father. He has also not informed to Sri Bala Gopal, the counsel about his condition of his father. He further admitted that he has not lodged any complaint to police stating that D3 obtained their signatures by force on Ex.B5—agreement. He further admitted he has not issued any notice to D3 stating that he obtained their signature by force. Added to it, plaintiff withdrew the suits filed by him against defendants vide Exs.B1 and B2 and he also cancelled the earlier agreement entered into by him. If really the defendants threatened and obtained Ex.B5, there was no need for plaintiff to withdraw the suits filed by him. Similarly, if his mental condition was not good his counsel would not have taken risk of withdrawing the suits. So, the evidence on record demonstratively shows that the plaintiff neither suffered with such sort of mental disease which deprived him of rational thinking on the consequences of the agreement entered into by him nor he was threatened by the defendants to enter into the agreement under Ex.B5. Therefore, it is manifest Ex.B5 was entered into by him voluntarily. It reads that defendants 1 and 2 did not know about the sale agreement entered into by defendant No.3 and plaintiff and they were not parties to the said agreement. It was mentioned that sale deed executed by defendants 1 and 2 in favour of defendant No.3 was rejected and not registered by the Registration authority and subsequently number of suits and other proceedings taken place in respect of suit property and in view of various pending cases the plaintiff voluntary agreed to deliver the vacant possession to defendants 1 and 2 and in return the defendant No.3 agreed to pay him Rs.3,00,000/- i.e. Rs.2,40,000/- the advance amount earlier paid by him and Rs.60,000/- towards compensation for the legal expenses incurred by him. The plaintiff received Rs.3 lakhs and he did not return the same. His conduct through out reflects that Ex.B5 is a genuine document. Hence, he cannot now challenge Ex.B5 on the ground of its being tainted by illness or threat and coercion applied on him.

9) The cited decisions will not advance his cause. In ***Sona Bala Boara***'s case (1 supra) basing on the evidence on record the Apex Court found that respondent No.6 was not mentally sound at the time of execution of sale deed and the appellants therein could establish that respondent No.6 developed fits of insanity during which he threatened to sell away his residential house and he had detached from the family and his conduct was not normal. He instituted a criminal case against his own family members without any reason. Such is not case here.

10) The other decision in ***Chacko***'s case(2 supra) also can be distinguished on facts. In that case, the appellant/Chacko and his family members challenged the sale deed executed by Chacko in favour of Mahadevan on the ground of fraud that Mahadevan obtained sale deed from Chacko by administering liquor on him. On evidence it was found that Chacko was not having sound mind when he executed Ex.A3—sale deed which was established from Ex.A4—medical certificate which showed that he was treated in Mental Hospital, Trichur for alcoholic psychosis. It was further observed that under Ex.A2 he sold one cent of land for Rs.18,000/- on 04.09.1982 but 10 months thereafter he sold three cents of land for only

Rs.1,000/- which is an abnormality. Basing on *res ipsa loquitur* it was held Chacko sold the land under Ex.A3 when he was not of sound mind and some fraud was played on him. Needless to say the facts in the present case are different from the aforesaid decisions.

11) The other contention of appellant is that defendants 1 to 3 colluded together to see that his agreement was nullified and with that intention, defendants 1 and 2 did not submit required documents before the Sub-Registrar to enable him to register the sale deed executed by defendants 1 to 2 inform of D.3 and due to their collusive acts the plaintiff is entitled to the sale deed from defendants 1 to 3. This argument also does not carry much conviction.

a) In clause 7 of Ex.B3—sale agreement, it is mentioned that the sale deed executed in favour of defendant No.3 by the owners was not yet registered for want of necessary certificates under ULC Act and hence, the sale under present agreement shall be completed within one month from the date of defendant No.3 obtaining a registered sale deed in his favour and all other certificates stipulated therein. This clause would show that plaintiff knows that defendant Nos.1 and 2 are original owners of the property and sale deed executed by them in favour of defendant No.3 is not yet registered for want of certain certificates and his sale can be completed only after defendant No.3 obtaining the sale deed from defendants 1 and 2. Nowhere in Ex.B3 it was mentioned that defendants 1 and 2 knows about Ex.B3—transaction. There is no privity of contract between defendant No.1 and 2 on one hand and plaintiff on the other hand. So, even if defendant Nos.1 and 2 did not submit the relevant documents before the registration authorities, the plaintiff cannot impute collusion between defendants and claim sale deed from them in his favour on that ground.

In view of the above discussion, point No.1 is held against the appellant/plaintiff.

12) **POINT No.2**: In view of finding on point No.1, the appellant/ plaintiff is not entitled to reliefs prayed for.

13) In the result, this C.C.C.A. filed by the appellant/plaintiff is dismissed. But in the circumstances, there shall be no order as to costs.

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

U. DURGA PRASAD RAO, J

Date: 26.10.2015

Murthy