

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

+ C.M.A.No.951 of 2014

% 16.04.2015

Y.Vinod Reddy and others

...Appellants

Vs.

\$ Syed Ahmed Ali and others

...Respondents

! Counsel for the appellants: Mr.V.L.N.G.K.Murthy
for Mr.P.Venkat Reddy

Counsel for the respondent No.1: Mr.O.Manohar Reddy

Counsel for other respondents: --

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>Head Note:

? Cases referred:

AIR 1954 SC 75

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

C.M.A.No.951 of 2014

-
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Between:

Y.Vinod Reddy and others

...Appellants

And

Syed Ahmed Ali and others

...Respondents

Counsel for the appellants: Mr.V.L.N.G.K.Murthy
for Mr.P.Venkat Reddy

Counsel for the respondent No.1: Mr.O.Manohar Reddy

Counsel for other respondents: --

The Court made the following:

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JUDGMENT:

This Civil Miscellaneous Appeal arises out of the order, dated 27.08.2014, in I.A.No.285 of 2014 in O.S.No.674 of 2014 on the file of learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar.

At the interlocutory stage, the civil miscellaneous appeal itself is taken up for hearing and disposal with the consent of the learned counsel for both the parties.

Brief facts leading to the filing of the civil miscellaneous appeal are three persons i.e., P.Lachamma, D.Anji Reddy and K.Ramakrishna Reddy (respondent Nos.3 to 5) along with one P.Agam Reddy jointly purchased the land admeasuring Acs.161.36 guntas situated at Thimmaipalli Village under a common registered sale deed bearing document No.492 of 1966, dated 20.06.1966; out of this land, an extent of Acs.88.07 guntas is situate in survey Nos.76 to 81 and an extent of Acs.73.29 guntas is situate in survey Nos.82 to 86; on 23.02.1988, respondent No.4, one of the joint purchasers, having 16% share in Acs.73.29 guntas in survey Nos.82 to 86, died; on 01.11.1988, one P.Narsa Reddy (respondent No.2), husband of one of the co-purchasers viz., P.Lachamma (respondent No.3), was stated to have executed a receipt/agreement of sale in respect of land admeasuring Acs.33.00 out of Acs.73.29 guntas in survey Nos.82 to 86 in favour of

one Syed Ahmed Ali (respondent No.1); the said receipt, however, does not contain the boundaries of the said extent of Acs.33.00 guntas; and between 13.08.1990 and 17.12.1990, respondent Nos.

3 and 5 and P.Agam Reddy along with the legal heirs of deceased respondent No.4 jointly sold land admeasuring Acs.72.30 guntas (hereinafter referred to as 'the subject property'), out of Acs.73.29 guntas in survey Nos.82 to 86, though registered sale deeds to one D.Vijay Kumar and M/s.Dharam Resorts & Projects Private Limited (hereinafter referred to as 'the vendors of the appellants), while respondent No.3 retained land to an extent of Ac.0.39 guntas in survey No.82.

That respondent No.1 filed O.S.No.599 of 1991, based on the receipt, dated 01.11.1988, stated to have been executed by respondent No.2, before learned II Additional Subordinate Judge, Ranga Reddy District, seeking specific performance thereof against respondent Nos.2 to 5 in respect of land admeasuring Acs.33.00 guntas, forming part of the subject property; respondent No.2 filed written statement on 12.06.1995 denying the very execution of receipt/agreement, dated 01.11.1988; it was also pleaded that respondent No.4 died much prior to the date of the alleged execution of the said receipt; and on 31.10.1996, learned II Additional Subordinate Judge, Ranga Reddy District, decreed O.S.No.599 of 1991 *ex parte* against respondent Nos.2, 3 and 5 (defendant Nos.1, 2 and 4) while dismissing the suit against respondent No.4 (defendant No.3). It however appears that the share of respondent No.4 was also included in the said decree. On 20.11.1996, respondent No.1 deposited Rs.1,38,500/- towards balance sale consideration; however, on 26.10.1999, respondent No.1 filed I.A.No.533 of 2000 seeking to permit him to withdraw the said amount by pleading that the decree was not executable as third parties are in possession; between 01.02.2003 and 26.05.2003, the vendors of the appellants sold entire

subject property (Acs.72.30 guntas) to the appellants/plaintiffs through registered sale deeds; and on 13.10.2004, respondent No.1 filed E.P.No.67 of 2004 in O.S.No.599 of 1991 on the file of II Additional Senior Civil Judge, Ranga Reddy District, seeking execution of *ex parte* decree, dated 31.10.1996, in O.S.No.599 of 1991 without bringing on record, the legal representatives of the deceased respondent Nos.2 and 3 on record, who were stated to have died on 11.03.1999 and 11.01.2002 respectively.

It appears, for the first time, respondent No.1 has given the descriptive particulars of the land admeasuring Acs.33.00 with boundaries in the aforesaid E.P., though neither the aforesaid receipt nor the plaint in O.S.No.599 of 1991 contained the boundaries and other details of the said land. On 06.06.2005, the appellants having come to know about the proceedings in the aforesaid E.P., filed claim petition, vide E.A.No.36 of 2005, under Order XXI Rules 58 and 97 C.P.C.; and on 28.02.2012, the executing Court summarily dismissed the aforesaid E.A. on the ground that such an application was not maintainable on the facts of the case. Following the dismissal of the aforesaid E.A., the appellants filed O.S.No.674 of 2014 before XIII Additional District & Sessions Judge, Ranga Reddy District, to declare the *ex parte* decree, dated 31.01.1996, in O.S.No.599 of 1991 as null and void and not binding on them and for perpetual injunction in respect of the subject matter; in the said suit, they also filed I.A.No.285 of 2014 seeking to restrain the respondents from interfering with their possession of the subject property by way of perpetual injunction; on 27.06.2014, respondent No.1 filed draft sale deed in E.P.No.67 of 2004 in O.S.No.599 of 1991 by furnishing certain boundaries while specifying the extents of each survey number for the first time and also including the share of respondent No.4 in respect of which respondent No.1 has withdrawn the aforesaid E.P. on 23.09.2013; and by order, dated 27.08.2014, learned XIII Additional District & Sessions Judge,

Ranga Reddy District, dismissed I.A.No.285 of 2014 in O.S.No.674 of 2014. Feeling aggrieved by the said order, the unsuccessful plaintiffs filed this civil miscellaneous appeal.

I have heard Sri V.L.N.G.K.Murthy, learned counsel for the appellants, and Sri O.Manohar Reddy, learned counsel for respondent No.1.

The following are certain undisputed facts:

Respondent Nos.3 to 5 and one P.Agam Reddy were the joint owners of the subject property from 20.06.1966; O.S.No.599 of 1991 was filed by respondent No.1 based on the purported receipt/agreement of sale, dated 01.11.1988, executed by respondent No.2, who is the husband of one of the joint owners i.e., respondent No.3; respondent No.2 filed written statement denying the very execution of the aforesaid receipt/agreement. However, an *ex parte* decree, dated 31.10.1996, was passed in the aforesaid suit in favour of respondent No.1 for specific performance of the purported agreement. Admittedly, by the time respondent No.1 filed the aforementioned suit, the subject property was sold by the four joint owners and/or their legal heirs to the vendors of the appellants in the year 1990 itself and the said vendors were not impleaded as parties to the said suit.

Sri V.L.N.G.K.Murthy, learned counsel for the appellants, has strenuously contended that the very suit viz., O.S.No.599 of 1991 filed by respondent No.1 for specific performance of the aforesaid receipt/agreement of sale without impleading the purchasers of the property from the four joint owners and/or their legal heirs was not maintainable as the title in the property has already passed on to the subsequent purchasers. In support of this submission, he has relied upon the judgment of the Supreme Court in **Durga Prasad vs. Deep Chand**^[1]. He has also submitted that as O.S.No.599 of 1991 filed for specific performance of the aforesaid receipt/agreement of sale

purported to have been executed by a person, who was admittedly not the owner of the property, itself was not maintainable, the decree passed therein is wholly unsustainable. He has further emphasised the fact that as neither the receipt nor the plaint nor the decree contained identification of the property with reference to the boundaries, such a decree is wholly unenforceable and the boundaries cannot be inserted for the first time in the E.P. and the draft sale deed.

In **Durga Prasad** (supra), the Supreme Court, *inter alia*, held as under:

“42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in – Kafiladdin v. Samiraddin’, A.I.R. 1931 Cal 67 (C), and appears to be the English practice. See Fry on specific Performance, 6th Edn. page 90, paragraph 207; also – ‘Poter v. Sanders’, (1846) 67 ER 1057 (D). We direct accordingly.”

Admittedly, the vendors of the appellants, being the purchasers from the four joint owners and/or their legal heirs referred to above, were not impleaded in O.S.No.599 of 1991, and under the registered sale deeds executed between 13.08.1990 and 17.12.1990, the title in respect of the property held by the four joint owners was conveyed to the vendors of the appellants. Therefore, following the dicta of the Supreme Court in the aforementioned judgment, execution of sale deeds by the four joint owners and/or their legal heirs did not have the effect of conveying title to respondent No.1. Unless the subsequent purchasers were impleaded in the suit and a finding was rendered by the lower Court that the sale deeds executed in their favour by the original owners were invalid, the decree for specific performance of receipt/agreement of sale ought not to have been passed. Moreover,

the boundaries of the land admeasuring Acs.33.00 appear to have been for the first time shown in the E.P. with further improvement in the sale deeds with respect to each of the survey numbers. While the above serious legal lacunae stare at the decree obtained by respondent No.1, it does not seem to be in dispute that the appellants purchased the land admeasuring Acs.72.30 guntas, out of which an extent of Acs.33.00 in respect of which decree was passed in favour of respondent No.1 in O.S.No.599 of 1991 forms part under the sale deeds executed in the year 2003 and that the entire property is converted into plots for development purpose. In these facts and circumstances of the case, I am of the opinion that the elements of *prima facie* case, balance of convenience and irreparable injury lie in favour of the appellants for granting injunction restraining respondent No.1 from interfering with their possession of the property.

Sri O.Manohar Reddy, learned counsel for respondent No.1, submitted that in the event of the appellants not succeeding in O.S.No.674 of 2014, creation of third party interests would cause serious prejudice to his client's interests.

Sri V.L.N.G.K.Murthy, learned counsel for the appellants, submitted that on execution of sale deed by the Court in favour of respondent No.1, the latter has immediately sold the properties to third parties and that interlocutory applications were filed by his clients for impleadment of the subsequent purchasers and also for injunction restraining them from interfering with his clients' possession of the property. In the light of this fact, respondent No.1 is permitted to file an appropriate application before the lower Court for protecting his interests pending O.S.No.674 of 2014. If such an application is filed, the lower Court shall pass appropriate orders.

Subject to the above observations, the Civil Miscellaneous Appeal is allowed by setting aside the order under appeal and

I.A.No.285 of 2014 in O.S.No.674 of 2014 on the file of learned XIII Additional District and Sessions Judge, Ranga Reddy District, is allowed by grating injunction as prayed for therein.

As a sequel to allowing the Civil Miscellaneous Appeal, C.M.A.M.P.Nos.1547 and 1548 of 2014 filed by the appellants for injunction and for receiving documents are disposed of as infructuous.

(C.V.NAGARJUNA REDDY, J)

16th April, 2015

Note: L.R. copies to be marked.

(B/o)
GHN

[\[1\]](#) AIR 1954 SC 75