

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

* * * *

SECOND APPEAL No.289 of 2015

Between:

V.Narayan Reddy

....Appellant

and

Mohd.Nazeer Ali.

....Respondent

DATE OF JUDGMENT PRONOUNCED: 11.09.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment 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 |

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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SECOND APPEAL No.289 of 2015

JUDGMENT:

Heard the learned Counsel for the appellant. In spite of notice to the respondent, none appeared.

The defendant in the suit in O.S.No.81 of 2005 is the appellant herein. The said suit was filed for specific performance of the agreement dated 14.02.2003 in respect of Ac.1.00 of land out of Survey No.9 shown as Survey No.9/g in the revenue records situated at Dharmapur Village, Mahabubnagar Mandal and District out of total extent

of Acs.5.21 guntas. A written statement was filed in the suit, which was pending on the file of the learned I Additional Senior Civil Judge (FTC), Mahabubnagar, stating that the plaintiff had not come to the Court with clean hands and he deliberately failed to pay the balance sale consideration. It was also stated that the time was the essence of the contract. Based on the pleadings in the suit, the following issues were framed:

- “1. Whether the plaintiff was always ready and willing to perform his part of contract?
2. Whether the plaintiff is entitled for specific performance as prayed for?
3. Whether the plaintiff is entitled for damages as prayed for?
4. To what relief?”

Before the trial Court, P.Ws.1 and 2 were examined and defendant was examined as D.W.1. No documents were marked on behalf of the defendant, but on behalf of the plaintiff, Exs.A1 to A8 were marked. The trial Court, on the basis of the oral and documentary evidence, came to the conclusion that the plaintiff was always ready and willing to perform his part of contract and, accordingly, held issues 1 and 2 in favour of the plaintiff. In view of holding issues 1 and 2 in favour of the plaintiff, the third issue was held against the plaintiff. Accordingly, the suit was decreed by judgment and decree dated 13.07.2009. Challenging the same, the appellant herein filed A.S.No.67 of 2009, and the appellate Court framed the following issues:

- “1. Whether the plaintiff is always ready and willing to perform his part of contract?
2. Whether the plaintiff is entitled for specific performance as prayed for?”

The appellate Court noticed that Ex.A1 contained the following terms:

- “i. Plaintiff has to pay the balance amount of Rs.2,20,000/- by 14.3.2003.

- ii. The defendant has to execute registered sale deed in favour of the plaintiff.
- iii. If plaintiff fails to obtain registered sale deed by 14.3.2003, the earnest money need not be returned by the defendant to the plaintiff.”

After considering the entire case law and the evidence of the parties, the appellate Court held that the plaintiff is doing real estate business, he purchased many lands and converted them into plots to sell the same. The plaintiff also purchased the shares of Chukka Reddy and Venkat Reddy in the year 2003 itself and the defendant also did not issue any notice to the plaintiff to pay the balance sale consideration till the plaintiff issued Ex.A2 legal notice. Accordingly, the appellate Court came to the conclusion that the plaintiff was ready and willing to perform his part of contract and due to the fault of the defendant only, the plaintiff could not obtain registered sale deed and, accordingly, exercised the discretion under the Specific Relief Act in favour of the plaintiff. The decree granted by the trial Court was, accordingly, confirmed by judgment and decree dated 31.12.2014 by dismissing the appeal. Against the same, the present Second Appeal is filed.

Learned Counsel for the appellant submits that the agreement relates to the land of an extent of Ac.1.00 in Survey No.9/aa. The suit was filed in respect of undivided extent of Ac.1.00 in Survey No.9/g and thus, the plaint schedule was vague and unrelated to the agreement. Learned Counsel for the appellant also submits that the plaintiff was not ready and willing to perform his part of contract and the Courts below came to a wrong conclusion.

In a suit for specific performance, when both the Courts below recorded a finding in favour of the plaintiff, this Court, in the Second Appeal, cannot disturb the said finding of fact and the Second Appeal cannot be admitted on the grounds raised by the learned Counsel for the appellant.

The Second Appeal is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

11.09.2015
vs