

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

S.A.No.533 of 2014

JUDGMENT :

Heard Sri T.G.S. Srivatsav, counsel for appellant
and Sri K. Ramesh, counsel for respondent
Nos.4, 6 and 7

2. This Second Appeal is filed challenging the judgment and decree dt.02.06.2014 in AS.No.36 of 2011 on the file of Principal District Judge, Kadapa confirming the judgment and decree dt.31.05.2011 of the Principal Junior Civil Judge, Kadapa in OS.No.54 of 2006.

3. The appellant herein is plaintiff in the said suit. He filed the suit for specific performance of a contract of sale in respect of plaint schedule property, for delivery of vacant possession of it and for a perpetual injunction restraining respondents from executing any third party registration relating to the said property.

4. As per schedule to the plaint, the property is described as a house constructed by the Andhra Pradesh Housing Board (1st respondent herein) with vacant site within boundaries mentioned therein of extent 91.25 Sq.yds.

5. The plaintiff contended that he was allotted plot

No.290 LIG-II in Kadapa; he entered agreements with the defendant nos.1 to 3 for the said purpose; in 1982, D.3 sent the allotment letter Ex.A.2 dt.24.06.1982 for which he paid Rs.7,000/- towards estimated cost by way of Demand Draft; he discharged the entire balance payable to defendants by letter Ex.A.4 dt.24.09.1991; in all, he paid Rs.51,919/-; and that he was put in possession but registered sale deed was not executed in his favour. He contended that he demanded orally and also sent telegram notices and letters to defendant Nos.1 to 3 informing them that he was ready and willing to perform his part of the contract, but they postponed the execution of registered sale deed on one pretext or the other; and defendant Nos.1 to 3 executed a sale deed in favour of 4th defendant on 19.10.2006 under Ex.B.5. He contended that he is entitled to grant of relief of specific performance and perpetual injunction.

6. Later, 4th defendant got herself impleaded contending that on 13.03.1999, plaintiff had sold the plant schedule house with vacant site to 5th defendant and executed an agreement of sale Ex.B.1 for a sum of Rs.1,75,000/-, and D.5 then executed an agreement of sale on 26.06.2003 in favour of D.4

7. Thereafter, plaintiff amended the plaint and inserted pleadings to the effect that in 1999, 5th defendant and her husband requested him to sell the subject

property along with the vacant site and he was unwilling to do so; but subsequently, they prevailed on him and made him agree that he would execute a sale deed in favour of 5th defendant only after defendant Nos.1 to 3 execute a registered document in his favour; that on 13.03.1999, he executed Ex.B.1 agreement of sale in respect of the said property for a sum of Rs.1,75,000/- in favour of 5th defendant; that he paid part consideration, but thereafter disputes arose between him and defendant nos.1 to 3 regarding the value of the adjacent site; that 1st defendant had informed that a sum of Rs.68,438/- should be paid for the vacant site by a letter dt.03.04.2001; in the meantime, G.O.Ms.No.67 Housing (BHII) Department dt.08.09.2001 was issued which permitted agreement holders from the original allottees to directly approach 1st defendant and obtain sale deeds, and taking advantage of the same, 4th defendant obtained a sale deed Ex.A.46 on 19.10.2006 from defendant Nos.1 to 3.

8. The defendant Nos.1 to 3 filed a written statement denying that they had allotted vacant site also along with the house property to plaintiff and alleged that in spite of the same, the plaintiff sold away the house property along with the appurtenant site admeasuring 91.25 Sq.yds. to 5th defendant on 13.03.1999; that 5th defendant then sold the house to 4th defendant for Rs.3,50,000/- and executed

agreement of sale dt.26.06.2003; since then 4th defendant was in possession of the property; that 4th defendant represented to 1st defendant to register the house with vacant site in her favour as a third party; and on that basis, by following G.O.Ms.No.67 dt.08.09.2001, sale deed was executed by 1st defendant in favour of 4th defendant.

9. The 4th defendant took a similar stand to that of defendant Nos.1 to 3.

10. The plaintiff again amended the plaint and raised a plea that pending suit, 2nd defendant executed a sale deed Ex.B.5 dt.19.10.2006 in favour of 4th defendant, and it would not bind him because of the doctrine of *lis pendens*.

11. After considering the pleadings of the parties, the Court below framed the following issues :

“19. Issues No.1 to 3 and additional issue :

1. *Whether plaintiff is entitled for regular sale deed from D1 to D3 in respect of schedule property and for delivery of vacant possession from D4?*
2. *Whether 4th defendant is in possession and enjoyment of suit property?*
3. *Whether defendants 1 to 3 colluded with D4?*

Additional Issue : Whether 5th defendant is rightful owner and has been in possession and enjoyment of suit

schedule property”

12. Before the trial court, plaintiff examined himself and marked Ex.A.1 to A.56. The defendants examined DWs.1 to 4 and marked Ex.B.1 to B.9.

13. By judgment and decree dt.31.05.2011, the court below dismissed the suit. It held that plaintiff had failed to prove that he was also allotted the vacant site admeasuring 91.25 Sq.yds with the house property by defendant Nos.1 to 3 and that he was ready and willing to perform his part of the contract; although plaintiff herein was offered the vacant site also by fixing a cost for it, the plaintiff did not pay it to defendant nos.1 to 3; that there was no allotment of the vacant site to plaintiff; that plaintiff has not come to court with clean hands; and is, therefore, not entitled to relief of specific performance.

14. Challenging the same, the appellant herein filed AS.No.36 of 2011 before the Principal District Judge, Kadapa. The said appeal was also dismissed.

15. The appellate Court, apart from confirming the findings of the trial court, also held that plaintiff had tampered with documents and inserted the words *“including cost of additional land admeasuring 91.25 Sq.yds”* in Ex.A.4; that he did not file the original of Ex.A.4 and only filed a Xerox copy and it appears that the above words were inserted in the said letter to suit his convenience. It held that he is not entitled to make any

claim over the said land in absence of any evidence indicating the allotment of the said land to him or payment by him of cost of the said land; that plaintiff was supposed to pay full consideration to defendant Nos.1 to 3, but he did not keep his promise by paying the instalments to defendant nos.1 to 3; and therefore, he is not ready and willing to perform his part of the contract. So he is not entitled to the relief of specific performance.

16. Questioning the same, this Second Appeal is filed.

17. It is the contention of counsel for appellant that the courts below had not correctly appreciated the evidence on record and erroneously denied him relief. He contended that the courts below should have taken into account the fact that subsequent to the filing of suit defendant nos.1 to 3 had executed Ex.B.5-sale deed in favour of 4th defendant in collusion with each other; and in view of the said conduct, plaintiff is entitled to relief of specific performance.

18. I am of the opinion, that plaintiff first needs to establish that he is entitled to relief of specific performance. Both courts below concurrently found that even though no vacant site adjacent to the house property was allotted to him by defendant nos.1 to 3, he still made a claim for the same and, in fact, entered into an agreement of sale for sale of both the house and adjoining

vacant site in favour of 5th defendant; and that this indicates that he has not come to the court with clean hands. The counsel for appellant is unable to show that this finding is erroneous. He is also unable to satisfy this court that their finding that the plaintiff tampered with Ex.A.4 is wrong. Once these two findings are accepted, it is clear that plaintiff has come to the court with unclean hands, and therefore, he is disentitled to relief of specific performance. Therefore, I do not find any question of law, much less any substantial question of law, arising for consideration in this Second Appeal. Accordingly, the Second Appeal is dismissed. No order as to costs.

19. As a sequel, miscellaneous petitions pending, if any in this Second Appeal, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-02-2015

Ndr/*