

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

SECOND APPEAL No.501 OF 2015

Between:

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Murukutla Visweswara Devi Vara Prasada Rao ... Appellant

and

Gundumogula Durga Prasada Rao ... Respondent

DATE OF JUDGMENT PRONOUNCEMENT: 15th
SEPTEMBER,2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers
may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. | Whether His Lordship wishes to
see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

SECOND APPEAL No.501 OF 2015

J U D G M E N T

Having failed before both the Courts below, the defendant in O.S.No.30 of 2002 on the file of the learned Senior Civil Judge, Narsapuram, is in second appeal.

O.S.No.30 of 2002 was filed by the respondent-plaintiff for specific performance of an agreement of sale dated 20.09.1999 (Ex.A1). The case of the respondent-plaintiff was that the appellant-defendant, being the owner of the suit schedule property, offered the same for sale and entered into Ex.A1 agreement of sale, which was registered on 21.09.1999 at the Sub-Registrar's Office, Mogalturu. As per this agreement, the consideration was fixed at Rs.1,62,000/-, out of which Rs.1,32,000/- was paid as advance. The respondent-plaintiff agreed to pay the balance sale consideration of Rs.30,000/- within one year. The regular sale deed was to be executed on the receipt of the balance sale consideration and the appellant-defendant was to deliver possession at that point of time. According to the respondent-plaintiff, the appellant-defendant received a further sum of Rs.25,000/- on 06.02.2000 and made an endorsement to that effect (Ex.A3) on Ex.A1 agreement of sale. However, as the appellant-defendant failed to execute the regular sale deed though the respondent-plaintiff was ready and willing to perform his part of the contract and pay the balance sale consideration of Rs.5,000/-, he got issued a notice to the

appellant-defendant and thereafter filed the suit.

In his written statement, the appellant-defendant denied the sale transaction as put forth by the respondent-plaintiff. He further stated that in any event, going by the terms of Ex.A1 agreement of sale, the time stipulated had expired and the suit was therefore barred by time.

The trial Court settled the following issues for adjudication:

1. Whether the contention of the defendant that he executed the suit sale agreement as a collateral security for the debt contracted by his brother from T. Mutyala Rao is true?
2. Whether the part-payment endorsement dated 6-2-2000 on the reverse of the suit sale agreement is true, valid and binding on the defendant?
3. Whether the suit sale agreement is barred by limitation?
4. Whether the plaintiff is entitled to the primary relief of a decree of specific performance of the suit sale agreement?
or
5. To what relief?

The respondent-plaintiff examined himself as P.W.1 apart from examining three other witnesses and marked Exs.A1 to A5 in evidence. The appellant-defendant examined himself as D.W.1 but did not choose to adduce any documentary evidence.

Notably, the appellant-defendant admitted execution of Ex.A1 agreement of sale. The nature of the suit transaction, according to him, was however different. Ex.A1 agreement of sale was claimed by him to have been executed and registered only as collateral security for a loan obtained by his brother from the brother-in-law of the respondent-plaintiff. There was however no evidence to support this claim. Ex.A1 agreement of sale did not state to that effect and no independent documentary or oral evidence was adduced by the appellant-defendant to support his story.

Further, the appellant-defendant denied the part payment endorsement (Ex.A3) in Ex.A1 agreement of sale, in relation to the

sum of Rs.25,000/- which was said to have been paid on 06.02.2000. Alternatively, the appellant-defendant strongly relied upon the use of the word 'vasulu' (collection) in the said endorsement, to support his claim that the suit transaction was only meant as collateral for the loan obtained by his brother and was not to be acted upon. However, the trial Court was not willing to accept this and opined that the said word may have been used due to the innocence of the parties. The trial Court further opined that on a total reading of the endorsement, the amount thereunder was in fact received by the appellant-defendant. As regards the issue of limitation, the trial Court held that time was not the essence of the contract, Ex.A1 agreement of sale, and accordingly decreed the suit directing the respondent-plaintiff to deposit the balance sale consideration of Rs.5,000/-, whereupon the appellant-defendant was to execute the registered sale deed as per the terms of Ex.A1 agreement of sale.

Aggrieved by the decretal of the suit, the appellant-defendant filed A.S.No.34 of 2012 before the learned Additional District Judge, Narsapur. The lower appellate Court framed the following points for consideration.

- 1) Whether the judgment and decree dated 08.08.2007 in O.S.No.30 of 2002 on the file of Senior Civil Judge, Narsapur, suffer from any error, irregularity or illegality?
- 2) Whether the contention of the defendant that he executed suit sale agreement as a collateral security for the debt contracted by his brother from T. Mutyala Rao is true?
- 3) Whether the part-payment endorsement dated 6-2-2000 on the reverse of the suit sale agreement is true, valid and binding on the defendant?
- 4) Whether the suit sale agreement is barred by limitation?
- 5) Whether the plaintiff is entitled to the primary relief of a decree of specific performance of the suit sale agreement? Or for the alternative relief of refund of the amount as prayed for?

6) To what relief?

The lower appellate Court took note of the fact that most of the sale consideration under Ex.A1 agreement of sale had already been paid and only Rs.5,000/- remained outstanding. Further, as per the terms of the agreement of sale, if the registered sale deed was not executed within the time stipulated, the respondent-plaintiff had to pay interest at the rate of 12% per annum on the balance of the sale consideration. As this clause clearly demonstrated that time was not of essence, the delay, if any, on the part of the respondent-plaintiff was found not to be fatal.

As regards the claim of the appellant-defendant that Ex.A1 agreement of sale was never intended to be acted upon and was only executed as collateral security for a loan, the lower appellate Court found that there was no evidence to support this claim as there was no proof of payment of a loan of Rs.1,00,000/- to the appellant-defendant's brother by the brother-in-law of the respondent-plaintiff. The lower appellate Court therefore confirmed the judgment and decree of the trial Court.

Heard Sri VLNGK Murthy, learned counsel representing Smt. Bobba Vijaya Lakshmi, learned counsel for the appellant-defendant, and Sri P. Durga Prasad, learned counsel on caveat for the respondent-plaintiff.

Sri VLNGK Murthy, learned counsel, contended that the Courts below failed to take note of the attending facts and circumstances which clearly disproved the simple sale transaction as embodied in Ex.A1 agreement of sale. Learned counsel asserted that a party, having paid Rs.1,57,000/- out of a total sale consideration of Rs.1,62,000/-, would definitely insist on delivery of possession where as in the present case, admittedly, possession was not delivered. Learned counsel would further contend that the respondent-plaintiff was a mere name lender to his brother-in-law in his finance business and that the respondent-plaintiff lacked the financial capacity to pay

the sale consideration. Reference in this regard was made to the deposition of the respondent-plaintiff, speaking as P.W.1, wherein he admitted that he was doing centering work and had about 3.00 acres of land at Penumadam Village. Learned counsel would contend that the respondent-plaintiff's brother-in-law was a village Shylock and that the valuable property of the appellant-defendant was sought to be knocked away under the nominal agreement of sale which was executed only as collateral security for a loan.

Per contra, Sri P. Durga Prasad, learned counsel, asserted that the appellant-defendant had never contested the financial capacity of his client before the Courts below. He pointed out that the readiness and willingness of his client to comply with the agreement conditions were never disputed. Reference in this regard was made to the written statement filed by the appellant-defendant, wherein he did not dispute the financial capacity of the respondent-plaintiff or his readiness and willingness. Learned counsel pointed out that though the appellant-defendant filed an I.A. in the suit seeking expert opinion as to the part payment endorsement dated 06.02.2002 (Ex.A3), he did not take steps thereafter for securing such opinion, even though the I.A. was ordered. He further pointed out that, in the first appeal, an application was filed again in this regard but was dismissed and the said dismissal was allowed to attain finality.

Though Sri VLNGK Murthy, learned counsel, would assert that the transaction embodied in Ex.A1 agreement of sale was only nominal and that the said document was executed for the purpose of furnishing collateral security for a loan obtained by the appellant-defendant's brother from the respondent-plaintiff's brother-in-law, no evidence whatsoever was adduced in support of this plea. The appellant-defendant did not even examine his own brother to support this story. Steps taken to disprove Ex.A3 part payment endorsement on Ex.A1 suit agreement of sale were not pursued to their logical end. It is therefore not open to the appellant-defendant to dispute the said

endorsement at this stage.

Further, though Sri VLNGK Murthy, learned counsel, contended that the respondent-plaintiff's brother-in-law was an avaricious money lender in Mogaltur area and that the appellant-defendant's valuable property was sought to be knocked away under the nominal document executed by him, the very fact that the respondent-plaintiff did not take steps immediately to secure a registered sale deed and filed the suit after a lapse of a year clearly negates the contention that the suit transaction was being pursued avariciously.

The financial capacity of the respondent-plaintiff is sought to be raised at this late stage but no pleading or argument was advanced before the Courts below in support of the same. It is therefore too late in the day for the appellant-defendant to raise this bogey. As Ex.A1 agreement of sale itself provided for payment of interest on the balance sale consideration, if it was not paid within the time stipulated, time cannot be construed to be of essence as is the general rule. The suit was therefore not barred by time.

The legal position in this regard, as aptly summarized by the Supreme Court in ***K. PRAKASH V/s. B.R. SAMPATH KUMAR***^[1], is that when a plaintiff brings a suit for specific performance of a contract of sale, he must show his continued readiness and willingness to perform his part of the contract and once the trial Court exercises its discretion in one way or the other after appreciating the entire evidence, the appellate Court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The Supreme Court observed that once an agreement to sell is legally and validly proved and further requirements for getting a decree of specific performance established, the Court would have to exercise its discretion in favour of granting the relief of such specific performance.

That being the situation obtaining in the case on hand, this

Court finds no reason to interfere with the judgments and decrees passed by the Courts below. No question of law, much less a substantial question of law, arises for consideration in this second appeal.

The second appeal is accordingly dismissed. S.A.M.P.No.1345 of 2015 shall stand dismissed in consequence. No order as to costs.

SANJAY KUMAR,J

15th SEPTEMBER, 2015
PGS

[\[1\]](#) 2015 (1) SCC 597