

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

SECOND APPEAL NO.575 OF 2015

DATED:30-10-2015

Between:

Arudala Vasantha Rao ... Appellant

And

Meruva Bhadra Reddy

and others ... Respondents

... Respondents

COUNSEL FOR THE APPELLANT: Mr. V.R. Avula

COUNSEL FOR THE RESPONDENTS: -

THE COURT MADE THE FOLLOWING:

JUDGMENT:

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The unsuccessful defendant No.1 in the suit filed the present second appeal feeling aggrieved by the judgment and decree dt.20.4.2015, in A.S. No.198 of 2012, on the file of the IV Additional District Judge, Guntur, whereby he has confirmed the judgment and decree dt.27.4.2012, in O.S. No.583 of 2010, on the file of the V Additional Senior Civil Judge, Guntur.

For the sake of convenience, the parties will be referred to as they are arrayed in the

suit.

The facts in brief are that defendant No.2 has entered into an agreement of sale dt.19.12.2006 with defendant No.1, in respect of 261 sq. yards of site, for a total consideration of Rs.5,22,000/- and the former has received Rs.50,000/- towards advance money. It was agreed between the parties that defendant No.2 will execute the sale deed in favour of defendant No.1 on receipt of the balance sale consideration. Defendant No.1 in turn entered into an agreement of sale on 26.1.2007 with the plaintiff agreeing to sell the schedule mentioned site for a total sale consideration of Rs.6,78,600/- and received a sum of Rs.1,70,000/- from the plaintiff towards advance money. It was agreed under the

agreement of sale that defendant No.1 will obtain sale deed from defendant No.2 in his name and he in turn would execute the sale deed in favour of the plaintiff. The plaintiff's enquiries revealed that defendant No.2 did not have title over the property and with a view to cheat the purchaser, he has executed the registered sale deed dt.8.2.2010 in favour of defendant No.1 purporting to be the absolute owner and defendant No.1 misrepresenting that he became absolute owner entered into the agreement of sale with the plaintiff. The plaintiff has caused a notice issued on defendant No.1 on 16.2.2010 for execution of regular sale deed, but he failed to do so. Therefore, the plaintiff has filed the suit for recovery of money advanced by him under the agreement of sale, along with interest.

The defendants filed separate written statements wherein they have denied the claim of the plaintiff. In the manner the appeal is proposed to be disposed of, it is not necessary to refer to the pleadings in detail. It will suffice to note that one of the issues framed by the trial Court is whether the suit is barred by limitation. Under the said issue the

trial Court held that under Article 54 of the Schedule appended to the Limitation Act, 1963 (for short, 'the Act') a suit for specific performance or refund of earnest money has to be filed within three years from the date fixed for performance and that, as defendant No.2 has executed sale deed in favour of defendant No.1 on 8.2.2010 instead of defendant No.2 executing sale deed in favour of the plaintiff, the said date must be taken as deemed refusal for specific performance of the agreement of sale. The lower Appellate Court has confirmed this view of the trial Court.

At the hearing, Mr. V.R. Avula, learned counsel for the appellant – defendant No.1, submitted that Article 54 of the Schedule appended to the Act prescribed limitation of three years for specific performance of contract and not for recovery of money and both the Courts below have committed a serious error in relying upon the said Article. I find merit in

the submission as the said Article does not refer to the relief of recovery of money. However, in my opinion, the correct provision applicable to this case is Article 113 of the Schedule to the Act, which is a residuary provision, as per which a suit for which no period of limitation is provided elsewhere in the Schedule, can be filed within three years when the right to sue accrues.

It is not in dispute that on 8.2.2010 defendant No.2 has executed a sale deed in favour of defendant No.1 though the plaintiff was holding an agreement of sale executed by defendant No.1. Therefore, the Courts below have rightly taken 8.2.2010 as the date on which the right to sue has accrued to the plaintiff to file the suit, and the suit filed on 27.3.2010 is well within three years prescribed under Article 113 of the Schedule.

In the above view of the matter, I do not find any substantial question of law arising in this second appeal. The second appeal is accordingly dismissed.

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C.V. NAGARJUNA REDDY, J

30-10-2015

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