

HON'BLE SMT JUSTICE ANIS
SECOND APPEAL No.544 OF 2001

J U D G M E N T:

This Second Appeal is directed against the judgment and decree dated 25.01.2001, passed in A.S.No.14 of 1992, by the I Additional Senior Civil Judge, Vijayawada, whereby and whereunder the learned Senior Civil Judge has disposed of the appeal by confirming the judgment and decree dated 13.12.1991, passed in O.S.No.362 of 1988 by the I Additional District Munsif at Vijayawada, with regard to specific performance of the contract of sale and to deliver the vacant possession of the land, but set aside the direction given by the trial Court to the defendant Society to refund an amount of Rs.3,000/- with interest at the rate of 12% p.a from 10.04.1983 till realization.

Originally the appellant, who is the plaintiff, filed the suit for specific performance of an agreement of sale dated 10.04.1993 and to deliver the vacant possession of the land with costs.

The parties hereinafter will be referred to as they are arrayed before the trial Court for the sake of convenience.

The brief averments made in the plaint are that the defendant Society purchased an extent of Ac.6-61cents of dry land on 31.10.1973 for the purpose of dividing the same into plots and to allot the same to its members. The plaintiff is one of its member and the defendant Society has agreed to allot one such plot admeasuring 200 Sq. yards for Rs.3,000/- to him and collected Rs.2,000/- from him as advance sale consideration and executed a possessory agreement dated 10.04.1983. The president of the defendant Society contemplated that in view of the suits and litigations pending in respect of the said property, regular sale

deed will be executed after receiving the balance sale consideration and also agreed to deliver vacant possession of the plot after demarcating the same by fixing boundaries. As such, the plaintiff paid the balance sale consideration i.e., Rs.1,000/- one month later to the Society. According to the plaintiff, he was always ready and willing to perform his part of contract, whereas the defendant Society contemplated to allot the plots to strangers on fresh applications ignoring prior commitment of the Society. The plaintiff approached the president and requested to allot one plot as per the agreement. But, the president demanded payment of additional amount of Rs.2,000/- for allotment of plot without any receipt. So, as the defendant Society failed to register the sale deed in favour of the plaintiff, he got issued a legal notice on 05.10.1986 and 05.11.1986. After receiving the said notices, the defendant Society kept quite. Hence, the plaintiff filed the present suit.

The defendant Society filed the written statement disputing the said agreement of sale as forged one and contended that the claim of the plaintiff is speculative in nature. It is also stated that the defendant Society purchased some land under an agreement of sale dated 31.10.1973 for the benefit of its members. The plaintiff is not a member of the Society at any point of time. The then president of the society committed various offences including misappropriation of huge funds and when it was noticed, he left the place to unknown destination. Taking advantage of the fact, the plaintiff along with certain other people made attempts to lay their hands over the suit schedule property, which is resisted by the defendant Society. The defendant Society specifically stated that the plot number and block number of the suit schedule property

were not given, as such the agreement of sale is vague and fabricated one. The plaintiff has not approached bonafidely and prayed the Court to dismiss the suit.

Basing on the pleadings, the trial Court framed four issues. To prove his case, the plaintiff got examined PWs.1 & 2 and got marked Exs.A1 to A12 on his behalf. On behalf of the defendant Society, RW.1 was examined and Exs.B1 to B4 got marked.

After considering the oral and documentary evidence, the trial Court dismissed the suit for the relief of specific performance of contract and delivery of possession in favour of the plaintiff, and directed the defendant Society to refund an amount of Rs.3,000/- with interest @ 12% p.a from 10.04.1983 till realisation.

Aggrieved by the judgment of the trial Court, the plaintiff preferred the first appeal i.e., A.S.No.14 of 1992 on the file of the I Additional Senior Civil Judge, Vijayawada.

The first appellate Court after considering the evidence on both sides modified the trial Court judgment as under:

'The observation of the trial Court that the defendant Society is directed to refund an amount of Rs.3,000/- with interest at the rate of 12% p.a from 10.04.1983 till realization is set-aside and the finding of the trial Court dismissing the relief of specific performance and delivery of possession of the property is upheld. Accordingly, the appeal is disposed of. No costs.'

Aggrieved by the finding of the first appellate Court, the plaintiff filed the present second appeal on the ground that the appellate Court has no jurisdiction to set aside the direction of the trial Court given to the defendant Society. Further, the appellate Court ought to have seen that the trial Court has discretion to grant any relief to the plaintiff and the respondent/defendant did not

challenge the directions of the trial Court by filing cross appeal or cross objections. It is also contended that the judgment and decree of the first appellate Court is contrary to the legal principles laid down by the Apex Court and finally disputed by raising the following substantial question of law.

“Whether or not the Appellate Court has jurisdiction to set aside the direction of the trial Court to the Defendant to refund an amount of Rs.3,000/- with interest at the rate of 12% p.a from 10.04.1983 till realization in an appeal of the Appellant/Plaintiff Under Section 96, Order XVI Rule 1 of C.P.C. when defendant/Respondent had not filed either cross appeal or cross objections?”

Now the point for consideration is whether there is any substantial question of law in this case as framed by this Court?

A perusal of the record shows that there is no dispute that the appellant, who is the plaintiff, filed O.S.No.362 of 1988 seeking specific performance of the contract dated 10.04.1983, to deliver vacant possession and for costs and the said suit was dismissed on 13.12.1991, wherein the trial Court denied the relief of specific performance of contract of agreement of sale, but granted refund of Rs.3,000/- to the plaintiff along with interest at 12% p.a.

Aggrieved by the judgment of the trial Court the appellant/plaintiff filed the first appeal before the I Additional Senior Civil Judge, Vijayawada in A.S.No.14 of 1992 and the appellate Court confirmed the judgment of the trial Court regarding not granting relief of specific performance in favour of the plaintiff and also modified the order by setting aside the relief of refund of amount of Rs.3,000/- along with interest.

The learned counsel for the appellant/plaintiff contended that in this case, the defendant at no point of time, raised any

objection for refund of Rs.3,000/- along with interest to the plaintiff, but the first appellate Court interfered into the said judgment and decree of the trial Court, which is not permissible. It is also argued that the first appellate Court has no jurisdiction to set aside the judgment and decree of the trial Court regarding the refund of amount of Rs.3,000/- along with interest. The learned counsel for the appellant/plaintiff also argued that Section 96 and Order XLI Rule 33 of the Code of Civil Procedure Code, 1908 clearly shows that the appellant is entitled for the relief.

Admittedly, the appellant/plaintiff last his case for the relief of the specific performance of the contract of sale. As per the evidence on record, the plaintiff had paid Rs.3,000/- to the defendant Society as sale consideration. This fact was not denied by the defendant Society, as such the trial Court granted the relief of refund of Rs.3,000/- to the plaintiff along with interest. Defendant Society also has not filed any appeal against the judgment passed in O.S.No.362 of 1988 questioning the direction to refund Rs.3,000/- along with interest. In the present appeal, the respondent/defendant Society has not contested nor made appearance before this Court. Taking into consideration the facts and circumstances of the case, I am of the view that the appellant/plaintiff is entitled for the refund of Rs.3,000/- along with interest and he is not entitled for the relief of specific performance as passed by the trial Court.

Accordingly, the second appeal is allowed in part confirming the direction given by the trial Court to the defendant Society regarding refund of Rs.3,000/- with interest at the rate of 12% p.a. from 10.04.1983 till realization. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall

stand closed.

Date: 19.02.2016
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ANIS, J