

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

APPEAL SUIT NO.59 OF 2000

Between:

Yellina Venkateswaa Rao

.....Appellant

And

Bollina Venata Ramana and three others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 31.03.2016

THE HON'BLE SRI JUSTICE R.KANTHA RAO

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|----------|---|---------------|
| <u>1</u> | <u>Whether Reporters of Local newspapers may be allowed to see the Judgments?</u> | <u>Yes/No</u> |
| <u>2</u> | <u>Whether the copies of judgment may be marked to Law Reports/Journals</u> | <u>Yes/No</u> |
| <u>3</u> | <u>Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?</u> | <u>Yes/No</u> |

RAO ***HON'BLE SRI JUSTICE R.KANTHA**

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.....RESPONDENTS

! Counsel for petitioner: Sri M.N. Narsimha Reddy

^ Counsel for respondents : Sri Y.V.Anil Kumar

< **GIST:**

>HEAD NOTE:

? **Cases referred:**

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THE HON'BLE SRI JUSTICE R.KANTHA RAO

APPEAL SUIT No.59 of 2000

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The Court made the following:

THE HON'BLE SRI JUSTICE R.KANTHA RAO

APPEAL SUIT No.59 of 2000

JUDGEMENT:

This appeal is directed against the judgment and decree dated 02.08.1999 passed in O.S.No.1 of 1989 by the Principal Senior Civil Judge, Eluru.

For the sake of convenience, the parties hereinafter be referred to as 'the plaintiff and the defendants'.

The plaintiff instituted the suit for specific performance of an agreement to sell, dated 23.05.1988 said to have been executed by the defendants 1 and 2 in respect of the schedule

property of an extent of Ac.08.94 cents. The 3rd and 4th defendants got themselves impleaded in the suit claiming to be the tenants of the schedule property. The first defendant remained *ex parte* and the second defendant filed her written statement denying execution of the agreement of sale, dated 23.05.1998.

The third defendant filed the written statement which is adopted by the 4th defendant. The third defendant contended in the written statement that he and the 4th defendant are the brothers and the first defendant is their step sister. The first defendant leased out an extent of Ac.7.00 cents from out of the plaint schedule property on the western side under written lease dated 30.06.1987 for a period of two years from 01.07.1987 and by virtue of the operation of the A.P. Tenancy Act the lease is in perpetuity. He was put in possession of the land on the date of the lease deed and has been cultivating the same as tenant by raising crops. It is his case that on knowing about the fact that the first defendant was making efforts to sell away the plaint schedule property without his knowledge, he filed ATC No.15 of 1988 on the file of the Special Officer, Chintalpudi to declare him as cultivating tenant of the said land and for injunction. The plaintiff is a party to the said ATC No.15 of 1988 and a declaration was also sought against the plaintiff that any sale made in favour of the plaintiff and another is void. The said ATC No.15 of 1988 was allowed on merits on 23.08.1995. The plaintiff thereafter suppressing ATC No.15 of 1988 filed the present suit even during the pendency of the said tenancy petition. During the pendency of the suit, the plaintiff and one P.Krishnarao obtained two separate sale deeds for an extent of Ac.5.44 cents each from the first defendant contrary to the provisions of the A.P. Tenancy Act and the lease agreements.

The third defendant sought to declare the said sale deeds as void. In fact, the plaintiff has not claimed any relief against the 4th defendant. The 3rd defendant therefore sought to dismiss the suit with costs.

Before the trial Court, PWs.1 and 2 were examined and Exs.A-1 to A-17 were marked on behalf of the plaintiff. DWs.1 and 2 were examined and Exs.B-1 to B-15 were marked on behalf of the defendants.

It is borne out from the record that after filing the suit for specific performance of agreement to sell dated 23.05.1988 the plaintiff obtained the registered sale deed for an extent of Ac.5.44 cents of the plaint schedule land from the first defendant. But, the version of the defendants 3 and 4 is that the 3rd defendant is the cultivating tenant of an extent of Ac.7.00 cents and the remaining extent of Ac.1.94 cents belongs to the 4th defendant. They contended that since the tenancy was subsisting, the defendants 1 and 2 have no right to sell away the property to the third parties in contravention of their rights under Section 15 of the A.P. Tenancy (Andhra Area) Act.

The trial Court recorded a specific finding that a careful perusal of Ex.B-14 (certified copy of the order in ATC No.15 of 1988) clearly shows that the 3rd defendant filed ATC No.15 of 1988 against the first defendant and the plaintiff and one P.Krishnarao for declaration that he is the cultivating tenant of an extent of Ac.7.00 cents of land out of the schedule land and also for declaration that he is entitled to exercise his option to purchase the petition schedule land therein as per the provisions of the A.P. Tenancy (Andhra Area) Act and the tenancy case was allowed on merits granting all the reliefs to the third defendant

with a specific finding that any alienations of such property made by the first defendant herein are voidable at the option of the third defendant. Therefore, obviously prior to filing of the suit with against the present appeal is filed the plaintiff and the defendant No.1 were made parties to the tenancy petition and in the said case, the aforesaid order was passed by the Special Officer. The trial Court also recorded a positive finding that the order passed by the Special Officer in ATC No.15 of 1988 declaring the rights of the 3rd defendant as a cultivating tenant has attained finality and it operates against the plaintiff and the first defendant. Therefore, the trial Court totally agreed that the contention of the third defendant that he is the cultivating tenant of Ac.07-00 cents out of the schedule mentioned land under a written lease and he was declared so by the order passed by the Special Officer under Ex.B-14. Much prior to the agreement to sell which was sought to be specifically enforced in the present case, obviously the third defendant was put in possession of Ac.07-00 cents out of the schedule mentioned land under a written lease deed dated 14.07.1987 and the same was upheld by the Special Officer under the A.P. Tenancy Act. The trial Court also accepted the contention of the third defendant that the plaintiff was never put in possession of the schedule mentioned property either on the date of the agreement to sell on any subsequent date thereto since obviously on the date of the agreement to sell, or the third defendant was cultivating Ac.7.00 cents of land as tenant. The trial Court recorded a specific finding that the recital made in Ex.B-14 agreement to sell that the possession was delivered to the plaintiff is absolutely false.

In spite of noticing the admitted facts which have been referred to hereinabove, the trial Court dismissed the suit for specific performance in respect of Ac.5.54 cents on the ground

that the plaintiff has already obtained a registered sale deed with regard to the said extent pending suit but granted the relief of specific performance in relation to remaining Ac.3.54 cents and directed the defendants 1 and 2 to execute the registered sale deed in favour of the plaintiff in respect of the said extent on the sole ground that the third defendant did not issue any notice to the defendants 1 and 2 expressing his willingness to purchase the land. The trial Court however mentioned in the judgment that the alleged sale of Ac.3.54 cents shall be subject to the tenancy rights of the third defendant.

The sole question which requires to be determined in the present appeal is whether the trial Court is justified in granting the relief of specific performance in respect of Ac.3.54 cents of scheduled mentioned property having regard to aforementioned facts and circumstances of the case on the ground that the third defendant did not exercise his option to purchase the land as provided for under Section 15 of the A.P. Tenancy Act.

In accordance with the provisions of Section 15 of the A.P. Tenancy Act if the landlord intends to sell the land leased to a cultivating tenant he shall first give notice to such cultivating tenant, of his intention to sell such land, and requiring him to exercise his option to purchase the land. If the cultivating tenant exercises his option to purchase the land and there is an agreement between the parties in regard to the price payable, the landlord shall sell the land to such cultivating tenant in accordance with such agreement. Where the cultivating tenant exercises his option to purchase the land; but there is no agreement in regard to the price payable, the landlord or the cultivating tenant may apply to the Special Officer for the determination of reasonable price of such land; and the Special Officer shall, after giving notice to the landlord, and the

cultivating tenant and after making such inquiry as he thinks fit, determine the reasonable price.

In the instant case, the third defendant who is the cultivating tenant initially filed ATC No.16 of 1988 to declare him as cultivating tenant of the land alleging therein that the defendants 1 and 2 were contemplating to sell away the land to the plaintiff. He also sought a declaration that any sale made in favour of the plaintiff by the defendants 1 and 2 is void. The said case i.e. ATC No.15 of 1988 was allowed on merits. Therefore, obviously ATC 15 of 1988 was filed by the third defendant contending that the defendants 1 and 2 were proposing to sell away their land to the plaintiff infringing the right of the third defendant which was provided under Section 15 of the A.P. Tenancy (Andhra Area) Act. The said ATC was allowed granting all the reliefs prayed for by the third defendant. Therefore, in the considered opinion of this Court, there is no substance finding recorded by the trial Court that the third defendant did not exercise his right to purchase the land which was leased out to him. The finding recorded by the learned trial Court on this aspect is totally misconceived since Section 15 of the A.P. Tenancy Act mandates that the landlord intending to sell the land leased out to a cultivating tenant shall first give notice to such cultivating tenant of his intention to sell such land.

Further, the relief of specific performance is a discretionary relief and the Court is not expected to grant the said relief even if it is lawful to do so, particularly, if the party approaches the Court by suppressing the material facts, the Court would normally refuse to grant of such relief. In the instant case, the trial Court noticed that prior to filing of the suit relating to the present appeal, the plaintiff and the defendants 1

and 2 are very much aware of the fact that the petitioner is the cultivating tenant of the schedule mentioned land of Ac.7.54 cents and he was declared so by the Special Officer in ATC No.15 of 1988 in which the plaintiff and the defendants 1 and 2 were the respondents. The trial Court also recorded a finding that on the date of alleged agreement to sell, the third defendant was in possession of the land leased out to him and thereafter, he is continuing in possession. Noticing the said fact the trial Court observed that the recital in the agreement of sale that the plaintiff was put in possession of the schedule mentioned property is absolutely false. Moreover, pending suit, the plaintiff obtained the sale deed from the first defendant for an extent of Ac.5.44 cents of the plaintiff schedule property.

Having noticed all these facts, the trial Court ought not to have granted the relief of specific performance to the plaintiff. The finding recorded by the trial Court are totally misconceived and contrary to the provisions of the A.P. Tenancy Act and they are liable to be set aside in the appeal.

Consequently, the judgment and decree dated 02.08.1999 passed in O.S.No.1 of 1989 by the Principal Senior Civil Judge, Eluru is set aside. The appeal suit is allowed without any order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

R. KANTHA RAO,J

Date:31.03.2016

Note:

L.R. Copy to be marked.

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THE HON'BLE SRI JUSTICE R.KANTHA RAO

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