

**HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA**

**C.C.C.A.No. 192 OF 2000**

**JUDGMENT:**

Assailing the judgment and decree in O.S.No.565 of 2000 rendered on 08.09.2000 on the file of the IV Additional Senior Civil Judge, City Civil Court, Hyderabad, the present appeal is preferred by the defendant in the said suit.

2. The respondent/plaintiff filed the regular suit in O.S.No.565 of 2000 to enforce the agreement of sale dated 05.07.1994 said to have been executed by the appellant/defendant in his favour.

3. The facts would show that the receipt dated 05.07.1994 said to have passed by the defendant towards payment of advance amount of Rs.1,50,000/-, was sought to be treated as an agreement of sale-cum-receipt, for sale of 303 Square Yards of plot appurtenant to H.No.3-6-301/A, Avanthinagar, Hyderabad, within specific boundaries. The plaintiff said to have acquired the said property under registered sale deed dated 31.07.1991. It appears that the plaintiff has got impounded it and paid penalty/fee of Rs.36,000/- and Rs.4,000/- in the direction of getting it validated and even obtained endorsement of the Collector/Registrar on the original agreement of sale dated 05.07.1994 on 22.04.2000. The terms as indicated by the plaintiff refer to payment of Rs.1,50,000/- and the balance consideration in two instalments. According to the plaintiff, he paid Rs.80,000/- on 01.09.1994 and the remaining Rs.70,000/- on 17.02.1995. The plaintiff refers to a docket order in I.A.No.1311 of

1998 in O.S.No.4759 of 1998 on the file of the VII Junior Civil Judge, City Civil Court, Hyderabad, wherein an order of *ex parte* status quo was passed for a limited period, which was not extended on 10.11.1998.

4. Be that as it may, the Court below passed the judgment and decree on 08.09.2000 setting the defendant *ex parte*. The said judgment reads thus:

“P.W.1 examined. Exs.A.1 to A.4 marked.

Perused the documents. This reveals the amount was paid as per the agreement. The title deeds of the defendant are also filed by the plaintiff attaches sanctity to the version of P.W.1. Suit claim is proved. Suit is decreed with costs and directing the defendant to execute and register the sale deed as per the Agreement dt. 5.7.1994 in favour of plaintiff within three months from the date of this judgment. Failing which the plaintiff has to approach the court and get the sale deed through process of law. Suit is decreed with costs.”

5. Aggrieved over the said judgment and decree, the defendant filed this appeal agitating in the grounds of appeal that the Court below, somehow, has failed to distinguish between a receipt and an agreement of sale and treated the receipt itself as an agreement of sale and passed the decree and thus, faulted in decreeing the suit. The other ground raised is no summons at all were served on the defendant which fact was not taken note by the Court below.

6. Further ground raised is that when the regular Presiding Officer was on leave, the In-charge Officer set the defendant *ex parte*.

The appellant feels that it is contrary to the regular procedure. The other grounds are that no opportunity was afforded to him to contest the case to pass the judgment on merits and that Ex.A.1 is a forged receipt, which the Court below, somehow, overlooked to properly consider.

7. It is also stated in the grounds that the appellant having realised that he was not holding any title compromised with one Paramjit Singh and Jagjit Singh in O.S.No.313 of 1999 and O.S.No.314 of 1999 on the file of IV Additional Senior Civil Judge, City Civil Court, Hyderabad, and that it is also within the knowledge of the respondent herein.

8. Heard learned counsel for the appellant.

9. Despite entering appearance, there is no representation for the defendant.

10. The learned counsel for the appellant would contend that subsequent to passing of the decrees in O.S.No.313 of 1999 and O.S.No.314 of 1999, title is vested with the appellant. It is also his submission that, though, an application was filed to get the *ex parte* judgment and decree, which is now under challenge in the instant appeal, set aside, the Court below has not numbered it at all. Therefore, he is unable to furnish the S.R number. However, he submits that the said application was not traced out and on coming to know about it, the present appeal is preferred.

11. The Court below, based on production of title deeds of the vendor of the defendant, viewed that unless there was sanctity to the

version given by P.W.1 the agreement of sale would not have been entered into and thus, accepted the statement of P.W.1 and passed the decree directing the defendant to execute the sale deed within three months and gave liberty to the plaintiff to get the sale deed executed through process of law in case of failure on the part of defendant to execute the sale deed as directed.

12. The present appeal was filed on 29.09.2000 and on the said date this Court granted interim stay in CMP No.18431 of 2000. The interim order has been in force through out.

13. When the question relates to whether the receipt can be construed as a sale agreement and whether mere payment of penalty/fee by getting it impounded through the Collector would make the document admissible giving the colour of an agreement would require adjudication. The Court below has not referred to these two vital aspects and just carried away by the assertions made by P.W.1 in his chief-examination. There has been no proper adjudication as such in delivering the judgment and passing the decree, which are under challenge. Therefore, the judgment and decree are liable to be set aside and accordingly, set aside remitting the matter to the Court below with the following directions:

- (i) The defendant shall file written statement within one month from the date of his appearance before the Court below.

- (ii) The Court below is directed to settle the issues for trial within one month thereafter, and dispose of the suit within one year thereafter.

14. The appeal is accordingly allowed with the directions as given above. It is also made clear that the Court below shall dispose of the suit uninfluenced by any of the observations made herein before. There shall be no order as to costs.

15. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall also stand dismissed.

Date: 27.09.2016  
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**A. SHANKAR NARAYANA, J**

