

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.382 of 2015

JUDGMENT:

This appeal is preferred challenging the decree and judgment dated 23.03.2015 in A.S.No.5 of 2014 on the file of X Additional District & Sessions Judge, Krishna, Machilipatnam, whereunder, judgment and decree dated 27.12.2013 in O.S.No.50 of 1999 on the file of Senior Civil Judge, Krishna, Machilipatnam is confirmed.

2. Appellant herein is D3 in O.S.No.50 of 1999 filed by first respondent herein for specific performance of agreement of sale dated 22.06.1988 executed by deceased-Kodanda Ramaiah and third respondent herein. Appellant contended that he purchased part of suit schedule property through registered sale deed in the year 2002 without notice of the agreement in favour of plaintiff and that he is a bonafide purchaser and resisted the claim of plaintiff to the extent of property purchased under Ex.A23. Trial Court on a consideration of oral and documentary evidence disbelieved the version of appellant herein, on the ground of *lis-pendence* and discarded his plea, granted specific performance in favour of plaintiff and also directed appellant herein to execute registered sale deed in favour of plaintiff and to deliver possession of plaintiff schedule property within three months.

Aggrieved by the said decree, appellant herein preferred appeal to the District Court and X Additional District Judge, Krishna, Machilipatnam on a reappraisal of entire oral and documentary evidence confirmed the findings of trial Court and dismissed the appeal. Aggrieved by the same, present second appeal is preferred.

3. Heard arguments.

4. According to advocate for appellant following are the substantial questions of law, which require consideration by this Court:

“a. Whether Courts below have justified in Decreeing the suit when the Appellant/3rd defendant has proved his case by producing substantial oral and documentary evidence, as he is the bonafide purchaser with regard Item no.1 of Plaint schedule property.

b. Whether the Courts below have dealt the issue involved in the lis as per section 6 of Specific Relief Act 1963, as admittedly the suit has to be filed within 6 months from the date of dispossession of the plaintiff from the suit schedule property.

c. Whether the Courts below are justified in decreeing the suit, without observing the provisions under Article 54 of Limitation Act, as the suit for specific performance of Agreement of Sale has to be filed within 3 years from the date of agreement of sale i.e., on or before 21.06.1991. But suit was filed on 22.04.1999. Even, in the present case on hand the plaintiff has noticed that defendants 1 and 2 have mortgaged the scheduled properties to Primary Agricultural co-operative Society and raised loan, it itself shows that the Defendants 1 and 2 have refused in performing the Agreement of Sale. Therefore, the suit has to be instituted within 3 years from the date of mortgage as per 2nd limb of Article 54 of Limitation Act. Therefore, the suit is hopelessly barred by the Limitation.

d. Whether the Courts below are justified in Decreeing the suit basing on Ex.A1/Agreement of sale, as it is hit by section 25 of the Indian Contract Act 1872, as there is no evidence of passing of consideration hence, both Courts should have held that the said Agreement of Sale is a void document.

e. Whether the Courts below are justified in Decreeing the suit when the evidence available on record is not supporting the pleadings, apart from that as per section 20 of Specific Relief Act says that Decree of specific performance is discretionary and it should be on sound and reasonable, in the present case on hand there is clear evidence that the plaintiff has not proved her case, moreover, the appellant/3rd defendant was the bonafide purchaser, in the said circumstances the court below should have granted alternative relief instead of decreeing the suit for specific performance of Agreement of Sale.

f. Whether the 1st appellate Court is justified in disposing the appeal without formulating proper points for consideration and more preferably without any adjudication with regard to the execution and proof of Ex.A1/Agreement of sale, which has resulted the miscarriage of justice or not.

g. Whether the 1st appellate Court has properly appreciated the pleadings, material oral and documentary evidence available on record.”

5. Advocate for appellant mainly contended that appellant has no knowledge of the transaction between plaintiff with D1 and D2 and he is a bonafide purchaser for valuable consideration, therefore the decree to the extent of property purchased by D3 is illegal. He further submitted that trial Court failed to notice that claim for specific performance is barred by limitation under Article 54 of Limitation Act and that trial Court has not properly exercised its discretion as per Section 20 of the Specific Relief Act and these two are the substantial questions of law that would arise for consideration of this Court.

6. I have perused the material papers including judgments of both trial Court and first appellate Court. Here, appellant, who is third defendant, a subsequent purchaser, who purchased the property, after filing of the suit has no right to question the transaction between plaintiff and D1 and D2 in respect of agreement dated 21.06.1991. Both the courts on appreciation of evidence held that defendant purchased the property after institution of suit, and not a bonafide purchaser.

7. As seen from the material suit is filed in the year 1999 and the sale deed in favour of D3 is in the year 2002. All the above referred grounds raised on behalf of appellants are only in respect of factual aspects and the legal provisions referred to in those grounds are not available to the appellant herein as he is only a subsequent purchaser and not the original executor of sale agreement.

8. On a scrutiny of the material, I am of the view that no law is involved in this appeal, leave alone, substantial question of law for determination of this court and that second appeal is liable to be dismissed at admission stage.

9. Accordingly, this Second Appeal is dismissed at admission stage. No costs. Miscellaneous Petitions pending in this appeal, if any, shall stand closed.

S. RAVI KUMAR, J

Date: 03-02-2016.

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