

HON'BLE SRI JUSTICE R.KANTHA RAO

Appeal Suit No.3804 of 2000

Judgment:

Heard Smt. Umadevi Nama, learned counsel appearing for the 1st appellant/defendant No.2 and Sri J.V. Prasad, learned counsel appearing for the 1st respondent/plaintiff.

2. Defendants 2 and 3 are the appellants, the plaintiff is respondent No.1 and the 1st defendant is respondent No.2. For the sake of convenience, the parties hereinafter will be referred to as the plaintiff and the defendants i.e. as they were arrayed in the suit.

3. Besides making oral submissions, the learned counsel appearing for the plaintiff filed written arguments. This Court has gone through the written arguments submitted on behalf of the plaintiff.

4. The case of the plaintiff as was set-forth in the plaint may be stated as follows:

One Smt. Vinjamuri Ramadevi agreed to sell the suit schedule property consisting of site and house built thereon to the plaintiff for an amount of Rs.1,10,000/- under an agreement of sale dated

06-12-1990. On the date of agreement, an amount of Rs.85,000/- was paid by the plaintiff to Ramadevi as an advance. It was undertaken by the parties that the balance of sale consideration has to be paid in between 3 years and the plaintiff has to obtain a registered sale deed from Ramadevi. But after executing the agreement to sell dated 06-12-1990, Ramadevi died on 27-3-1992. After the death of Ramadevi, the plaintiff got issued a notice to the 1st defendant, who is the husband of Ramadevi, on 13-5-1992 calling upon him to execute a registered sale deed by 16-6-1992 before the Sub Registrar, Khammam and she was willing to deposit the balance of consideration in a Fixed Deposit in the name of the 1st defendant and also his daughter, the 2nd defendant. The plaintiff also purchased Non-Judicial Stamps worth Rs.12,150/- and she was prepared to pay the balance of consideration and waited at the Sub-Registrar's office expecting that the defendants 1 and 2 would come and execute the registered sale deed. But they did not come and execute the sale deed. On that, she filed the suit for specific performance of agreement to sell dated 06-12-1990.

5. Before the trial Court, the 1st defendant remained *ex parte*. The 2nd defendant, minor daughter of Ramadevi and the 3rd defendant, the father of Ramadevi, who claims to be the guardian of the 2nd defendant, filed written statement contending that the 1st defendant, the husband of Ramadevi was harassing her, he obtained signatures of Ramadevi on blank papers and he in collusion with the husband of the plaintiff fabricated Ex.A-1 agreement to sell basing on which, this suit for specific performance was filed on false grounds. Admittedly, Ramadevi died in suspicious circumstances on 27-3-1992 on receiving burn injuries. The 3rd defendant lodged a complaint with the II Town Police Station, Khammam against the 1st defendant basing on which a case under Sections 306 and 498-A, IPC came to be registered against the 1st defendant. Subsequently, a charge-sheet was filed. The 1st defendant was tried for the aforementioned offences and ultimately he was acquitted of the offences.

6. The contention of the 3rd defendant is that the house was in fact constructed in the site owned by him and not by Ramadevi and her

husband. He also stated in the written statement that after the death of Ramadevi, he got issued a legal notice to the 1st defendant on 23-4-1992 calling upon to return the blank stamped papers on which the signatures of Ramadevi were obtained apprehending that the 1st defendant might manipulate or fabricate the documents. Subsequently, he also got published a notice in Eenadu Telugu Daily on 24-9-1992 stating about the possibility of fabrication of the documents. Thereafter, it is said that the 1st defendant and the husband of the plaintiff being closely related brought into existence Ex.A-1 agreement to sell by fabrication in order to deprive the rights of the 2nd defendant in the plaint schedule property.

7. Basing on the aforesaid pleadings, the trial Court framed the following issues:

- (1) Whether the agreement of sale, dated 06-12-1990 in respect of the plaint schedule property alleged to have been executed by late Vinjamuri Ramadevi, wife of 1st defendant, mother of the 2nd defendant and daughter of 3rd defendant was true and she received an amount of Rs.85,000/- from the plaintiff from out of sale consideration of Rs.1,00,000/- ?
- (2) Whether the plaintiff was always ready and willing to perform her part of the contract but the said V.Ramadevi failed to perform her part of the contract ?

- (3) Whether the defendants 2 and 3 are both the legal representatives of the said V.Ramadevi ?
- (4) Whether the plaintiff is entitled to specific performance of the contract of sale ?
- (5) Alternatively whether the plaintiff is entitled to refund of Rs.85,000/- together with interest of 24% ?
- (6) To what relief ?

8. Before the trial Court, on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A-1 to A-6 were marked. On behalf of the defendants, D.Ws.1 to 3 were examined and Exs.B-1 to B-5 were marked.

9. The trial Court answered all the issues in favour of the plaintiff and against the defendants and decreed the suit for specific performance.

10. Feeling aggrieved, the defendants 2 and 3 filed the present appeal.

11. The following points would arise for consideration in the present appeal:

- (1) Whether the agreement of sale Ex.A-1 dated 06-12-1990 is true and genuine ?
- (2) Whether the plaintiff was willing to perform her part of the contract ? and
- (3) Whether the plaintiff is entitled for specific performance of contract as held

by the trial Court ?

12. Points 1 and 2:- Admittedly, the plaint schedule site was in the name of V.Ramadevi. Though the defendants 2 and 3 contended that the house was in fact constructed by the 3rd defendant, they failed to establish the same. On the other hand, P.W.2, the attesor of Ex.A-1 deposed in his evidence that the husband of P.W.1 and the 1st defendant, who is the husband of Ramadevi brought a typed agreement of sale to the house of the 1st defendant. Thereafter, P.W.1 paid a sum of Rs.85,000/- to Ramadevi and then Ramadevi signed on Ex.A-1. Thereafter, the 1st defendant and P.W.2 signed as attesting witnesses in the agreement. Thus, the evidence of P.W.2 clearly indicates that Ramadevi received advance of Rs.85,000/- from the plaintiff on the date of Ex.A-1 and that the 1st defendant is one of the attestors of Ex.A-1 agreement.

13. The learned trial Court found that as per Ex.A-5, registered sale deed dated 22-8-1989 executed by P.Veerawamy in favour of the 1st defendant and his wife, the site was purchased in the name of Ramadevi.

The trial Court recorded a specific finding that

though the 3rd defendant claims that in fact he purchased the site in the name of his daughter and he spent monies for constructing the house, he did not adduce any evidence in proof of the said fact. In this context, the trial Court relied on the evidence of D.W.2, who is the attestor of Ex.A-5. D.W.2 stated in his evidence before the trial Court that Ramadevi and the 1st defendant were living amicably without any disputes and they purchased the schedule mentioned site. He also stated that within one year after purchase of the site, they constructed the house in the site. He has specifically stated in his evidence that the 3rd defendant might have helped his daughter in constructing the house but did not spend any advance amount for purchasing the schedule property.

14. The trial Court also took into consideration the contents of the complaint lodged by the 3rd defendant after the death of Ramadevi wherein he mentioned that on the date of death of Ramadevi, the 1st defendant and Ramadevi constructed the house and were residing therein. The trial Court further took into consideration the fact that in Ex.B-4 Invitation

Card of house warming ceremony, the name of 3rd defendant is not mentioned. Therefore, the trial Court drew an inference correctly that the 3rd defendant played no role in constructing the scheduled house by Ramadevi.

15. The trial Court also considered the evidence of the 3rd defendant as D.W.1 who stated that there was no house in the scheduled site by the date of 06-12-1990 but the building was constructed by Ramadevi by March, 1991. The house warming ceremony was performed on 02-3-1991. Ex.B-4 Invitation Card cannot be believed in support of the version of the 3rd defendant. Therefore, the trial Court believed the version of the 3rd defendant that Ramadevi constructed the house within one year after purchasing the house-site. Considering all these facts, the trial Court upheld the version of the plaintiff that Ex.A-1 agreement to sell is true and genuine and the plaintiff paid advance of Rs.85,000/- under the said agreement to late Ramadevi.

16. As regards the readiness and willingness, soon after the death of Ramadevi, the plaintiff got issued a legal notice to the 1st defendant, who is the

husband of late Ramadevi. The 2nd defendant is the minor daughter of the 1st defendant. Since the 3rd defendant, the father of Ramadevi is only a guardian of the 2nd defendant, the plaintiff did not issue any notice to him.

The 3rd defendant, however, after the death of Ramadevi filed a petition seeking custody of the 2nd defendant contending that he is the guardian of the 3rd defendant after the death of Ramadevi and that Ramadevi died on account of the harassment meted out to her by the 1st defendant. The said petition filed by the 3rd defendant was allowed and the custody of the 2nd defendant was entrusted to the 3rd defendant.

17. From the evidence, it is established that the plaintiff paid Rs.85,000/- as an advance and only a small amount remained to be paid. The evidence further indicated that the plaintiff expressed her willingness to deposit the remaining amount. Therefore, the trial Court correctly held that the plaintiff was ready and willing to perform her part of the contract.

18. Point No.3:- For granting the relief of specific performance on behalf of the plaintiff, the

Court has to exercise its discretion in an appropriate way.

In the instant case, as already said, the plaintiff paid material portion of the sale consideration on the date of Ex.A-1 agreement itself and was ready and willing to perform her part of contract which is evidenced by the notice got issued by her to the 1st defendant. Further, the plaintiff by examining herself as P.W.1 and examining the scribe of Ex.A-1 as P.W.2 proved the execution of Ex.A-1 and passing of the advance amount thereunder. The defendants 2 and 3 failed to establish that Ex.A-1 is a fabricated document.

19. The learned counsel appearing for the appellants relied on **K.S. VIDYANADAM v. VAIRAVAN**^[1], wherein it is held that though time is not the essence of contract in relation to sale of immovable property, the suit can be filed within a period of 3 years provided under Article 54 of the Limitation Act, 1963 and it should be filed within a reasonable time having regard to the terms of the contract prescribing the time limit and nature of the property.

20. The above decision relied on by the learned counsel appearing for the appellants is not

applicable to the facts of the present case for the reason that it is stipulated in the agreement that the sale deed has to be executed within a period of 3 years from the date of agreement and the parties intended that the regular sale deed can be obtained within a period of 3 years.

As such, the suit can be brought by the plaintiff within

a period of 3 years thereafter. Therefore, there is no substance in the contention that the plaintiff did not bring the suit within a reasonable time after Ex.A-1 agreement to sell.

21. Thus, having regard to the facts and circumstances of the case, the trial Court rightly held that the plaintiff is entitled to the relief of specific performance of the contract. Further, as per the direction of the trial Court, the defendants did not execute the sale deed. Thereafter, the plaintiff filed execution petition and got the sale deed executed by the Court in terms of Ex.A-1 agreement to sell. The trial Court evaluated the evidence in a proper perspective having regard to the contentions of both the parties and rightly decreed the suit filed by the plaintiff. The findings recorded by the trial Court do not call for any interference in the appeal and therefore they are

confirmed. The appeal suit is, therefore,
dismissed.

The miscellaneous petitions, if any, pending in this
appeal shall stand closed. No costs.

R.KANTHA RAO, J.

07th April, 2016.
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