

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.841 of 2012

JUDGMENT:

This second appeal is preferred challenging judgment and decree in A.S.No.335 of 2010 dated 23.04.2012 on the file of

XI Additional District and Sessions Judge (F.T.C.), Guntur at Tenali whereunder judgment and decree dated 16.07.2010 in O.S.No.127 of 2008 on the file of Senior Civil Judge, Repalle, is confirmed.

2. Appellant herein is unsuccessful plaintiff in both the courts. He filed O.S.No.127 of 2008 for specific performance of an agreement of sale dated 30.06.1995. Trial Court on a consideration of oral and documentary evidence of both parties held that plaintiff is not entitled for the relief of specific performance and the claim is barred by limitation. Aggrieved by the judgment and decree of the trial Court, plaintiff preferred appeal to the District Court/appellate Court and appellate Court on a reappraisal of oral and documentary evidence dismissed the appeal confirming the findings of trial Court.

3. Heard arguments.

4. Advocate for appellant submitted that the Courts below are not right in holding that the suit is barred by limitation as the suit is filed within three years from the date of refusal of performance. He submitted that both the Courts were not right in placing burden on the appellant in

proving his relief of specific performance without extending the presumption available under Section 10 of the Specific Relief Act.

5. I have perused the material papers including judgments of trial Court and appellate Court. As seen from the material, as per the terms of agreement of sale, plaintiff has to pay balance sale consideration before 15.10.1995 and in case of failure to pay the sale consideration within stipulated time there is a default clause. Admittedly, the agreement is dated 30.06.1995 and defendants addressed letters under Exs.A.16, A.17 and A.19 dated 18.12.1995, 21.04.1996 and 25.05.1996 respectively requesting plaintiff to perform his part of contract and to pay the balance sale consideration and that there was no response to those letters from plaintiff, it appears when a notice was issued in the year 1996 a reply was sent on 27.08.1996 informing plaintiff to pay the balance sale consideration with interest as agreed in the sale agreement and obtain regular sale deed and in spite of that plaintiff has not taken any steps to perform his part of contract. But, ultimately after a lapse of 12 years, he filed suit on 14.08.2008. Considering these aspects both the trial Court and appellate Court held that plaintiff is not entitled for the relief of specific performance, I do not find any wrong in the findings of the trial Court and appellate Court and the substantial question of law raised by appellant is not at all tenable, particularly, when Courts

below on appreciation of material on record referred to above held that the suit claim is hopelessly barred by limitation. For these reasons, I am of the view that no substantial question of law is involved to admit the second appeal against the concurrent findings.

6. Accordingly, second appeal is dismissed at admission stage.

7. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

6th January 2016.

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