

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

SECOND APPEAL NO.763 OF 2015

DATED:12-02-2016

Between:

Kallam Sambhi Reddy ... Appellant

And

Mannava Srinivasa Rao
and others ... Respondents

COUNSEL FOR THE APPELLANT: Smt. Marella Radha

COUNSEL FOR THE RESPONDENTS: -

THE COURT MADE THE FOLLOWING:

JUDGMENT:

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The concurrent findings of fact recorded by both the Courts below against the appellant, who filed the suit for refund of the advance money paid in an agreement of sale, are assailed in this second appeal.

Brief facts of the case are that the appellant has entered into an agreement with respondent Nos.1 and 2 for purchase of the suit schedule property. In pursuance thereof, on 17.1.2007 he has paid Rs.1,70,000/- as advance sale consideration. It is the pleaded case of both the parties that as per the agreement, respondent Nos.1 and 2 shall get the suit property measured within 50 days and executed the sale deed on the appellant paying the balance sale consideration. It is pertinent to note that as evidently the appellant has not shown interest in paying the balance sale consideration and getting the sale deed executed, respondent Nos.1 and 2 have sold the suit schedule property to respondent No.3 on 27.02.2008, and the latter executed a sale deed in favour of respondent No.4 on 04.02.2009. Almost one year thereafter, on 09.01.2010, the appellant has caused a legal notice issued to respondent Nos.1 and 2 calling upon them to execute the sale deed by receiving the balance sale consideration. On 27.01.2010, respondent Nos.1 and 2 got a reply notice issued. Later, the appellant has filed O.S. No.311 of 2010 on the file of the Principal Senior Civil Judge, Guntur, for refund of the advance money.

Respondent Nos.1 and 2 have filed a detailed written statement wherein while admitting execution of sale-cum-receipt on 17.1.2007 and receipt of Rs.1,70,000/- towards advance out of total sale consideration of Rs.6,72,000/-, however, pleaded that they were ready and willing to execute the regular registered sale deed in favour of the

appellant, that he never came forward with the balance sale consideration and that he has never shown his readiness and willingness to act upon the terms mentioned in the agreement of sale. That if the terms and conditions mentioned in the agreement of sale are taken into consideration, the claim of the appellant, either for refund of the amount, or for getting a regular registered sale deed, is absolutely time barred. Respondent Nos.1 and 2 further averred that in spite of repeated requests made by them to pay the balance sale consideration and get the registration of the property done, the appellant started giving evasive replies and that on account of the failure of the appellant to purchase the property, respondent Nos.1 and 2 have suffered huge loss due to diminution of the land value.

Having regard to the respective pleadings of the parties, the trial Court framed the following issues:

- i. "Whether the plaintiff is entitled to recover the suit amount as prayed for?"*
- ii. "Whether the suit is barred by limitation?"*
- iii. "To what relief?"*

On behalf of the appellant, he has examined himself as P.W.1 and one M. Venkateswara Rao, as P.W.2. He has got Exs.A.1 to A.6 marked. On behalf of respondent Nos.1 and 2, respondent No.1 has examined himself as D.W.1 and examined respondent No.3, as D.W.2. They have also got Exs.B.1 to B.3 marked on their side.

On a careful appreciation of the evidence, the trial Court has held all the issues in favour of the respondents and dismissed the suit. Feeling aggrieved by the said judgment, the appellant has filed A.S. No.122 of 2012, which also ended in dismissal by the II Additional District Judge, Guntur.

At the hearing, Smt. Marella Radha, learned counsel for the appellant, submitted that his client has only sought for refund of the advance money paid under the agreement of sale and that therefore there was no need for him to prove that he was ready and willing to perform his part of the contract.

I do not find any merit in this submission, for a person who has paid advance sale consideration promising to purchase the property is bound to express his readiness and willingness to perform his part of the contract failing which he cannot seek refund of the money advanced by him, as payment of advance consideration serves two purposes, namely; to make the purchaser bound by the terms of the contract for ensuring specific performance and to compensate the vendor for the loss that may be sustained by him in the event the purchaser without sufficient cause fails to discharge his part of the contract. Both the Courts below have concurrently found that the appellant has failed to establish that he was ready and willing to perform his part of the contract. The very fact that the appellant has not issued any notice whatsoever for almost three years after entering into the agreement of sale itself proves that he is not interested in getting the sale deed executed by paying the balance sale consideration. As noted above, almost two years after respondent Nos.1 and 2 sold the property to respondent No.3, the appellant has woken up and then caused a legal notice issued.

From the above discussed facts, this Court is of the opinion that both the Courts below have not committed any illegality in dismissing the suit and the appeal, and no substantial question of law arises for consideration in this second appeal which is accordingly dismissed.

As a sequel to dismissal of the second appeal, S.A.M.P. No.2177 of 2015 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

12-02-2016

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