

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Second Appeal No. 602 of 2016

Between:

Shaik Saidavali and others

...Appellants

And

Veerayapalem Anjaiah

...Respondent

JUDGMENT PRONOUNCED ON : 18.11.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : NO
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : NO

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Second Appeal No. 602 of 2016

Judgment:

The appellants herein are defendants in O.S.No.51 of 2008 on the file of the Senior Civil Judge, Darsi, Prakasam District. The respondent herein filed the said suit for specific performance directing the defendants to receive the balance sale consideration of Rs.1,70,000/- from the plaintiff and execute a sale deed in respect of vacant site of Ac.0.30 cents situated in Survey No.238/2 of Kurichedu village and Mandal, Prakasam District.

It is the case of the plaintiff that the said property is the absolute property of the family of defendants 1 and 2 as it is their ancestral property. They offered to sell the same and the plaintiff was willing to purchase. The price was settled for a sum of Rs.2,20,000/- in the presence of elders on 20.01.2008. On the same day, the plaintiff paid an amount of Rs.50,000/- by way of advance and the defendants 1 and 2 agreed to receive the balance sale consideration on or before 20.04.2008 and execute a regular sale deed. The defendants 3 and 4 and daughter of the first defendant besides two others attested the said agreement by putting their thumb impressions and signatures. By an oral understanding, the plaintiff took possession of the said property, erected a cattle shed and has been using the same for drying "Burli Tobacco" and also for tethering cattle. Though the plaintiff was demanding the defendants 1 and 2 to receive the balance sale consideration, execute a proper sale deed and get the same registered, the defendants 1 and 2 have been postponing the same on some pretext or the other with an object of having unlawful gain due to increase of prices. The plaintiff

deposited the balance sale consideration of Rs.1,70,000/- payable to the defendants 1 and 2 on 14.03.2008 in the State Bank of India, Darsi Branch in his SB Account and the registration expenses are available with him in cash. Since the plaintiff was ready and willing to perform his part of contract and the defendants having failed to perform their part of contract, the plaintiff got issued a legal notice on 17.04.2008 demanding specific performance of contract and the defendants refused to receive the same. Having come to know of issuance of notice, the defendants started demanding the plaintiff to remove the cattle shed and the 'Burli Tobacco' kept by him for the purpose of drying and remove the cattle.

The fifth defendant remained *ex parte* and the third defendant filed her written statement. The defendants 1, 2 and 4 adopted the said written statement. It was admitted that the suit schedule property was their ancestral property. Their further case is that the plaintiff approached them asking to take the said land on lease for three years fixing the rent at Rs.50,000/- for three years and the defendants 1 and 2 accepted for the same. Contract agreement was drafted on 20.01.2008 in Mandal Praja Parishad Office, Kurichedu at 10.00 PM and the scribe of the said document made the defendants 1 and 2 to believe that it was a lease agreement but not a sale agreement. They accordingly put their thumb impressions and handed over possession of the same by 20.04.2008. The defendants 1 and 2 are deaf and dumb persons and they will act on the signs of defendants 3 and 4 who are their wives. The defendants 3 and 4 are illiterate persons and having believed the plaintiff and the scribe of the document, they put their thumb impressions and signatures on the document. They were surprised to know that the plaintiff filed a suit against them for specific performance with the plaint allegations. They

never handed over possession of the land and it continued to be in their enjoyment. The allegation that the plaintiff sent a legal notice through courier and they refused to take it was denied. The defendants are willing to repay the amount of Rs.50,000/- taken on 20.01.2008 and since the defendants 1 and 2 are incapable persons to face the litigation, the third defendant came forward to contest on behalf of other defendants also.

Based on the above pleadings, the following issues were framed by the trial Court.

1. Whether the agreement to sell dated 20.01.2008 executed by the defendants 1 and 2 in favour of the plaintiff is true, valid and binding on them?
2. Whether the defendants 1 and 2 executed the agreement to sell dated 20.01.2008 thinking that it is only a lease agreement for a period of three years as alleged by them is true?
3. Whether the defendants 1 and 2 have delivered possession of the plaint schedule property to the plaintiff on the same day and whether the plaintiff is in possession and enjoyment of the same by raising sheds by curing burley tobacco and by tethering his cattle?
4. Whether the plaintiff has been ready and willing to perform his part of the contract?
5. Whether the plaintiff is entitled for specific performance of the agreement to sell dated 20.01.2008 as prayed for in the plaint?
6. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
7. To what relief?

Before the trial Court the plaintiff examined PWs.1 to 3 and marked Exs.A1 to A8. On behalf of the defendants, DWs.1 to 4 were examined, but the evidence of DW.2 was eschewed.

The trial Court came to the conclusion that Ex.A1 is the agreement of sale executed by the defendants 1 and 2 and was attested by the defendants 3 and 4 along with PW.2 and DW.3. It was held that it is not a lease agreement as alleged by the defendants and Ex.A1 is true, valid and binding on the defendants. The trial Court also gave a finding that

the plaintiff was ready and willing to perform his part of contract and in view of oral evidence it gave a finding that the plaintiff is in possession and enjoyment of the land covered under Ex.A1. Accordingly, decreed the suit by judgment and decree dated 20.02.2013.

Challenging the said judgment and decree, the defendants preferred A.S.No.54 of 2013 before the VI Additional District Judge, Markapur, wherein the following points were framed for consideration.

1. Whether the respondent/plaintiff is entitled for specific performance of contract as prayed for?
2. Whether the Ex.A1 is true, valid and binding on the appellants/defendants?
3. Whether the plaintiff is entitled for permanent injunction as consequential relief against defendants?
4. Whether there are grounds to interfere with the findings of the trial Court?
5. To what relief?

The lower appellate Court, on the basis of the evidence of PWs.2 and 3, held that the defendants 1 and 2 are dumb, but not deaf and they signed Ex.A1 after admitting the contents. The lower appellate Court also observed that in the cross-examination of DW.3, he stated that the leases were prevailing in Kurichedu village for Rs.1,000/- to Rs.2,000/- per acre and in view of the same the defence taken by the defendants that the amount of Rs.50,000/- received under Ex.A1 was towards lease amount for three years was found to be doubtful and suspicious. It came to the conclusion that due to enhancement of land rates the litigation was created by the defendants. Accordingly, it confirmed the judgment and decree of the trial Court dated 20.02.2013 by its judgment and decree dated 19.04.2016.

The oral and documentary evidence was carefully scrutinised by the trial Court as well as by the lower appellate Court and they concurrently

held that Ex.A1 is a sale agreement was executed with the full knowledge of the defendants 1 and 2 and is binding on them. Both the Courts also came to the conclusion that the plaintiff was ready and willing to perform his part of contract and accordingly decreed the suit. The said finding of fact could not be challenged by the learned counsel for the appellants by showing any piece of evidence and in the absence of the same this Court sees no ground to admit the present Second Appeal as no substantial question of law arises for consideration.

The Second Appeal is, accordingly, dismissed at the admission stage. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Second Appeal shall stand closed.

Date: 18th November, 2016
Nsr

A. RAMALINGESWARA RAO, J

