

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

ASMP No.1974 of 2016 in AS No.658 of 2007,

APPEAL SUIT No. 658 of 2007

and

CROSS OBJECTIONS (SR) No. 132 of 2008

JUDGMENT: (*Per VRS,J*)

The appeal arises out of the dismissal of a suit for specific performance of an agreement of sale, while the Cross Objections arise out of the judgment and decree of the suit to the extent of awarding interest at 18% per annum on the advance sale consideration of Rs.40,00,000/-.

2. During the pendency of the appeal, the appellants and the respondents have entered into a compromise and they have agreed that the respondents will return the advance sale consideration paid under the agreement of sale, dated 05.02.2005, together with interest and damages. The amount payable has been arrived at as Rs.3.00 crores.

3. Today, cheques to the tune of Rs.2,70,00,000/- have been issued by the proposed purchasers of the property in favour of the 1st appellant. Cheques to the tune of Rs.30,00,000/- have been issued by the proposed purchasers of the property in favour of the 2nd appellant.

4. Though these cheques have been issued by third parties to the suit, the appellants have accepted the same, on the basis that if any one of these cheques is bounced, the liability would create a charge on the property.

5. The Memorandum of Compromise filed along with a petition in A.S.M.P.No.1974 of 2016 reads as follows:

“The petitioners/appellants herein filed a suit O.S.No.159 of 2005 on the file of the Court of the II Addl. District Judge, Ranga Reddy District at L.B.Nagar for the reliefs:

1. To declare the defendant No.1 as the sole and absolute owner of the suit schedule property.

2. To grant decree for specific performance of the agreement of sale dated 5.2.2005 entered with the defendant No.1 and sought for an alternate relief to direct the defendant No.1 to pay a sum of Rs.40,00,000/- by way of return of earnest amount and Rs.10,25,000/- towards refund of amount incurred by the petitioners/appellants towards stamp duty and registration charges for validation of agreement of sale.

On the ground that the petitioners/appellants herein have purchased suit schedule property under agreement of sale dated 5.2.2005 from the respondent No.1 as individual as her name appeared in all the revenue records as pattedar based on the sale deeds standing in the name of respondent No.1.

The respondent Nos.2 and 3 herein have questioned the very claim of respondent No.1 as she is not the absolute owner of the suit schedule property, as the suit schedule property was purchased by the parents of respondent Nos.1 to 3 in the name of the respondent No.1, but however it is for the benefit of all the 3 daughters i.e., respondent Nos.1 to 3, as such, the parents of the respondent Nos.1 to 3 have constituted a partnership firm under the name and style of “M/s. Supriya Farms”, the respondent No.4 herein and pooled the suit

schedule property as the property of the respondent No.4 firm and contended that the respondent No.1 had no exclusive right or title over the suit schedule property to enter into any agreement of sale by the petitioners/appellants herein. As such, sought for dismissal of the suit.

The Court below after considering the rival contentions of all the parties had dismissed the suit on 22.10.2007 holding that R.1 is not the exclusive owner and it is the property R.4 firm the Court below by rejecting the relief of specific performance, however directed the 1st respondent to refund the earnest amount of Rs.40,00,000/- to the petitioners/appellants along with interest @ 18% p.a. and also directed to refund Rs.10,25,000/- incurred by the petitioners/appellants in validating the agreement of sale along with interest and dismissed the suit regarding the other reliefs.

As against the said judgment, the petitioners/appellants herein preferred this appeal before this Hon'ble Court questioning the judgment and decree passed in O.S.No.159 of 2005 dt.25.1.2007.

While pending disposal of the appeal A.S.No.658 of 2007 and the cross appeal preferred by the first respondent vide A.S.No.132 of 2008 the parties herein have settled the dispute outside this Hon'ble Court. Regarding the claim between petitioner/appellant No.1 and petitioner/appellant No.2 there is a memorandum of understanding settling the claims between them and the monetary adjustments are made and to that effect an MOU dated 27.5.2016 was entered between appellants 1 and 2. Still the appellant No.2 was made party 6 to this memorandum of compromise to avoid future claim by the appellant No.2 against the respondents 1 to 4. The appellant No.2 joined this memorandum of compromise and signed and agreed for settlement.

While pending the disposal of the appeal A.S.No.658 of 2007 and after settling the terms with appellant No.2 by appellant No.1 and due to intervention of well wishers and elders appellant Nos.1 and 2 and respondents 1 to 4 have settled the terms between them and agreed to conclude the litigation and entered into compromise outside this Hon'ble Court and submitting this memorandum of compromise and to

record the same as to dispose of the appeal in terms of compromise set out below:

1. That the petitioner appellant No.1 herein having settled the terms with appellant No.2 by paying the amounts invested by the appellant No.2 at the time of entering into agreement of sale with respondent No.1 as per agreement of sale dated 5.2.2005 and as per settlement arrived between appellant No.1 and 2. Now petitioner/appellants 1 and 2 herein to avoid longevity of the litigation and to avoid further loss due to pendency of the appeal and to end the litigation have agreed to take back the amount as directed by the lower Court in O.S.No.159 of 2005 on the file of the Court of the Second Additional District Judge, Ranga Reddy District, along with interest and damages amounting to Rs.3,00,00,000/- (Rupees three crores only) and out of the said amount, the appellant No.1 agreed to receive an amount of Rs.2,70,00,000/- (Rupees two crores seventy lakhs only) from respondents and appellant No.2 having settled with appellant No.1 earlier is entitled to receive Rs.30,00,000/- (Rupees thirty lakhs only) from out of the settled amount from the respondents Rs.2,70,00,000/- paid to appellant No.1 vide cheque No.833874, dated 16.09.2016 favouring Sri V. Ravinder Rao the petitioner/appellant No.1 herein to be drawn on State Bank of Hyderabad, Siddamber Bajar Branch, Hyderabad. Rs.30,00,000/- paid to appellant No.2 vide Cheque No.833875, dated 16.09.2016, Cheque No.641206, dated 16.09.2016 and Cheque No.787006, dated 16.09.2016, Rs.10,00,000/- each favouring Shri V. Vajrender Rao the petitioner/appellant No.2 herein to be drawn on State Bank of Hyderabad, Siddamber Bazar and SBI, King Koti, Hyderabad. The petitioner appellants No.1 and 2 admitted that the above said amounts received by them is towards full and final settlements of the appeal.

2. That the petitioners appellants No.1 and 2 having settled the claim out of Court are hereby relinquishing their claim/right of specific performance under the agreement of sale 5.2.2005.

3. That the petitioners appellants No.1 and 2 having settled the dispute with the respondents 1 to 4 agreed to endorse on the agreement of sale 5.2.2005 as cancelled which is filed in the Court.

4. That in view of entering into compromise by the petitioners appellants 1 and 2 with the respondents 1 to 4 relinquishing their claim of specific performance as against the suit schedule property as per their will and wish and withdrawing the appeal the appellants have no right to object. The respondents 1 to 4 are at liberty to sell the schedule property to any third party or to enjoy it as the case may be. The appellants shall have no right claim, interest, demand etc. in respect of the suit property.

5. In view of entering into compromise and recording the terms of compromise by the Hon'ble Court the appeal preferred by appellants herein may be disposed of as per the terms agreed above and in view of that, the appeal S.S.No.658 of 2008 may be dismissed with regard to the claim of specific performance and regarding the claim of refund of earnest amounts and stamp duty this Hon'ble Court may be pleased to dispose of as per the terms set out and in view of compromise entered between the parties the cross appeal A.S.No.132/2008 preferred by respondent No.1 may also be dismissed however without costs.

6. The parties are entitled to bear their own costs."

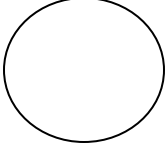
6. In view of the same, A.S.M.P.No.1974 of 2016 is ordered and the Appeal Suit and the Cross Objections are disposed of, in terms of the Memorandum of Compromise.

Consequently, miscellaneous petitions if any pending in the appeal suit shall stand dismissed.

V. RAMASUBRAMANIAN, J

ANIS, J.

21st September, 2016
cbs



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN ✓
AND
THE HON'BLE SMT JUSTICE ANIS



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