

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.C.C.A.No.148 of 1997

JUDGMENT:

The unsuccessful plaintiff in the Court below preferred the instant appeal aggrieved by the judgment dated 05.08.1997 in O.S.No.2154 of 1987 passed by I Additional Judge, City Civil Court, Hyderabad, whereby and whereunder the learned Judge dismissed the plaintiff's suit filed for specific performance of agreement of sale dated 03.12.1984 and possession.

2) The factual matrix of the case is thus:

a) The case of the plaintiff is that suit property admeasuring 216 sq. yards situated at Road No.12, Banjara Hills, Hyderabad belongs to 1st defendant and plaintiff agreed to purchase the same under Ex.A1—agreement of sale dated 03.12.1984 for consideration of Rs.64,800/- and paid a sum of Rs.25,000/- towards advance and 1st defendant received the said amount and issued Ex.A2—receipt to that effect. The further case of the plaintiff is that for registration of sale deed, the 1st defendant has to obtain Clearance Certificate from the ULC authorities which is one of the conditions mentioned in the agreement. The plaintiff made several requests to obtain the said Certificate but the 1st defendant did not respond and failed to execute the sale deed in terms of agreement and therefore, she got issued Ex.A3—legal notice dated 28.04.1987 to the 1st defendant but there was no response.

b) Her further case is that the 1st defendant in contravention of conditions of agreement of sale executed a registered sale deed dated 16.09.1985 in favour of 2nd defendant for a nominal sum of Rs.30,000/-. The plaintiff would submit that she was ready to pay balance sale consideration of Rs.39,800/- and obtain registered sale deed. The plaintiff further submits that in view of earlier agreement in her favour, the 1st defendant is estopped to execute the sale deed in favour of 2nd defendant.

Hence the suit.

c) The 1st defendant filed written statement admitting execution of Ex.A1—agreement and receipt of advance amount of Rs.25,000/-. She contended that Urban Land Ceiling Act was struck down and hence there was no necessity to obtain permission from the ULC authorities for alienation, as alleged by plaintiff. She further contends that plaintiff was bound to pay the sale consideration within six months from the date of agreement and obtain registered sale deed which she failed to do so and hence, she cannot seek for specific performance. She thus prayed to dismiss the suit.

d) Basing on the above pleadings, the trial Court framed the following issues:

- 1) Whether the suit is barred by limitation?
- 2) Whether the plaintiff was always ready and willing to perform her part of the contract?

- 3) Whether no permission under the Urban Land Ceiling Act is required and the plaintiff committed breach of contract?
- 4) Whether the 2nd defendant is a *bona fide* purchaser not bound by suit agreement?
- 5) Whether the plaintiff is entitled to specific performance and possession?
- 6) To what relief?

e) During trial PWs.1 and 2 were examined and Exs.A1 to A8 were marked on behalf of plaintiff. DW1 was examined on behalf of defendants.

f) The trial Court after hearing both sides and on considering the oral and documentary evidence observed that suit was not barred by limitation and plaintiff was not ready and willing to perform her part of contract and 2nd defendant was a *bona fide* purchaser and not bound by the suit agreement. With the above, the trial Court held plaintiff is not entitled for specific performance and possession and accordingly dismissed the suit.

Hence, the appeal.

3) Heard arguments of Sri Vinod Kumar Tadakamalla, learned counsel for appellant and Sri N.Vasudeva Reddy, learned counsel for respondent No.1. R2 dismissed for default vide Court order dated 17.12.2007.

4) The parties in the appeal are referred as they stood before the trial Court.

5a) Criticizing the judgment of the trial Court as erroneous, learned counsel for appellant/plaintiff would firstly argue that trial Court could have seen that plaintiff was always ready and willing to perform her part of the contract and obtain registered sale deed from the 1st defendant but the 1st defendant in spite of having a responsibility to obtain Clearance Certificate from the ULC authorities for effecting registration of the sale deed failed to do so and that was the reason why plaintiff could not obtain sale deed and in the entire episode the laches, if any, were on the part of 1st defendant alone.

b) Secondly, learned counsel argued that the trial Court failed to appreciate, having entered into an agreement with the plaintiff, 1st defendant clandestinely sold the suit property to the 2nd defendant, which shows her oblique motive.

c) Thirdly, learned counsel argued that in respect of immovable property time is not the essence of the contract and in that view, though in Ex.A1 six months time was stipulated for obtaining registered sale deed that cannot be viewed seriously and on the other hand, registration could not be effected due to laches on the part of 1st defendant as stated supra, and not on account of laches or defaults on the part of plaintiff. In this context, he sought to submit that observation of the trial Court that plaintiff failed to produce the particulars relating to her bank

account and bank deposits in proof of her having sufficient money in hand is unwarranted for the reason that if needed, she could secure funds by raising loans, provided, the 1st defendant had come forward to register the suit property. Therefore, the financial ability of the plaintiff is not an issue and on the other hand, what was germane for consideration was whether the 1st defendant endeavoured to secure the Clearance Certificate from ULC authorities which is a must for effecting registration. Learned counsel further argued that since the 1st defendant failed to perform her part of contract and on the other hand sold away the property to 2nd defendant without the knowledge of the plaintiff, she was responsible for breach of the contract and hence the plaintiff is entitled for specific performance.

6) In oppugnation, learned counsel for 1st respondent/1st defendant argued that in a suit for specific performance, plaintiff must show to the satisfaction of the Court that he is always ready and willing to perform his part of contract and there are no laches on his part. However, in the instant case, the plaintiff miserably failed to prove that she was ready with the balance sale consideration of Rs.39,800/- to obtain a registered sale deed within six months from the date of Ex.A1 and she failed to produce her bank accounts to show that she was having enough money with her to pay balance sale consideration. Therefore, the trial Court rightly observed that plaintiff was not ready with the balance amount to obtain registered sale deed. Learned counsel argued that in order to

wriggle out of her laches, the plaintiff tried to take shelter under the plea that 1st defendant failed to obtain Clearance Certificate from ULC authorities which was absolutely not required. The 1st defendant waited till expiry of time stipulated in Ex.A1 and demanded plaintiff to pay the balance amount and even sent word through PW2 which fact was admitted by him also in his cross-examination and since there was no response from the plaintiff, she cancelled the agreement and sold away the property to 2nd defendant and hence plaintiff cannot harp that 1st defendant cheated her. Learned counsel argued that when the 1st defendant sent word through PW2, the plaintiff ought to have either got ready with the balance amount or ought to have sent a legal notice demanding the 1st defendant to obtain the so-called non-required Clearance Certificate from ULC authorities but she did not do so and on the other hand waited for 2½ years and then sent Ex.A3—notice which shows her conduct that she was not evincing any interest in obtaining sale deed. He argued that considering all these aspects the trial Court rightly dismissed the suit and hence there are no merits in the appeal and the same may be dismissed. Learned counsel further argued that the appeal is not maintainable also for the reason that the same was dismissed for default against 2nd respondent/2nd defendant who is the purchaser of the property and hence the appeal is not maintainable against 1st respondent/1st defendant.

7) In the light of above rival arguments, the points for determination are:

- 1) *Whether time is essence of the contract and parties treated so?*
- 2) *Whether the plaintiff is entitled to specific performance of agreement?*
- 3) *To what relief?*

8) **POINT Nos.1 and 2:** It is not in dispute that the parties entered into agreement of sale under Ex.A1. The rival contentions as can be seen from pleadings and evidence are to the effect that according to the plaintiff, the 1st defendant had to obtain Clearance Certificate from ULC authorities for execution and registration of sale deed but she failed to do so in spite of repeated demands and requests made by the plaintiff and she evaded on one or other pretext and that was the reason the plaintiff could not obtain sale deed by paying the balance sale amount within six months and not because of her inability to pay the balance amount within the stipulated time. So, the plaintiff accuses the 1st defendant for the delay. On the other hand, the contention of the 1st defendant is that the ULC certificate is not required for effecting sale deed as the suit plot is a part of house bearing No.8-2-684 situated at Road No.12, Banjara Hills for which no Clearance Certificate was required for effecting registration and that the absence of such certificate would not be a legal impediment was clearly mentioned in Ex.A1 itself. It is the contention of 1st defendant that time stipulation of six months for payment of balance sale consideration was an essential part of the contract but the plaintiff failed to pay the balance amount within time

without any reasonable cause and only to wriggle out of her laches, she took the plea that 1st defendant failed to obtain the Clearance Certificate from ULC authorities. The above rival contentions, thus necessitated this Court to examine whether time is essence of the contract or not with reference to Ex.A1—agreement.

a) It is trite law that in respect of immovable property, the presumption is that time is not the essence of the contract and this aspect is no more *res integra* as this principle was laid down in a number of decisions. We can gainfully refer to *Smt. Chand Rani (dead) by LRs. vs. Smt. Kamal Rani (dead) by LRs.*¹ and *Smt. Swarnam Ramachandran vs. Aravacode Chakungal Jayapalan*². In those decisions the Apex Court while referring its earlier decisions on the subject laid down to the effect that in case of sale of immovable property there was no presumption that time being the essence of the contract. However, time can be regarded as essence of the contract basing on the

- (i) the express terms of the contract;
- (ii) the nature of the property; and
- (iii) surrounding circumstances.

In the light of above analysis, Ex.A1 has to be scrutinized to know whether parties intended that the time should be the essence of the contract.

¹ AIR 1993 SC 1742

² (2004) 8 SCC 689

b) The important terms of Ex.A1 are thus:

3. *That the vendee shall pay the balance sale consideration of Rs.39,800/- (Rupees thirty-nine thousand eight hundred only) on the date of registration of sale deed. The vendor shall execute and present the sale deed for registration after receiving the balance amount of Rs.39,800/- (Rupees thirty-nine thousand eight hundred only).*

4. *That the vendee shall get the sale deed registered by paying the balance consideration of Rs.39,800/- within a period of six months from the date of this agreement of sale, and the vendor shall execute the sale deed and present it for registration on payment of balance sale consideration of Rs.39,800/- (Rupees thirty-nine thousand eight hundred only) by the vendee within six months from the date of this Agreement of Sale.*

9. *That there is no legal impediment in alienation of the said land under Urban Land Ceiling Act or any other law. The vendor shall get necessary permission under Urban Land Ceiling Act for getting the sale deed registered without any objection.”*

9) As can be seen from the stipulations in condition No.4, twice it was mentioned that the Vendee shall pay the balance sale consideration of Rs.39,800/- within six months from the date of agreement. Having regard to the double reiteration of fixation of time for payment of balance amount and employing mandatory term ‘shall’ and as the suit property is located in a prime area in Banjara Hills whose value tend to increase rapidly, I consider that it is not without a real intention that the parties have stipulated that the balance sale consideration should be paid

within six months. Therefore, it must be held that the parties intended that time should be the essence of the contract. Since the plaintiff seeks for an equitable relief under Specific Relief Act and as time for payment of balance sale consideration is held an essential condition, needless to emphasize that the plaintiff shall show she has, always been ready and willing to perform her part of contract. It has now to be seen whether the plaintiff was ready and willing to perform her part by paying the sale amount within the stipulated time or was she prevented from paying the amount because the 1st defendant failed to obtain the Clearance Certificate from the ULC authorities. In this context, it has also to be seen from the terms of the contract, whether Clearance Certificate from ULC authorities is a must and whether payment of balance sale consideration has any nexus with such Clearance Certificate.

c) In first part of condition No.9 under Ex.A1, the parties got it mentioned that there was no legal impediment in alienation of the suit plot under ULC Act or any other law. However, in the second part of the said condition they got it mentioned that the vendor shall get necessary permission under ULC Act for getting the sale deed registered without any objection. So, from a reading of the entire condition No.9, it can be inferred that parties were aware that there was no legal impediment under ULC Act for alienation of the suit land but it appears, as an extra caution the vendor was asked to obtain such certificate. Therefore, as rightly observed by the trial Court, but of course for a different reason, Clearance Certificate from ULC authorities was not a

must for effecting registration. Even assuming for a moment that such certificate was necessary for registration of the suit property as contended by the plaintiff, by that count the plaintiff cannot repudiate her responsibility of getting ready with balance sale consideration within six months from the date of agreement under Ex.A1. As per the terms under Ex.A1, the plaintiff must at first, get ready with the balance amount of Rs.39,800/- within the stipulated period of six months and then demand the 1st defendant to obtain the Clearance Certificate from ULC authorities and register the sale deed in her favour. In the instant case, though plaintiff claims in her evidence she was always ready and willing to perform her part of the contract she could not establish that fact. Except her oral assertion that she was going to the house of 1st defendant and demanding execution of the sale deed, she could not prove that she was indeed ready with the balance sale consideration of Rs.39,800/- within the stipulated time of six months. She did not issue legal notice to 1st defendant within the stipulated time or immediately thereafter informing her readiness and willingness to obtain the sale deed and demanded the 1st defendant to get ready with the Clearance Certificate. In fact, the plaintiff issued Ex.A3—legal notice only on 28.04.1987 i.e. almost two years after expiry of the stipulated period of six months. This inordinate delay shows her unwillingness to obtain sale deed. Further, though in her evidence the plaintiff proclaimed that she got bank account and she had an amount of Rs.39,800/- lying in her account by the date of Ex.A1 and also she got amount from her husband

to a tune of Rs.60,000/- lying in the form of FDs. in her name, she did not produce any proof to that effect. Therefore, her readiness with balance amount within the stipulated period is also highly doubtful. Above all, even though 1st defendant informed to the plaintiff through PW2 that she was going to return the advance amount as the period under Ex.A1 was expired, plaintiff neither responded with the balance amount nor issued notice. All the aforesaid facts would clinchingly show that the plaintiff was not ready with balance amount within the stipulated time and she did not evince any interest to obtain the sale deed by performing her part of contract. Therefore, the 1st defendant cannot be found fault for alienating the property to 2nd defendant. Hence, plaintiff is not entitled to a decree for specific performance. Her appeal does not merit consideration. Since the appeal is dismissed against 2nd respondent/2nd defendant for default, on that count also the appeal is liable to be dismissed against 1st respondent/1st defendant.

10) In the result, this CCCA is dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 02.09.2016
Murthy