

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

* * * *

Second Appeal No. 509 of 2016

Between:

Gopidesi Raghunath

...Appellant

And

Pera Veera Nagi Reddy

...Respondent

JUDGMENT PRONOUNCED ON : 11.11.2016

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. 509 of 2016

Judgment:

This Second Appeal is preferred against the judgment and decree in A.S.No.36 of 2015 dated 10.03.2016 passed by the learned VI Additional District Judge, Markapur confirming the judgment and decree in O.S.No.137 of 2007 dated 18.01.2012 passed by the learned Principal Junior Civil Judge, Markapur.

The appellant herein is the plaintiff in the suit. The suit was filed for specific performance of the agreement of sale dated 29.01.2005 and for consequential direction to the defendant to execute and register sale deed in favour of the plaintiff regarding plot schedule site of an extent of Ac.0.25 cents situated in Survey No.88/1 of Yerragondapalem Revenue Village, Prakasam District after receiving the balance sale consideration of Rs.65,000/- out of the total consideration of Rs.78,000/- from the plaintiff and deliver vacant possession of the same. The plaintiff states that an agreement was executed on 29.01.2005 and an amount of Rs.13,000/- was paid on the date of agreement towards part sale consideration. It was agreed to execute sale deed on or before 05.03.2005 on receipt of balance sale consideration and in case of failure, the said advance is not returnable. Subsequently, the plaintiff personally and through one Chilukula Chinnareddy demanded the defendant several times before 05.03.2005 for execution of the registered sale deed after receiving the balance sale consideration, but the defendant postponed the same on some pretext or the other. Ultimately, a notice was issued on 06.10.2006 to the defendant demanding him to receive the balance of sale

consideration and execute a sale deed. The defendant received it and gave reply on 16.10.2006 with false allegations.

The defendant filed a written statement admitting the execution of agreement of sale dated 29.01.2005 and receipt of part sale consideration. It was stated that the plaintiff failed to fulfill the terms of the agreement and thus failed to perform his part of contract. The defendant asked the plaintiff to get the registered sale deed by paying the balance sale consideration and also sent one Mandla Venkateswarlu who was a witness to the agreement for obtaining the registered sale deed. The plaintiff postponed the same by expressing his inability to pay the balance sale consideration. In those circumstances, the agreement was cancelled on 05.03.2005.

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

1. Whether the plaintiff is failed to perform his part of contract before the stipulated time as alleged by the defendant?
2. Whether the time is essence of the contract?
3. Whether the plaintiff is entitled to claim decree for specific performance of the contract as prayed for?
4. Whether the plaintiff is entitled to claim decree for permanent injunction as prayed for?
5. To what relief?

Before the trial Court, the plaintiff and the defendant were examined as PW.1 and DW.1 respectively. The plaintiff further examined PW.2 and marked Exs.A1 to A3 on his behalf. The defendant further examined DW.2 and no documents were marked on his behalf.

The trial Court, on the basis of the evidence, held that time was not the essence of the contract and on the basis of the deposition of PW.1, who stated that there was no evidence of possessing cash for payment of balance sale consideration, came to the conclusion that the plaintiff was not ready and willing to perform his part of contract and accordingly dismissed the suit by judgment and decree dated 18.01.2012, challenging which the plaintiff filed A.S.No.36 of 2015 before the VI Additional District Judge, Markapur.

The lower appellate Court framed the following points for consideration.

1. Whether the plaintiff is entitled for specific performance of contract?
2. Whether the time is the essence of the agreement of sale under Ex.A1?
3. Whether there are grounds warranting interference with the findings of the trial Court?
4. To what relief?

In respect of points 1 and 2, the lower appellate Court came to the conclusion that the plaintiff failed to perform his part of contract and hence the trial Court correctly dismissed the suit. After considering the decisions reported in *K. Mahadeva Rao v. Vaztha Tabassum Ghouse*¹ and *Govind Prasad Chaturvedi v. Hari Dutt Shastri*², the lower appellate Court came to the conclusion that the time is the essence of the contract by strict interpretation of the contents of Ex.A1.

Though the copy of the agreement was not filed, it is clear from the plaint averments that an agreement was entered on 29.01.2005 agreeing

¹ 2008(4) ALD 781

² AIR 1977 SC 1005

to take the plaint schedule vacant site of an extent of Ac.0.25 cents for a total consideration of Rs.78,000/-, paid an amount of Rs.13,000/- towards part payment of sale consideration and agreed to obtain registered sale deed on or before 05.03.2005 by paying the balance sale consideration. The balance was not paid nor was it offered along with the notice or at the time of filing the suit. PW.1, the plaintiff admitted in his cross-examination that there is no evidence to show that as on 05.03.2005, either himself or his father possessed the requisite cash with them. In the absence of proof of readiness and willingness to perform his part of contract, the discretionary relief of specific performance cannot be sought by the plaintiff. Both the Courts below concurrently came to the conclusion that the suit filed by the plaintiff should be dismissed based on the oral and documentary evidence. In the circumstances, no substantial question of law arises for consideration in the present Second Appeal.

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.

A. RAMALINGESWARA RAO, J

Date: 11th November, 2016
Nsr