

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition SR No.2283 of 2016

And

Civil Revision Petition No.936 of 2016

COMMON ORDER:

The unregistered revision and the revision filed by the unsuccessful plaintiff in O.S.No.10 of 2013 on the file of the Court of the learned IX Additional District Judge, Wanaparthi, Mahabubnagar District, are directed against the successive orders dated 12.11.2015 and 23.12.2015 passed by the said learned Additional District Judge in the aforesaid suit.

2. I have heard the submissions of *Sri K.Govind*, learned counsel for the revision petitioner/plaintiff and *Sri N.Harinath*, learned counsel for the 1st respondent. I have perused the material record.

3. The submissions of the learned counsel for the plaintiff, in brief, are as follows:

The plaintiff brought the suit against the 1st defendant for specific performance of an agreement of sale dated 11.07.2012 in respect of a residential house along with shop bearing Door No.6-83 admeasuring 70 X 9 ½ square yards situated at Wanaparthi, morefully described in the schedule annexed to the plaint. In the said suit the plaintiff also sought other reliefs including a direction to the 1st defendant to clear the disputes including title issues and the issues involved in the suit O.S.No.72 of 2013 on the file of Senior Civil Court, Wanaparthi, and also the alternate relief of damages or compensation in a sum of Rs.12,00,000/- . The plaintiff averred in the plaint as follows: 'The 1st defendant is the owner of the plaint schedule house. As per the terms and conditions of the said agreement, the total sale consideration agreed to be paid for the said property was Rs.33,50,000/- . On the same day, the 1st defendant received earnest money of Rs.5,00,000/- , i.e., Rs.3,50,000/- in cash and Rs.1,50,000/- by way of a cheque drawn on Andhra Bank. He

agreed to receive the balance sale consideration on 11.11.2012, and execute the registered sale deed. The plaintiff made ready the balance amount and approached the 1st defendant with the said amount for completing the formality of execution and registration of the sale deed. But, the 1st defendant dodged the issue on one pretext or the other and intentionally colluded with the 2nd defendant, who is the wife of his elder brother, and started quarreling; and, the 2nd defendant started claiming that the suit schedule property belonged to her husband, who is of unsound mind, and that the 1st defendant purchased the said property from her husband, who is of unsound mind and is innocent, and that she had no notice of such sale transaction between the brothers and that she did not consent for the same; and she lodged a complaint with the police concerned against the 1st defendant. In view of the said collusion between the defendants 1 and 2 and the breach of the contract to sell committed by the 1st defendant, the plaintiff got issued a notice dated 28.01.2013 expressing readiness and willingness to take registered sale deed. The 1st defendant got issued a reply dated 08.02.2013 demanding balance of sale consideration and simply stating that the 2nd defendant has no such right or any authority to raise any dispute. Thus he failed to settle the dispute and produce his documents and failed to prove his valid title by not clearing the disputes over the property. The 1st defendant cannot transfer the property with defective title. Therefore, the plaintiff is constrained to file the suit for specific performance and other reliefs.

4. The submissions of the learned counsel for the 1st defendant, in brief, are as follows: "The 1st defendant filed a written statement stating that he is ready to register the suit schedule property as per the sale agreement dated 11.07.2012 provided the plaintiff is ready to deposit the remaining balance of sale consideration of Rs.28,50,000/- into Court as directed by the Court and that the 1st defendant is prepared to abide by the directions of the Court and is ready to register the suit schedule property."

5. In the said back drop and setting of facts and as the 1st defendant expressed preparedness to receive the balance of sale consideration and execute and register the sale deed provided the plaintiff deposits balance of sale consideration into Court and further expressed in his defence that he is prepared to abide by the directions of the Court and execute a registered sale deed, the trial Court passed the following docket order on 12.11.2015.

“ Heard. No trial on issues. Plaintiff is directed to deposit balance sale consideration of Rs.28,50,000/- by 19-11-2015 to pass appropriate orders or else suit stands dismissed. Call on 19-11-2015.”

The aforesaid order was challenged by the plaintiff in CRP SR 2283 of 2016. Be it noted that the revision petition in CRP SR 2283 is not numbered/ registered as by subsequent orders dated 23.12.2015, the suit was dismissed for non-compliance of the above said orders dated 12.11.2015 and as the CRP SR 2283 of 2016 was filed on 10.03.2016 after the dismissal of the suit on 23.12.2015.

Be that as it may. The plaintiff filed I.A.No.339 of 2015 on 23.12.2015 for extending the time for complying with directions in the above said orders dated 12.11.2015. On the same day, i.e., on 23.12.2015, the trial Court dismissed the said petition filed for extension of time by passing the following order:

“ Petitioner called absent. Heard counsel for petitioner. No grounds for extended further time for deposit the balance sale consideration. Hence petition is dismissed in limine.”

On the same day, the trial Court dismissed the suit by passing the following judgment in the suit.

“ Conditional orders, dt. 12-11-2015 is not complied though time extended from time to time for over a period of one month. Applications filed for extension of further time is dismissed and suit is dismissed with costs.”

Aggrieved of the above said orders, the plaintiff filed the C.R.P.No.936 of 2016.

6. Both, the CRPSR 2283 of 2016 and the CRP 936 of 2016 are being listed together for hearing and disposal.

7. Having heard the submissions of the learned counsel for both the sides, I have perused the material record. I have given detailed and thoughtful consideration to the facts and submissions.

8. The case of the plaintiff, the defence of the defendants and the events that led to the filing these two proceedings before this Court are already stated supra.

9. The learned counsel for the plaintiff would submit that the trial Court committed a material irregularity in directing the plaintiff to deposit the balance of sale consideration by observing that there are no issues to be tried. The said order is passed in violation of Order XX Rule 5 of the Code of Civil Procedure, 1908. Though it was incumbent upon the trial Court to frame appropriate issues, the trial Court failed to frame the issues. When the plaintiff stated that there is a cloud cast on the title of the 1st defendant in view of the suit O.S.No.72 of 2013, the passing of the conditional order directing the plaintiff to deposit the balance sale consideration is contrary to the well settled principles of law. Any direction to deposit balance sale consideration shall be given only while decreeing the suit or after the suit is decreed, but not prior to the said stages. When there is a dispute about the title of the 1st defendant raised in O.S.No.72 of 2013 and when the question of title has to be gone into and decided, the trial Court's orders directing the plaintiff to deposit balance of sale consideration by observing that there are no issues to be tried are erroneous. The trial Court ought to have seen that the 2nd defendant filed the suit in O.S.No.72 of 2013 on the file of the Court of the learned Senior Civil Judge, Wanaparthy for cancellation of the sale deed

bearing no.4711 of 2012 dated 31.03.2012 registered in the office of the Sub Registrar, Wanaparthi, which is the source of title for the 1st defendant who has executed the suit agreement in favour of the plaintiff. The trial Court ought to have seen that the 1st defendant and the husband of the 2nd defendant are brothers and that no steps are being taken for disposal of the aforesaid suit in O.S.No.72 of 2013 and that the defendants 1 and 2 colluded together. When the said suit is pending, the trial Court ought not to have given the impugned direction and ought not to have passed a conditional order directing the plaintiff to deposit huge sale consideration of Rs.28,50,000/- by 19.11.2015 and ought not to have dismissed the application filed for extension of time on 23.12.2015 and ought not to have further dismissed the suit on the same day for non-compliance of the conditional order dated 12.11.2015 by refusing to extend the time. All the orders successively passed by the learned Judge of the trial Court are erroneous and unsustainable under facts and in law; the said orders are contrary to the settled principles of law.

10. Per contra, the learned counsel for the 1st defendant would submit as follows:

The plaintiff entered into an agreement of sale with the 1st defendant and paid a meager consideration of Rs.5,00,000/- as earnest money. He further agreed to pay the balance of sale consideration and obtain a regular registered sale deed from the 1st defendant. But he failed to perform his part of the obligations under the suit contract to sell and filed the suit for specific performance with false allegations. This 1st defendant while stating all the facts in his written statement had also stated that the 1st defendant is prepared to execute and register a sale deed provided the plaintiff is prepared to deposit the balance sale consideration into Court. The 1st defendant also stated that the 1st defendant is prepared to abide by the directions which the Court may give and execute the registered sale deed. The plaintiff cannot take shelter under the garb that the 2nd defendant is disputing the title of the 1st

defendant who is the vendor under the suit contract to sell. If the plaintiff feels that there is a cloud cast on the title to the property, the plaintiff shall not seek specific performance and shall back out of the contract to sell; or else, he shall deposit the balance of sale consideration as directed by the trial Court and obtain regular registered sale deed if he wants to proceed further. In fact, the trial Court having taken note of the defence of the 1st defendant further noted that there are no issues to be tried in the suit and directed the plaintiff to deposit the balance of sale consideration before 19.11.2015. The said orders directing the plaintiff to deposit a sum of Rs.28,50,000/- before 19.11.2015 were passed on 12.11.2015. The plaintiff did not file any application for extension of time before the said date, but filed an application for extension of time on 23.12.2015. On the same day, the said petition was dismissed as the Court was disinclined to extend further time and the suit was also dismissed for non compliance of the direction to deposit the balance sale consideration despite granting sufficient time. After the suit was dismissed for default on 23.12.2015, C.R.P.No.936 of 2016 was filed on 18.02.2016. Subsequently, C.R.P.SR No.2283 of 2016 was filed in March 2016. When the plaintiff is not ready and willing to perform his part of the contract to sell and is unable to raise the balance sale consideration and deposit the same before the trial Court despite directions of the trial Court, it follows that he is not entitled to the equitable relief of specific performance as per the well settled law. Though the order was passed on 12.11.2015 directing the plaintiff to deposit the balance sale consideration of Rs.28,50,000/- by 19.11.2015, the trial Court went on extending the time till 23.12.2015 and on 23.12.2015 also, when the amount was not deposited and only a petition was filed for extension of time, the trial Court took note of the fact that sufficient time was already granted for deposit of balance of sale consideration, dismissed the application for extension of time and also dismissed the suit for non-compliance of the direction to deposit the balance of sale consideration. Since the suit itself was

dismissed, the plaintiff, if aggrieved thereof, ought to have filed a regular appeal but not a revision. CRPSR 2283 of 2016 which was filed after dismissal of the suit is not maintainable and the objection taken by the Registry as to its maintainability is perfectly valid. Hence, both the revisions are liable for dismissal.

11. I have bestowed my attention to the facts. I have given detailed and thoughtful consideration to the submissions.

11.1 The plaintiff filed the suit for specific performance of an agreement to sell dated 11.07.2012. Admittedly, the balance of sale consideration payable under the suit contract to sell is Rs.28,50,000/-. Though a dispute was raised by the 2nd defendant and a suit was filed by her for cancellation of the sale deed executed by her husband in favour of the 1st defendant by *inter alia* claiming that her husband is of unsound mind and innocent, the 1st defendant expressed preparedness to execute the registered sale deed in favour of the plaintiff provided the plaintiff is prepared to deposit the balance sale consideration to the credit of the suit. The 1st defendant further expressed his willingness and preparedness to abide by the directions of the Court and execute the registered sale deed in respect of the suit schedule property in favour of the plaintiff. The trial Court having observed that there are no issues to be tried directed the plaintiff to deposit Rs.28,50,000/- before 19.11.2015. Thus, initially a short time was granted for depositing such a huge or considerable amount; however, the trial Court *suo motu* went on extending the time till 23.12.2015. On 23.12.2015, the plaintiff filed an application for extension of further time for depositing the balance of sale consideration. The plaintiff's contention is that a cloud is cast on the title of the 1st defendant in view of the dispute raised by the 2nd defendant and the suit in O.S.No.72 of 2013 filed by her. The plaintiff also alleges collusion between the defendants 1 and 2 who are closely related. In the well considered view of the Court, if the

plaintiff is of the view that the 1st defendant has no perfect or valid title, he cannot take a dual stand. At one breath, he cannot seek specific performance and at another, he cannot say that a cloud is cast on the title of the 1st defendant. He has to either opt to back out of the contract to sell entered into with the 1st defendant and receive back his earnest money of Rs.5,00,000/- paid to the 1st defendant or in the alternative, he shall take a registered sale deed by paying the balance of sale consideration, but he cannot blow hot and cold. Admittedly, the plaintiff filed an application for extension of time for depositing the balance of sale consideration but did not state in his said application in I.A.No.339 of 2015 as to till what date he needs time for depositing the balance sale consideration. He simply sought extension of time. The trial Court dismissed that petition and also the suit for non-compliance of its earlier orders dated 12.11.2015 whereby the plaintiff was called upon to deposit the balance of sale consideration of Rs.28,50,000/-.

11.2 In this regard, it is necessary to refer to the provision of Section 16(c) of the Specific Relief Act and the explanation appended to it, which read as under:

Section 16(c) in The Specific Relief Act, 1963
(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

11.3 Though it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court and though the law is well settled that the Court shall not give a direction to the plaintiff to deposit balance of sale consideration unless there are special circumstances, in the case on hand, there are sufficient circumstances to direct the plaintiff to deposit balance of sale consideration as

the 1st defendant expressed preparedness to execute and register the sale deed, provided the plaintiff deposits the balance of sale consideration into Court to the credit of the suit. In fact, in the plaint, the plaintiff averred that he made ready the balance of sale consideration and approached the defendant to obtain a registered sale deed, but the 1st defendant dodged the matter without executing the regular registered sale deed. As per the settled law, the plaintiff must allege and establish that he is always ready and willing to perform his part of the contract from the date of the agreement. In the case on hand, when the order dated 12.11.2015 was passed directing the plaintiff to deposit balance of sale consideration, he kept quiet for quite a long time and filed the petition for extension of time on 23.12.2015 even without stating as to how much time is needed by him for depositing the balance of sale consideration. His petition for extension of time also stood dismissed on 23.12.2015. He belatedly challenged the order dated 12.11.2016 by filing CRPSR 2283 of 2016 in March 2016 long after the dismissal of the suit.

11.4 On the above analysis, this Court finds that the plaintiff failed to establish that he is ready and willing to perform his part of the obligation and failed to deposit the balance of sale consideration of Rs.28,50,000/- into Court despite a direction by the Court and sufficient opportunity provided to him by the Court below. Further, the defendant did not challenge the order of the trial Court refusing to grant extension of time and allowed the said order to become final. Therefore, the trial Court cannot be faulted for coming to a conclusion that the plaintiff is not entitled to the main relief viz., the relief of specific performance of the suit contract to sell. However, there is one more aspect to be considered, before parting with the matter.

11.5 The plaintiff's suit is not just for specific performance of the suit contract to sell. The plaintiff also claimed an alternate relief viz., decree against the 1st defendant for damages/ compensation in a sum of Rs.12,00,000/-

which claim according to the plaintiff includes the relief of refund of earnest money with interest @18%per annum from the date of the suit till the date of realisation. The trial Court while passing the judgment dismissing the suit failed to take note of the said relief claimed in the suit and erroneously dismissed the entire suit of the plaintiff though under facts and in law the issue concerning the plaintiff's entitlement to the said relief of damages/compensation requires determination on merits after giving an opportunity to both the parties to adduce necessary and relevant evidence on the said issue. Since the trial Court failed to exercise the jurisdiction vested in it in that regard and committed a jurisdictional error, this Court is of the considered view that the judgment dismissing the suit can be set aside while exercising the jurisdiction vested in this Court under Article 227 of the Constitution of India and the trial Court can be directed to frame appropriate issues with regard to the plaintiff's entitlement or not to the damages or compensation claimed in the suit and also with regard to the quantum of amount, if any, to which the plaintiff may be entitled to and determine the said limited issues. Keeping in view the fact that under the said Article 227 of the Constitution of India this Court is having supervisory jurisdiction, it is necessary to refer to the relevant precedential guidance in *Surya Dev Rai V/s Ram Chander Rai and others*¹ which is as follows:

"(1) Amendment by Act No. 46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2).....

(3) Certiorari, under Article [226](#) of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules or procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

¹ AIR 2003 SC 3044

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to

the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

11.6 Though the trial Court is justified in coming to a conclusion that the plaintiff's suit in so far as the relief seeking decree for specific performance is liable for dismissal, nevertheless, the trial Court committed a flagrant error in dismissing the suit in so far as the relief of damages/ compensation without framing necessary issue/ s and trial. The dismissal of the suit in so far as the said relief of damages/ compensation, in the facts and circumstances of the case, resulted in gross failure of justice and grave injustice to the plaintiff. When the said error is manifest and apparent on the face of the proceedings and is capable of correction, refusal to intervene would result in travesty of justice and results in prolonging of the /s. Hence, this Court is obligated to issue a writ of certiorari exercising the supervisory jurisdiction in a case of this nature. When the judgment dismissing the entire suit including the claim for decree for damages/ compensation, which is not supported by any reasons, much less valid reasons, is manifestly unreasonable and unjust in the context of the facts of the case, this Court is obliged under law to set aside such erroneous part of the judgment to remedy the injustice.

12. Viewed thus, this Court finds that there is considerable merit in the contentions of the revision petitioner/ plaintiff that the trial Court ought not to have dismissed the suit in so far as the relief of damages/ compensation even without giving an opportunity to both parties to enter trial and without settling and determining the said issue on merits.

13. In the result, CRP 936 of 2016 and CRPSR 2283 of 2016 are disposed of accordingly setting aside the judgment dated 23.11.2015 of the trial Court dismissing the suit in so far as the relief in respect of claim for damages or compensation. As a sequel, the decree and judgment dismissing the suit in so

far as the relief of specific performance are confirmed; nonetheless, the learned IX Additional District Judge, Wanaparthy, Mahabubnagar District, is directed to frame only the necessary issue/ s, if not already framed, with regard to the relief of damages/ compensation claimed by the plaintiff in the suit and give an opportunity to both the sides to adduce necessary oral and documentary evidence, only on the said issue/ s, and determine the said issue/ s only and pass a decree and judgment in strict accordance with procedure established by law. It is made clear that the suit is remitted to the trial Court for the aforestated limited purpose.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

15th December, 2016
RAR

M. SEETHARAMA MURTI, J

