HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No.1144 of 1998

JUDGMENT:

This appeal is filed by the defendant against the judgment and decree dated 24.03.1998 passed in O.S.No.61 of 1988 by the Additional Senior Civil Judge, Eluru.

2. For the sake of convenience, as this is the first appeal, the parties are referred to as the plaintiff and defendant only.

3. The brief averments of the plaint are that the defendant offered for sale of the suit schedule property to the plaintiff to discharge of his loan amount due to the Indian Bank, Sriparru branch. On 12.07.1996 the defendant executed an agreement of sale for a sum of Rs.45,000/- and the plaintiff received advance of Rs.17,000/- and the balance amount has to be paid on or before 28.02.1988. With the advance amount, the defendant has discharged the loan amount due to the Indian bank. Later, whenever the plaintiff asked the defendant for executing the regular sale deed, the defendant tried to evade and postpone the same. Thereafter, the plaintiff got issued a legal notice dated 23.02.1988 and having received the said notice, the defendant has been evading the demand of plaintiff to receive the balance sale consideration, to vacate the building and hand over the possession of the same to the plaintiff and to execute the registered sale deed. One month thereafter, the defendant

gave a reply notice with false allegations. The plaintiff is ready and willing to perform his part of the contract, however, the defendant has committed default in executing the registered sale deed. Hence, the plaintiff filed the suit for specific performance of agreement of sale dated 12.07.1986 and other alternative relief of refund of money.

4. The defendant entered into appearance and filed the written statement denying all the averments made by the plaintiff. The defendant states that she purchased the plaint schedule property from her vendors through a registered sale deed dated 24.03.1975. Later, she reconstructed the suit schedule property by borrowing huge amount from one S. Venkateswara Rao on three different spells, totaling Rs.50,050/-. After paying Rs.50/-, the defendant executed equitable mortgage deed for a sum of Rs.50,000/- by way of deposit of title deed of schedule property. The said debt is still un-discharged. The plaintiff did not pay an advance of Rs.17,000/- to the defendant and the defendant never executed the agreement of sale in his favour. On 10.07.1986 the defendant requested the plaintiff to give a loan of Rs.5,000/- and he said that he would lend the amount after consulting his friends and legal adviser etc. On 12.07.1986 on some stamped blank papers, the plaintiff took the signatures of defendant with the attestation of her husband and son. The plaintiff went to Indian Bank and discharged the loan amount of Rs.3,079/- on 12.07.1986 relating to the

defendant and took the original sale deed dated 24.03.1975. The defendant never delivered to the plaintiff the Indian Bank vouchers etc. When the plaintiff sent legal notice dated 28.02.1988, then only she became aware of the fraud played by the plaintiff with the help of his friends, scribe and attestor of the alleged document. She gave reply to the said legal notice explaining the true account of the circumstances of her case.

5. The matter went to trial and the lower Court framed five issues. The plaintiff got examined himself as PW.1. The attestor and the scribe of document were examined as PWs.2 & 3 respectively. The defendant got examined herself as DW.1 and her son was examined as DW.2. On behalf of the plaintiff, Exs.A.1 to A.10 were marked and on behalf of defendant, Exs.B.1 & B.2 were marked.

6. After considering the documentary and oral evidence, the lower Court decreed the suit. Aggrieved by the same, the unsuccessful defendant has filed the present appeal.

7. Heard Sri Y.V. Ravi Prasad, learned counsel for the appellant/defendant and Sri K. Chidambaram, learned counsel for the respondent/plaintiff.

8. As this is a suit for specific performance, the first and foremost issue to be decided is whether the agreement of sale dated 12.07.1986 is true, valid and binding. The next

issue is whether the plaintiff proved his readiness and willingness to get a sale deed executed in his favour.

9. Ex.A.1 is an agreement of sale, which executed by the defendant. The attestors are her son and husband. The case of the plaintiff is that the defendant had mortgaged the suit schedule property to the Indian Bank and that she borrowed the money for discharging the loan. Therefore, the plaintiff states that he negotiated with the defendant for sale of the property and the deal was stuck for a sum of Rs.45,000/-. Thereafter, she executed an agreement of sale in his favour. The further case of the plaintiff is that the consideration paid by him is to discharge the debt due to the bank. Therefore, he is in the custody of the three counter foils, which are given by the bank and also the original sale deed of the property standing in the name of the defendant. This sale deed was released by the bank after its loan was discharged. The defendant in para-10 of her written statement clearly admits as follows:

> "This plaintiff went and discharged the bank loan amounting to about Rs.3,079/- on 12.07.1986 and took the original sale deed dated 24.03.1975 executed by Mungara China Nagayya and Peddiraju and the vouchers of discharge of the above debts from the Indian Bank, Sriparru."

9. However, the case of the defendant is that the plaintiff gave her blank stamp papers and took signatures of herself and her son and husband. At the time of discharge of

the said loan, she signed on some blank papers along with the attestors of her husband and her son. She denies that the original sale deed was delivered to the plaintiff and that she never executed the agreement of sale. She also states that there is another mortgage on the property. As per this version, she states that she borrowed a sum of Rs.47,000/- from S. Venkateshwara Rao and mortgaged the suit schedule property to the said Venkateshwara Rao. As per the written statement, the said mortgage is still subsisting. Therefore, her contention essentially is that she never executed an agreement of sale.

10. Ex.A.1 is the said agreement of sale, which is signed by the defendant and attested by her son and husband. PW.1, the plaintiff filed Ex.A.1 along with the vouchers of Indian Bank, which are marked as Exs.A.2 to A.4 and also the original sale deed in the name of the defendant dated 24.03.1975, which is marked as Ex.A.5. As per the plaintiff-PW.1, this was collected by him at the time of execution of Ex.A.1. The plaintiff asserts in the cross-examination that the scribe read over the contents of the agreement of sale to the defendant, she understood the same and signed on it. He also asserts that the defendant saw the attestors signing the agreement. Even in his cross-examination, the witness clearly asserts that the attestors saw the defendant signed the agreement of sale and that signed the document after the defendant signed the same.

Nothing was elicited in the cross-examination of the defendant to disbelieve her version of the affairs or the funds that transpired.

11. The next witness was examined as PW.2 who was the scribe of the document. This witness also asserts in his chief examination that after completing the document, the scribe of Ex.A.1 read over the same to the defendant and the attestors. The defendant admitted the contents of Ex.A.1 to be correct and true. He also asserts that the attestors who were aware the contents and they signed the said document. He also asserts that the defendant saw the attestors including himself signing Ex.A.1.

12. PW.3, who was summoned for the plaintiff, is the licenced document writer. He states that he completed the drafting of Ex.A.1, read over the contents and the same were admitted by the defendant. Thereafter, other attestors and himself have attested the document. In the cross-examination, again it is noticed that nothing was elicited to establish that the defendant was signed on blank papers or that the attestors were also signed on blank papers.

13. DW.1 is the defendant herself. She admits that she has approached the plaintiff for small loan for the purpose of discharging the outstanding amount due to the Indian Bank. She admits that the plaintiff lend a sum of Rs.5,000/- and Rs.3,079.70 was paid to the bank and balance was paid to her in cash. She, however, states that by

the time she signed on Ex.A.1, the same was blank. In the cross-examination, she reiterated the facts that she availed a loan from the plaintiff. But she denies the agreement of sale. She reiterates that by the time the signatures were taken, the contents of the documents were not filled up. With regard to the other mortgage, she states that Sri S. Venkatashwara Rao, who filed another suit for recovery of equitable mortgage deed is father-in-law of her son-Raju. She also filed Exs.B.1 & B.2 which are the plaint and the legal notice issued by the said S. Venkateshwara Rao for enforcing the mortgage in his favour.

14. The next witness was examined as DW.2, who reiterated whatever was stated by his mother. He also states that the signature on Ex.A.1 is his signature, but when he signed it, it was a blank paper. However, in his cross-examination, he states that the title deed to the property viz., Ex.A.5 was given two months after the loan transaction and signing on Ex.A.1. This is contrary to the evidence of DW.1 and her written statement also.

15. Again this backdrop, the conduct of the parties should be examined. The fact remains that the defendant availed the help of the plaintiff for discharging the loan due to the bank. She admits that there is a transaction between them for discharging the loan. She states in her written statement itself that the document of title to the property was collected by the plaintiff himself. If such a small loan was

obtained by her from the plaintiff; the question that arises is why did she allow the plaintiff to collect and retain her original sale deed. There is no answer to this. It is very clearly averred in para-10 of the written statement that the original sale deed dated 24.03.1975 executed by M. China Nagaiah and Peddiraju was taken by the plaintiff. The plaintiff has examined himself and has examined the attestor and the scribe of Ex.A.1 agreement of sale. The version of the defendant is that only Rs.5,000/- was borrowed for the purpose of discharge of the debt. Then the course of normal human conduct should be to give a notice to the plaintiff to return the document of title itself in his custody. She did not do anything to take back the said document which was collected by the plaintiff in July, 1986. On the contrary, she sets up a plea that she created a mortgage on the property on 20.11.1984 with S. Venkateshwara Rao and that the amount outstanding is Rs.70,000/-. As it is mentioned that the suit O.S.No.100 of 1996 is still pending, this Court does not wish to comment anything on the creation of a mortgage with a link document. For the purpose of decision in this suit it is observed that when the original document is in the custody of the plaintiff, the creation of mortgage in favour of the third party appears to be a little doubtful. This finding is only given for the purpose of this suit without in any way going into the merits of the suit O.S.No.100 of 1996, which is supposedly be still pending in the court of the Sub-ordinate Judge, Eluru.

16. In any suit for specific performance, the readiness and willingness has to be decided on a review of the entire evidence. In this case, the agreement of sale was executed on 12.07.1986. The notice demanding specific performance was issued on 22.02.1988. The original title deed is in the custody of the plaintiff. The balance sale consideration is also deposited into the Court. Therefore, viewing all the factors, this Court is of the opinion that the plaintiff proved that Ex.A.1 is a validly executed agreement of sale, that he was ready and willing with the balance sale consideration. On the other hand, the conduct of the defendant is not above board and is doubtful. The theory is advanced by her of small loan of Rs.5,000/-; of a mortgage created with a link document etc. to lead this Court to believe that the defendant's conduct is not clean and that she is not entitled to relief of rejection of Ex.A.1. This court is of the opinion that the judgment of the lower Court is correct and valid and that the plaintiff is entitled to relief for specific performance as directed in para-29 of the judgment of the lower Court. Issue Nos.1 & 5 as framed by the lower Court are thus confirmed.

17. As rightly noticed by the court below, the plaintiff did not introduce any evidence claiming for mense profits and therefore, it is held that the issue No.2 is against him. Similarly, the alternative relief covered by issue No.4 does not survive as the primary relief is granted.

18. In the result, the appeal is dismissed with costs through out. The judgment and decree dated 24.03.1998 passed in O.S.No.61 of 1988 by the Additional Senior Civil Judge, Eluru, is hereby confirmed. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 08.12.2017
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