

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

SECOND APPEAL No.419 OF 2000

JUDGMENT:

The Second Appeal is filed by the plaintiff impugning the reversal judgment of the 1st appellate Court-IV Additional District Judge, Kakinada dated 25.03.1992 passed in A.S. No.63 of 1992 against the trial Court's decree and judgment in favour of plaintiff by the Principal District Munsif (Senior Civil Judge) Kakinada in O.S. No.409 of 1985 dated 25.03.1992.

2) The said O.S. No.409 of 1985 was maintained for specific performance of the contract for sale (Ex.A1) dated 16.06.1982 executed by one Matta Suranna, who is none other than husband of 1st defendant and father of defendants 2 to 5 of the suit, in favour of plaintiff and in respect of the plaint schedule property of Ac.0.62 cts in three items (Ac.0.20 cts + Ac.0.22 cts + Ac.0.20 cts) of Meda Linu Village, Kakinada Taluk, East Godavari District, which is for a consideration of Rs.6,200/- of which having paid advance of Rs.4,000/- and agreed to pay the balance of Rs.2,200/- at the time of registration of the sale deed and Matta Suranna agreed to execute regular sale deed pursuant to said agreement terms in favour of the plaintiff on or before 15.06.1983.

3) It is pursuant to the contract for sale, from notice (Ex.A2) dated 16.05.1983 issued during the life time of Suranna and the same was acknowledged by him on 31.05.1983 under Ex.A3 with no reply and from his death on 18.07.1984, later notice was issued to the defendants under Ex.A4 dated

08.05.1985 and the same was acknowledged by them under Exs.A5 and A6 (postal receipts, acknowledgements and return covers) with no reply. The suit was filed on 10.06.1985 not only for the main relief of specific performance but also the alternative relief for refund of the amount with interest.

4) The contest in the written statement of 1st defendant adopted by other defendants is in saying, during the Suranna's life time there were transactions of bricks between Suranna and one N.Venkatrao (brother-in-law of plaintiff) and said Venkata Rao obtained some thumb impressions of Suranna on some blank papers and also on some blank stamp papers and the defendants are suspecting that same were used in fabricating the suit sale agreement and alleged payment of advance and time stipulated for payment of balance etc., are the created terms after death of said Venkata Rao and Suranna and therefore, the suit sale agreement is a forged one and there is no cause of action to the suit against the defendants and they want to clear off the suit debt by installments and plaintiff is not entitled to the suit reliefs.

5) After closure of evidence and the matter was when at the arguments stage, from the defendants amended as allowed the name of Venkata Rao in the written statement, the rejoinder was filed by plaintiff saying said Venkata Rao, brother-in-law of plaintiff, since no more was unnecessarily dragged into the suit with a false defence and there was no any so-called bricks transaction for Venkata Rao was not even having any bricks business for the alleged obtaining of signatures and thumb

impressions on blank papers and blank stamp papers by Venkata Rao and to the suspected making use by plaintiff and said defence is false, the suit sale agreement is true, valid and binding having been duly entered by Suranna with plaintiff having received advance and executed the same with stipulations therein.

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

i) Whether the suit sale agreement dated 16.06.1982 is true, valid and supported by consideration?

ii) Whether the plaintiff is entitled for specific performance of suit sale agreement?

iii) whether the plaintiff is entitled for the alternative relief of refund of the amount claimed? and

iv) to what relief?

7) During the course of trial, on behalf of the plaintiffs, PWs.1 and 2 were examined, Exs.A1 to A9 were marked. On behalf of the defendants, DWs.1 to 2 were examined and no documents were marked. It is after hearing arguments, from the pleadings and evidence on record of sole plaintiff—PW.1 and son of the scribe of Ex.A1—PW.2 since scribe died, with reference to Exs.A1 to A9 which include Exs.A7 to A9 viz., Ex.A7—registered sale deed dated 03.08.1982 executed in favour of plaintiff by Puthala Satyanarayana and his son Saradhi and Ex.A8—source of title of vendor of Ex.A1 Suranna dated 12.07.1949 and Ex.A9—death certificate of N.Venkata Rao, brother-in-law of plaintiff

proving that he died way back on 05.11.1983 and from the oral evidence of 1st defendant—DW1 and 3rd defendant—DW.2, the trial Court from the plea of plaintiff in the suit vis-a-vis the evidence, observed that Suranna was postponing to the demands of plaintiff and after his death, on came to know the same when plaintiff demanded the defendants (LRs of Suranna), they were also despite legal notice and plaintiff is always ready and willing to perform his part of the contract and even ready to deposit the balance consideration into Court if at all to do so directed, and thereby entitled to the reliefs. The trial Court decree therefrom directs the defendants to execute sale deed in favour of the plaintiff in pursuance of the Ex.A1—sale agreement within two months therefrom and if the defendants fail to execute sale deed, the plaintiff can get the sale deed executed through Court. The alternative relief for refund of suit amount is dismissed.

8) Aggrieved by the decree and judgment passed by the trial Court supra, the defendants preferred A.S. No.63 of 1992 on various grounds and the same was allowed by setting aside the decree and judgment of the trial Court and by granting alternative relief of refund of the amount of Rs.6153/- with interest at 6% per annum from the date of the suit till realisation. It is impugning the same, the Second Appeal is maintained by the plaintiff.

9) The grounds urged in the Second Appeal against the findings given in the judgment of the lower appellate Court dated 25.03.1992 are that, from the evidence on record there is no denial of thumb impression of late Suranna on the sale

agreement. There is also no reply to the notices and PW.2—son of the scribe of Ex.A1 proved the handwriting of the scribe and there is only one attester to Ex.A1 and plaintiff explained saying said attester is the man of defendants, which the plaintiff could not examine. The non-examination of said attester thereby no way fatal when stated he is a man of defendants and for not even disputed the same. DW.1 (D1) in her evidence stated that her husband fallen due of Rs.4,000/- for bricks purchased from Venkata Rao and Venkata Rao obtained thumb impressions on blank papers and blank stamp papers and though said debt was discharged, those papers were not returned and stated there is no document for any bricks transaction of debtor or its alleged discharge. With different version what DW.2 stated was only Rs.3,000/- was paid out of the total amount for bricks purchased and still balance is due. From the evidence and inconsistent versions of defendants, the alleged purchase of bricks by Suranna from Venkata Rao is nothing but false and introduced in the written statement of defendants with a wrong surname as D.Venkata Rao and PW.1 has specifically stated that he has no brother-in-law by name D.Venkata Rao and it was after completion of trial, the cause title was amended as per the orders in I.A. No.3169 of 1991 as N.Venkata Rao and there is no evidence on record to believe that brother-in-law of PW.1—N.Venkata Rao had a bricks business, much less to show therefrom of Suranna purchased any bricks worth Rs.4,000/- from him. From the thumb impression on the suit sale agreement as that of Suranna

not in dispute and Suranna in his life time did not even reply to the notice and later even by the defendants to the notice and the version of defendants regarding Ex.A8—sale deed, which is source of title of Suranna allegedly given to Venkata Rao, there is no plea in the written statement to that effect and in the chief examination also they did not state all these specifically. Thereby, the observations of the lower appellate Court that even the defendants denied the execution of Ex.A1—sale agreement by Suranna and contended saying plaintiff's brother-in-law Venkat Rao used to do bricks business and Suranna purchased on credit and in that occasion, he obtained thumb impressions on blank stamp papers and might have been fabricated by plaintiff and filed the suit are untenable, so also with the untenable observations but for own evidence of PW.1—plaintiff, even attester was not examined despite Section 68 of the Evidence Act requires proof by examination of scribe and atleast one attester, though the sale agreement is not compulsory attestable document and in the present case, the scribe died and his son—PW.2 was examined to prove the hand writing of the scribe and PW.1 deposed of the other attester is the man of the defendants and it is not suggested to PW.1 by defendants of alleged attester is not known to Suranna and defendants. The lower appellate Court went wrong in saying as if there is no evidence to the plaintiff to succeed and mere non issuing reply to the notice got issued by plaintiff to Suranna and defendants not fatal or as if the trial Court erred in decreeing the suit and in so saying in dismissing

the appeal for the main relief of specific performance, but for to the alternative relief.

10) This Court on 17.10.2010 while admitting the Second Appeal, framed substantial questions of law are as follows:

- a) *Whether, on the facts and in the circumstances of the case, the Lower Appellate Court is right in reversing the judgment and decree of the trial court on the ground that since the attesor of Ex.A1 was not examined though available especially when Ex.A1 does not require by law to be attested and when the thumb impression of late Suranna on Ex.A1 was admitted by the defendants?*
- b) *Whether, on the facts and in the circumstances of the case, the judgment of the Lower Appellate Court is not vitiated for eschewing the relevant evidence on record with regard to proof of Ex.A1 especially the testimony of PWs.1 and 2, conduct of the parties and circumstances such as non-denial of thumb impression of late Suranna on Ex.A1, non-issuance of reply to Ex.A2 by late Suranna, the handing over of Ex.A8 by late Suranna to plaintiff, while reversing the Judgment and decree of the trial Court.*

11) Heard learned counsel for appellant and learned counsel for respondents, with reference to the substantial questions of law involved in the lis and from the grounds of Second appeal at length and perused the material on record.

12) From the above in answering the Second Appeal lis supra, the evidence on record is very clear of the suit sale agreement contains the thumb impressions of late Suranna,

husband of 1st defendant—DW.1 and father of other defendants 2 to 5 including DW.2 and there is no specific suggestion much less any plea in the written statement or even any evidence of DWs.1 and 2 of sale agreement does not bear the thumb impressions of Suranna. The sale agreement stamps are not in the name of any person either D.Venkata Rao or N.Venkata Rao. It is not even in the name of Suranna for creating in the name of any person as agreement holder to believe the theory introduced by the defendants of one alleged Venkata Rao obtained thumb impressions of Suranna on blank papers and blank stamp papers, without saying any date or month or year even, leave about, inconsistent versions of DW1 and DW.2 in this regard, besides they does not know surname of Venkata Rao even for at fag end cause amended the surname mentioned in the written statement and also there is no proof of so-called Venkata Rao did any bricks business and Suranna purchased any bricks on credit, apart from non-giving or reply to the plaintiffs legal notice by Suranna in his life time and later even by defendants having received, if there is any little truth in the written statement version to draw adverse inference as had there been truth they could not keep silence but could reply with any version.

13) Further a perusal of the sale agreement running into two pages on stamps worth Rs.3/- + Rs.2/-, dated 15.06.1982 purchased only in the name of plaintiff—Medisetti Bapu Rao from stamp vendor, Kakinada. It shows that the sale agreement dated 16.06.1982 was executed only on the very next day of the said

stamps purchased. The sale agreement clearly refers that Suranna has acquired the said property having purchased from Sri Brahmadu on 12.07.1949. Ex.A8 is the original sale deed, which is the source of title that also referred in the sale agreement. The original document as source of title given to the plaintiff also exhibited from custody that also substantiates a perusal of the thumb impressions show that it is after scribing the document, the writing is uniform in font size, alignment and distance. It is not showing with any adjustment by creation on any blank stamp papers after obtaining thumb impressions even to give any little credence to such defence. In fact, Ex.A9 shows N.Venkata Rao, brother-in-law of plaintiff died on 05.11.1983, to say if at all really Suranna in his lifetime purchased any bricks, as per the version propounded in the written statement of defendants for the first time apart from the period not even mentioned and not even showed that several thumb impressions were obtained by Venkata Rao and not even alleged discharge from the inconsistent versions of DWs.1 and 2 and in full or part of bricks worth Rs.4,000/- purchased due to Venkata Rao and there is nothing filed in proof of it and it is not known why Suranna kept quite without asking any receipt or even return of the voucher sale deed if at all given and also of alleged signed blank stamp papers. In fact, the sale agreement dated 16.06.1982 provides stipulation for specific performance by 15.06.1983 and the Ex.A2—notice of plaintiff sent to Suranna was dated 16.05.1983 covered by Ex.A3 acknowledgment of Suranna dated 31.05.1983 and it shows from

Ex.A3 that registered notice sent on 30.05.1983, which is well within the stipulated period for specific performance under Ex.A1—agreement and the same was received by Suranna on 31.05.1983. It is even during life time of alleged N.Venkata Rao, who died only on 05.11.1983 and if at all true, Suranna could give reply to plaintiff and legal notice to Venkata Rao for return of those, but for no truth in the defence.

14) Further a perusal of the thumb impression on Ex.A3—acknowledgement with the thumb impression on Ex.A1—suit sale agreement shows the circle with ridge marks are co-relating as of same person's even. Apart from it, Suranna did not issue any reply even he received the notice, as discussed supra and further the Ex.A3—acknowledgment with thumb impression on 31.05.1983 that of Suranna not even disputed though said Venkata Rao was alive by then and Suranna died long back subsequent to it on 18.07.1984.

15) Having alive for more than a year after receiving of the legal notice and even by then Venkata Rao alive, there was no notice to Venkata Rao much less reply to plaintiff, much less raised any dispute and there is no explanation in the written statement for said version of defendants, so also for their non-giving reply to Ex.A4—2nd notice of plaintiff, if at all there is any little truth to come out with that alleged version of bricks were purchased on credit by putting thumb impressions on blank stamp papers by Suranna to Venkat Rao and amounts paid and

kept quiet without asking for return of voucher sale deed or so-called blank papers.

16) Importantly as stated supra, Ex.A8 sale deed, is with the plaintiff, which substantiates that the contents of notice also mentions so also from Ex.A1—sale agreement and not disputed by Suranna in his lifetime and even with these facts Ex.A4 notice given to the defendants having been received by some of them, they also did not chose to deny the contents much less by any reply and there is no explanation even in the written statement of them in this regard so also regarding the voucher sale deed, which is a document of title of Suranna with plaintiff. Thus, as concluded by the trial Court that of non-giving of reply by Suranna in his life time but also after his death by the defendants before filing of the suit even were served, leads adverse inference to said defence of the defendants.

17) The lower appellate Court thereby went wrong in reversing the reasoned finding of the trial Court, though law is well settled that merely because some other view is possible, it is not a ground to interfere to brush aside the findings of the trial Court by 1st Appellate Court. In fact, as laid down in **Chaparla Hanumaiah vs Kavuri Samba Siva Rao**¹ and the Three Judge Bench expression of the Apex Court in **Rangappa vs Mohan**² at para No.15 that non-giving of reply leads to adverse inference to the subsequent version for the fact that had there been no any

¹ 1971 (1) An WR 65

² AIR 2010 SC 1898

truth in the contents of the notice, no prudent person would keep quiet without responding and disputing the same atleast. Thereby, the trial Court was right in commenting for non-giving of reply to the two notices by Suranna and the defendants respectively and the lower appellate Court to say same no way fatal is incorrect therefrom. So far as so-called theory in the written statement not propounded by any reply to the notices and even to substantiate otherwise, they did not explain any reasons for no reply in the written statement and further they did not produce any material even disputing by plaintiff saying his brother-in-law N.Venkata Rao and not D.Venkata Rao and he never did any bricks business and there were no transactions of bricks purchase or otherwise between Suranna and Venkata Rao, and theory of Venkata Rao obtained thumb impressions on blank stamp papers of Suranna is a false one. There is no any evidence adduced by defendants to say Venkata Rao was doing bricks business or atleast in which year and month and date, Suranna purchased any bricks from him on credit and if so, for what purpose he purchased and with what utilisation and with what proof.

18) These aspects were totally Thus, totally ignored by the lower appellate Court in wrongly reversing the reasoned findings of the trial Court and even ignored the factum of how voucher sale deed is with the plaintiff, so also the thumb impressions on stamp papers of Suranna but for the version of plaintiff is true so also substantiating from non-giving reply to the notices; Thus the suit

sale agreement is true, duly executed, valid and supported by consideration and is enforceable as the plaintiff is always ready and willing to perform his part of the contract that was postponing by Suranna and after him by the defendants in entitlement of the suit relief by plaintiff as concluded rightly by the trial Court.

19) The appellate Court's reversal findings are thus nothing but perverse and outcome of ill-appreciation of the evidence on record on facts and law and thereby are unsustainable. Further, the Lower Appellate Court totally went wrong in saying as if the suit sale agreement is compulsorily attestable document under Sections 67 to 69 of the Evidence Act and the attesor has to be examined in proof of it. The trial Court explained in this regard, having recorded the evidence and fresh in mind of the facts by observation of demnor and also in saying that plaintiff in the cross examination not chosen to examine the other attesor alive saying that he is the man of the defendants.

20) Once such is the case, the non examination of him cannot be found fault and if it is really not true atleast the defendants should have been asked to examine the attesor as a Court witness. It is suffice to say that the plaintiff could prove the Ex.A1 as true and that he is always ready and willing to perform his part of the contract covered by the duly executed sale agreement by examining the son of the scribe as PW.2, who could identify the writings of the scribe on the sale agreement dated 16.06.1982 and the stamps purchased for the same in the name of the plaintiff was only on the previous day, that too, at kakinada,

where it was executed on the next day and in pursuance of the recitals of the notice issued in the month of May, 1983 itself shows demanding Suranna to execute sale deed, which is with no reply by him and the version in the written statement and evidence of defendants subsequent to the death of plaintiff's brother-in-law—N.Venkata Rao that plaintiff might have been created a sale agreement and filed the suit is *per se* false for N.Venkata Rao shown died on 05.11.1983 from Ex.A9, whereas Ex.A2—notice was sent on 30.05.1983 and he same was acknowledged by Suranna on 31.05.1983, who was alive later for more than an year and even the notice issued was few months before death of Venkata Rao. Thereby it is suffice to say and also for the reason of the same is not a compulsorily attestable document, the non-examination of the attestors of the sale agreement by plaintiff is no way fatal. The plaintiff is thus entitled to the relief of specific performance, as rightly concluded by the trial Court and the reversal findings of the Lower Appellate Court are since outcome of ill-appreciation of facts and law and the same are liable to be set-aside from the substantial questions of law involved in the Second Appeal in answering the same.

21) Accordingly and in the result, the Second Appeal is allowed by setting aside the judgment and decree passed by the Lower Appellate Court and by restoring the trial Court's decree and judgment. However, for the balance sale consideration of Rs.2,200/- payable by the plaintiff is if not already paid or deposited now to pay with interest at 15% per annum from the

date of sale agreement till date of deposit in Court and on such deposit the plaintiff can seek for execution of sale deed, which is within two months from the date of receipt of this judgment. No order as to costs.

22) Consequently, miscellaneous petitions pending, if any, in this Second Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.06.01.2017
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