

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.403 of 2011

JUDGMENT:

The present Second Appeal is filed against judgment, dated 23.08.2010, in A.S.No.64 of 2001 passed by the learned I-Additional District Judge, Vizianagaram, whereby the judgment and decree dated 28.08.2000 in O.S.No.408 of 1996 on the file of the Junior Civil Judge, Kothavalasa, was confirmed.

Heard Sri N.Siva Reddy, learned counsel for the appellants, and Smt. A.Padma, learned counsel for the respondents.

Originally, the sole plaintiff *viz.*, Satyavarapu Narasimham filed the suit in O.S.No.408 of 1996 on the file of the Junior Civil Judge, Kothavalasa, against the sole defendant, requesting to grant the relief of specific performance by enforcing the agreement of sale, dated 22.08.1990, said to have executed by the sole defendant and also the relief of recovery of an amount of Rs.80,000/- towards damages and costs of the suit.

The case set out by the plaintiff was that out of total sale consideration of Rs.30,000/- agreed upon, an advance of Rs.25,000/- was paid and the balance sale consideration of Rs.5,000/- was required to be paid at the time of registration. He claimed that he had paid advance amount of Rs.25,000/- and thereafter, despite his readiness to pay the balance amount, the defendant on one pretext or other went on

postponing it and, thus, he was constrained to file the suit for specific performance of the agreement of sale.

The defendant, of course, resisted the claim of the plaintiff. The defendant denied execution of the agreement of sale and also the receipt of advance amount as alleged by the plaintiff. Her case was that due to ill-health, she shifted from Kothavalasa to Bheemasinghi. She also stated that she being a woman without male assistance, besides being innocent and illiterate, and the subject matter being valuable property, the alleged agreement of sale might have been created. Of course, she raised bar of limitation even to file the suit.

The trial Court, having framed three issues, also framed three additional issues and deliberated on the evidence let in by both parties, both, oral and documentary, and having recorded findings on each of the issues including the additional issues, discarded the plea of bar of limitation and held that the plaintiff was not entitled to a decree of specific performance. During trial, the agreement of sale was referred for opinion of an expert as to the thumb impressions occurring thereon in order to assess whether they do belong to the defendant or otherwise as the expert's opinion went against the plaintiff's case.

Aggrieved over the judgment and decree of the trial Court, the plaintiff carried the dispute to the appellate Court by filing appeal in A.S.No.64 of 2001. During pendency of the appeal, the sole plaintiff died and appellants 2 to 5 came on record as legatees of the deceased

sole plaintiff. In the same way, as the sole defendant died, her legal representative came on record as respondent No.2.

The learned I-Additional District Judge, Vizianagaram, by his judgment and decree dated 23.08.2010, affirmed the judgment and decree passed by the trial Court, having formulated the points for determination, numbering 5, contained in paragraph '13' of the judgment.

Learned counsel for the appellants now pleads that in view of concurrent findings recorded by the Courts below so far as negating the relief of specific performance, he is not pressing the same. However, he seeks to grant the alternative relief of refund of advance amount of Rs.25,000/- with interest. Thus, the request of the appellants is now limited only to the extent of refund of advance amount said to have paid by the deceased plaintiff.

Learned counsel for the respondents would resist even that request on the ground that there has been no such plea at all in the plaint.

During the course of arguments, since the copy of the plaint was not filed along with the material papers, when asked, the learned counsel for the appellants has supplied a copy of the plaint. A perusal of the same shows that the relief of refund of advance amount was not pleaded by the plaintiff. To grant the alternative relief of refund of advance amount, there must be necessarily a plea as per the provisions of the Specific Relief Act, which was introduced by way of amendment Act, 1964, and there has been a bar enacted in Section 22 (1) (b) of the Act

for granting refund of advance amount without there being a specific claim made there for. In such an event, this Court is precluded from even acceding to the request of refund of advance amount. Therefore, not only in view of the fact that there is no substantial question of law that would arise, but also in view of the fact that the concurrent findings recorded by the courts below do not suffer from any patent illegality, the Second Appeal fails.

Accordingly, the Second Appeal is dismissed. No order as to costs.

Miscellaneous applications, if any pending in the instant appeal, stand closed.

July 21, 2017
v v

A. SHANKAR NARAYANA, J

