

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

SECOND APPEAL No.141 of 2017

JUDGMENT:

This Second Appeal is arising out of the order dated 17.01.2017 passed in Appeal Suit No.27 of 2015 by the Special Judge for trial of cases under SCs & STs (POA) Act-cum-Additional District and Sessions Judge, Vizianagaram (for short, appellate Court), confirming the decree and judgment passed by the Court of Senior Civil Judge, Vizianagaram (for short, lower Court) dated 08.09.2015 in O.S.No.25 of 2005.

2. The appellants are the plaintiffs and the respondents are the defendants in the Original Suit O.S.No.25 of 2005. The parties are arrayed as they are referred in the Original Suit.

3. The brief facts of the case are that O.S.No.25 of 2005 was filed by the plaintiffs Joga Anasuya and Joga Venkata Siva Prasad for specific performance of Kharaarnama agreement dated 16.12.1987 against defendants 1 to 7.

4. The case of the plaintiffs is that, the first plaintiff and defendant Nos.1 to 5 are the children of Guntuboyina Rohinamma, who is wife of one Narayana of Korada Veedhi. Guntuboyina Rohinamma is the absolute owner of wet lands to an extent of Ac.3-50 cents in Sy.No.82, and dry land to an extent of Ac.9-50 cents in Sy.No.81 of Ayyannapeta Village, Vizianagaram Mandal and District.

One Joga Mutyam is the husband of the first plaintiff and father of the second plaintiff. Guntuboyina Rohinamma, with the help of Joga Mutyam, got an approved layout from Gram Panchayat for converting the lands into house sites, and the Gram Panchayat has passed a resolution dated 05.11.1974 to that effect, for selling the said lands as house sites. As her idea was not materialized, she had orally agreed to sell her wet and dry lands to plaintiffs 1 and 2 @ Rs.50,000/- and Rs.65,000/-, respectively, per acre and she had taken an advance amount of Rs.25,000/- from the plaintiffs on 25.10.1987 and handed over possession of the lands to the plaintiffs. She has also agreed to receive the balance of sale consideration in installments, and in the event of her death, defendants 1 to 5 and the first plaintiff, who are her children, are entitled to receive the balance sale consideration equally.

Rohinamma had executed a kharaarnama agreement in favour of the plaintiffs on 16.12.1987. On the request of the plaintiffs, Guntuboyina Rohinamma executed registered sale deeds in favour of third parties for plot

numbers 142, 143, 144, 148, 149, 160, 161, 164 and 165 to an extent of Ac.0-48 cents in Sy.No.81. She has also received another sum of Rs.13,000/- from the plaintiffs and made an endorsement to that effect on the kharaarnama dated 16.12.1987. The original approved layout plan was handed over to the plaintiffs by Guntuboyina Rohinamma and subsequently she died on 23.08.2000.

Since she executed kharaarnama agreement in favour of the plaintiffs, they have asked the defendants to execute sale deeds in their favour in pursuance of kharaarnama agreement. The defendants admitted their liability to execute the sale deeds in favour of the plaintiffs, but they have procrastinated execution on some pretext or other.

The plaintiffs got issued a legal notice 26.12.2014 to defendants 1 to 5 demanding them for execution of registered sale deeds. The defendants, having received the said notice, have not responded, but filed a caveat petition with false averments, claiming their rights through an alleged Will Deed said to have been executed by Guntuboyina Rohinamma which is a fabricated document.

The plaintiffs have been expressing their readiness and willingness to perform their part of contract, but defendant 1 to 5 have not complied their obligations. After filing the suit, defendants 1 to 5, in collusion with defendant No.6, brought into existence an Agreement of Sale to defeat the decree that may be passed in favour of the plaintiffs.

5. On behalf of defendants 1 to 4 and 5, defendant No.3 has filed his written statement stating that Guntuboyina Rohinamma has never executed kharaarnama agreement in favour of the plaintiffs and that it was a fabricated document. Guntuboyina Rohinamma has purchased the scheduled properties with her own funds and she has been in physical possession and enjoyment of the scheduled properties till her death.

It is further stated that she had executed a registered Will Deed dated 28.03.1988 bequeathing all her properties upon all her children without confirming the alleged kharaarnama agreement. Subsequently, she had cancelled the Will Deed on 04.05.1995 due to the harassment of the first plaintiff and her husband.

It is further stated that the first plaintiff and her husband obtained signatures of Guntuboyina Rohinamma on several blank papers forcibly. Guntuboyina Rohinamma had executed her last Will which was registered on 09.08.1989 bequeathing scheduled properties to defendant Nos.1 to 5 and another by excluding the first plaintiff. Subsequent to the execution of said Will, she died on 23.08.2000. The beneficiaries of the Will have acquired their shares of property and they have been enjoying the same by paying the requisite fee and taxes to the authorities concerned. The Revenue Department had also

issued title deeds and passbooks in favour of the beneficiaries and their physical possession was also noted in the revenue records. Since the value of the scheduled properties has increased, the plaintiff and Mutyam started harassing the defendants for allotment of some portion in the scheduled properties, but they have refused to do so. The first plaintiff, being an influential person and having political background, had tried to take possession of defendants 1 to 5. Defendants 1 to 5 have executed sale agreement in favour of third parties prior to filing the suit. The plaintiffs have never been in possession and enjoyment of the scheduled properties and they have not acquired any rights in respect of the scheduled properties through alleged kharaarnama agreement. It is further stated that the suit is barred by limitation and therefore sought for dismissal of the suit.

6. Defendant No.6 had filed a separate written statement admitting the ownership of Guntuboyina Rohinamma over an extent of Ac.9-50 cents of dry land in Sy.No.81 and Ac.3-50 cents in Sy.No.82 of Iyyannapeta Village. It is stated that the kharaarnama agreement is barred by limitation. The Gram Panchayat had no right for approving the layout without the sanction of HUDA, Visakhapatnam.

The will executed by Guntuboyina Rohinamma is not a concocted and fabricated document. The plaint scheduled properties which are in the occupation of defendant No.6 is worth of Rs.35,90,400/-, as such, there is no pecuniary jurisdiction for the trial Court over the subject matter.

Defendant No.6 agreed to purchase an extent of Ac.14-96 cents in Sy.Nos.81/1, 81/3 and 82 from defendants 1 to 5 and G.Ramayamma through a sale agreement dated 15.12.2004 for Rs.29,92,000/- @ Rs.2 lakhs per acre. After entering into the said agreement of sale, the executants have not executed the sale deeds in favour of defendant No.6. Therefore, defendant No.6 had filed O.S.No.10 of 2005 on the file of the Court of District Judge, Vizianagaram, and the said suit was decreed in his favour, but they did not execute registered sale deed. Therefore, the defendant No.6 had filed E.P.No.12 of 2006 on the file of Additional District judge, Vizianagaram, and a registered sale deed bearing No.4658/2007 was executed on 03.05.2007 and possession of the land was also delivered to defendant No.6. Since then, defendant No.6 had been in possession and enjoyment of the said land.

It is further stated that unless the decree passed in O.S.No.10 of 2005 by the District Judge, Vizianagaram, is set aside, no relief can be sought against defendant No.6. Therefore, defendant No.6 sought for dismissal of the suit.

7. Defendant No.7 has remained ex parte.

8. On behalf of the plaintiffs, PWs.1 to 3 were examined and documents Exs.A.1 to A.18 were marked. On behalf of the defendants, DWs.1 and 2 were examined and documents Exs.B.1 to B.16 were marked.

9. The trial Court, basing on the pleadings of the parties, had framed issue Nos.1 to 7 and though it answered issues 2 and 3 in favour of the plaintiffs, it answered issues 1, 4 to 7 in favour of the defendants and, accordingly, dismissed the suit with costs.

10. On appeal by the plaintiffs, the lower appellate Court has framed three points for consideration in the appeal; with regard to validity of the sale agreement-Ex.A1, its limitation and as to whether defendant No.6 became the absolute owner and possessor of plaintiff schedule properties in furtherance of proceedings in E.P.No.12 of 2006 on the file of Additional District Judge, Vizianagaram.

11. The lower appellate Court on consideration of the evidence of witnesses PWs.1 to 3 and documents Exs.A1 to A18, so also the evidence of witnesses DWs.1 and 2 and documents Exs.B1 to B16, has held that the burden of proof is on the plaintiffs to prove that Ex.A1-sale agreement was executed by Rohinamma, and held that the plaintiffs failed to prove that Ex.A1 was a true and valid document executed by Guntaboina Rohinamma, and that they were willing to perform their part of the contract, and that by virtue of the document Ex.A1, they have been in possession and enjoyment of the property; and dismissed the appeal thereby confirming the judgment and decree passed by the trial Court. Aggrieved by the said order and decree dated 17.01.2017 passed in A.S.No.27 of 2015, the unsuccessful plaintiffs filed this Second Appeal under Section 100 of the Code of Civil Procedure.

12. The point for consideration in this Second Appeal is whether the suit of specific performance of Agreement of Sale is barred by limitation as per Article 54 of Limitation Act, 1963.

13. Heard the arguments of Sri Vedula Venkataramana, learned senior counsel appearing on behalf of the appellants; and Sri M.R.S. Srinivas, learned counsel for the respondents 1 to 5; and Sri C.V.R. Rudra Prasad, learned counsel for respondent No.6-caveator. At the request of the learned counsel appearing for the parties, the appeal is heard on merits at the stage of admission.

14. Though several grounds were raised in the appeal, Sri Vedula Venkataramana, learned senior counsel for the appellants, mainly pressed on the Ground No.5 pertaining to limitation which is reproduced below:

“5. Whether the courts below could have dismissed the suit on the ground of limitation when the agreement of sale has not stipulated any particular date for payment of balance consideration amount, which means that time is not the essence of contract and when the defendants have never demanded the balance of consideration amount and in view of Article 54 of the Limitation Act, 1963 which lays down that the limitation for a suit for specific performance is 3 years from the date of refusal to perform the agreement of sale?

15. The learned senior counsel for appellants submitted arguments on the limited issue of limitation and contended that the Agreement of Sale has no stipulation of any particular date for payment of balance of sale consideration, which means that the time is not an essence of contract. It is further argued that when the defendants have never demanded the balance of sale consideration, the limitation is three years from the date of refusal to perform their part of contract by the defendants.

16. The learned counsel for the respondents contended that both the Courts below held that the suit is barred by limitation as such there are no valid grounds to entertain the Second Appeal.

17. As a matter of fact, the point of limitation is a mixed question of fact and law. The limitation has to be decided basing on the evidence on record. Article 54 of the Limitation Act, 1963, for specific performance of contract, provides the period of limitation as three years, and the time from which the period of limitation begins to run is the date fixed for the performance or, if no such date is fixed, when the plaintiff has noticed that performance is refused.

18. In this regard, it is appropriate to refer to the judgment of the trial Court. The trial Court has re-casted the issues and Issue No.4 relates to the limitation aspect. The trial Court has discussed the issue on limitation in paragraph No.33 of its judgment and observed that the plaintiffs did not proceed against Guntaboina Rohinamma during her lifetime or against her legal representatives within three years from the date of rejection of their claim by Rohinamma though PW1 had admitted that she had declined to register the property in pursuance of Khararnama agreement Ex.A1 and that Rohinamma denied her obligation covered under the agreement during her life time. Therefore, the trial

Court had firmly come to the conclusion that the suit agreement was barred by limitation and answered the issue against the plaintiffs.

19. It is appropriate to refer to the findings of the lower appellate Court with regard to the issue on limitation in paragraph 23 of the impugned judgment which reads as under:

“The facts of the above cases are not applicable to this specific case in view of my findings that Ex.A1 is not genuine and not proved and it is brought into existence and the plaintiff did not come to the court with clean hands while seeking equitable relief of specific performance and set up false plea by suppressing facts, without examining crucial witness 1st plaintiff, who got better knowledge than P.W.1 and plaintiffs failed to take any action even though Rohinamma went on to execute registered sale deeds from time to time in favour of 3rd parties indicating that she is not complying with her part of contract and therefore, question of plaintiff waiting during her life time for 13 years and filing suit against D.1 to D.4 after 4 years of her death do not save limitation.”

20. It is the case of plaintiffs that Ex.A1-sale agreement was executed by Guntuboina Rohinamma in favour of the plaintiffs. It is pertinent to note that Guntuboina Rohinamma has been executing registered sale deeds in favour of 3rd parties in respect of plots sold to them in pursuance of agreement of sale-Ex.A1. It is obvious that the plaintiffs have waited during her lifetime for 13 years and filed the suit against the defendants 1 to 4, four years after the death of Rohinamma.

21. The lower appellate Court while referring to the decisions in Achhar Singh v. Smt. Gurdev Kaur and Ors.¹, Smt. Dilboo (Dead) by LRs. V. Smt. Dhanraji (Dead) & Ors.², Manjunath Anandappa Urf. Shivappa hanasi v. Tammanasa & Ors.³, and Pushparani S. Sundaram and Ors., v. Pauline Manomani James (Deceased) and Ors.⁴, relied upon by the advocate for defendant No.6, observed as under:

“These decisions support the case of defendants to some extent. In the present case, the plaintiffs miserably failed to prove that they are willing to perform their part of the

¹ MANU/PH/1709/2001

² 2000 SAR (Civil) 833

³ AIR 2003 SC 1391

⁴ (2002) 9 SCC 582

contract. In fact no evidence is led to prove the same. On the other hand, they set up false plea to cover up their laches. When a false allegation made by a party it is not entitled to equitable relief of specific performance. The plaintiffs failed to prove Ex.A1 is true and valid, much-less plaintiffs are in possession and enjoyment of the property and therefore, they are not entitled to claim and relief as rightly observed by the Lower Court. The Lower Court gave extensive reasons in its findings. There are no grounds to interfere with the decree and judgment of the Lower Court. Points answered accordingly.”

22. It is pertinent to note that though the plaintiffs had knowledge about Guntuboina Rohinamma executing and registering the sale deeds in favour of 3rd parties, they never sought for enforcement of the agreement of sale-Ex.A1. Plaintiffs 1 and 2 alleged to be the holders of Ex.A1 had knowledge that Guntuboina Rohinamma has been executing registered sale deeds in favour of 3rd parties but the plaintiffs have not demanded her to execute the registered sale deed in their favour during her lifetime for about 13 years. It is also the finding of the Courts below that no evidence is adduced by the plaintiffs to prove that they were willing to perform their part of the contract and moreover they have set up a false plea to cover up their laches. The findings of the Courts below do not require any interference, and the second appeal is liable to be dismissed.

23. The learned Senior Civil Judge in O.S.No.25 of 2005 and learned District Judge in A.S.No.27 of 2015 have considered all the aspects and passed detailed judgments. The two Courts below have rendered concurrent findings on all the aspects.

24. On perusal of the judgments of both the Courts, and considering the arguments of both the learned counsel, it is obvious that the suit is barred by limitation. Though it is contended that time is not essence of contract, in such cases, the time prescribed for filing a suit for specific performance is within three years from the date of refusal to perform their part of the contract by the defendants.

25. The trial Court has given a categorical finding in this regard stating that Article 54 of the Limitation Act, 1963, prescribes limitation of three years from the date fixed for the performance of contract and if no such date is fixed, when the plaintiff has noticed that performance is refused. There is no specific period

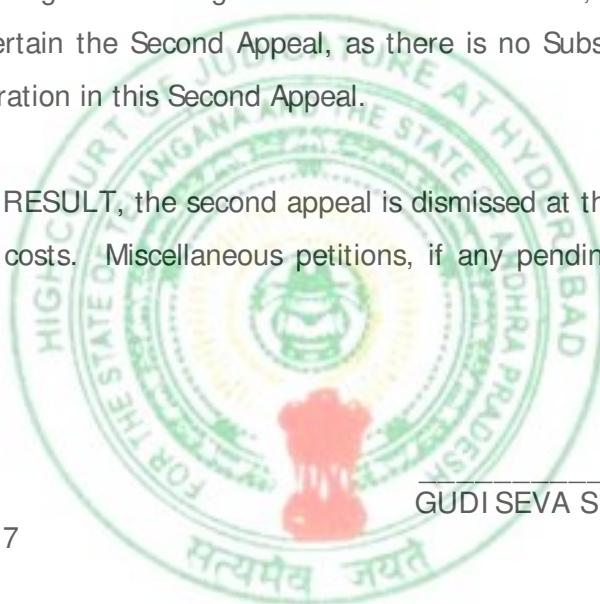
of limitation mentioned in Ex.A1-Agreement of Sale. Therefore, the limitation has to be reckoned from the date of denial of the claim of plaintiffs. The plaintiffs did not proceed against Rohinamma during her lifetime or against her legal representatives within three years from the date of refusal of performance on their part of contract of Ex.A1 by Rohinamma. In this regard, the appellate Court held that the plaintiffs failed to prove that they are willing to perform their part of contract, and there is also no evidence to prove the said fact. Therefore, the appellate Court observed that the plaintiffs have set up a false plea to cover up their laches and therefore, they are not entitled to equitable relief of specific performance. On consideration of these facts, the plaintiffs failed to prove Ex.A1 and they have set up a false plea to cover up their laches for explaining the delay. The appellate Court concurred with the findings of the trial Court and dismissed the appeal, confirming the judgment of the lower Court. In view of the clear and categorical findings of both the Court below, there are no valid grounds to entertain the Second Appeal, as there is no Substantial Question of Law for consideration in this Second Appeal.

26. IN THE RESULT, the second appeal is dismissed at the admission stage. No order as to costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

11th August, 2017

KSM

GUDI SEVA SHYAM PRASAD, J



THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD



SECOND APPEAL No. 141 of 2017

11th August, 2017

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