

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.1200 OF 2012

JUDGMENT:

The present Second Appeal is filed questioning the judgment and decree dated 25.4.2011 in A.S. No.254 of 2006 on the file of XIII-Additional District Judge (FTC), Krishna at Vijayawada.

2. The plaintiff has been throughout unsuccessful and, incidentally, the appellant in the present Second Appeal.

3. He sought for enforcement of oral agreement of sale basing on receipt dated 12.3.1995 said to have issued by the defendant for payment of Rs.4,000/- as advance amount out of a total consideration of Rs.4,23,000/- for purchase of Ac.0-45 cents of land. Admittedly, there was no written agreement of sale entered into and it is stated that the suit extent belonged to the defendant and family members, as it is joint family property, and the defendant promised to see that joint family members would execute a regular Agreement of sale in favour of the plaintiff. It is also agreed between the parties within a week therefrom substantial amount of balance of sale consideration was to be paid by the plaintiff. It appears that it was not abided by the plaintiff, even other terms would indicate as per their understanding the entire balance amount had to be paid in two installments by the end of December, 1995. It appears that the said condition was breached by the plaintiff. Thereafter, the defendant had issued notice annexing thereto the demand draft for Rs.4,000/- on

13.5.1995. Acknowledgement in token of receipt of the same by the plaintiff is also filed by the defendant and marked as Ex.B1, one of the exhibits, dated 22.5.1995. This is the background in the suit.

4. The plaintiff filed O.S. No.154 of 2006 on the file of IV-Additional Senior Civil Judge (FTC), Vijayawada, seeking enforcement of oral agreement of sale, having earlier issued two notices in Exs.A2 and A4, dated 31.10.1996 and 2.3.1998 respectively. It is clear from the record, pleadings and evidence there was no further move by the plaintiff in the direction of demanding the defendant to execute regular Sale Deed pursuant to oral agreement dated 12.3.1995 nor was there anything in regard to return of the demand draft on 13.5.1995 through which Rs.4,000/- paid as advance was sent back to the plaintiff.

5. In the said context, the learned IV-Additional Senior Civil Judge (FTC), Vijayawada, having framed the relevant issues as many as six in number touching the material allegations and specific denials while recording the findings against the plaintiff, dismissed the suit by judgment and decree dated 6.7.2006.

6. On merits, P.Ws.1 & 2 were examined by the plaintiff, besides marking exhibits A1 to A5, whereas D.Ws.1 & 2 were examined and Exs.B1 to B3 documents were marked on behalf of the defendant to substantiate their respective cases in the Original Suit.

7. Aggrieved over the same, when the plaintiff preferred the aforesaid Appeal (A.S. No.254 of 2006), the learned XIII-Additional District Judge (FTC), Krishna at Vijayawada, having formulated points 1 to 12 in paragraph-6 satisfying the mandatory requirement of Order 41 Rule 31 of C.P.C. on reappraisal of evidence on record, both, oral and documentary let in by both sides tendered findings against the appellants and favouring the defendants, and, consequently, dismissed the appeal by his judgment and decree dated 25.4.2011.

8. Now, the plaintiff having got aggrieved, preferred the Second Appeal agitating the grounds and substantial question of law in paragraph-9.

9. Heard Smt. Nimmagadda Revathi, for Sri Nimmagadda Satyanarayana, the learned counsel for the appellant. No notices were issued for the reason there is no substantial question of law that would arise in the facts and circumstances of the case.

10. Even from the arguments advanced by the learned counsel for the appellant, it is clear that having got issued second notice in Ex.A4 on 2.3.1998, irrespective of the legal effect of Ex.B3, the relief sought for by the plaintiff was clearly barred by limitation. The period of limitation provided is three years and the plaint was presented in the year 2006.

11. It is true, the plaint was presented on 12.3.1998, as could be seen from the entry in the decree passed in original suit, but the fact remains, when once the defendant sent back the demand draft on 12.5.1995, attributing breach of the terms and conditions agreed upon by the plaintiff and the plaintiff maintaining meaningful silence till 31.10.1996 on which date he has got issued notice which was after a lapse of about one year five months, is a circumstance or probability which improbabilises the case set out by the plaintiff. Of course, even the circumstance that the second notice also followed slightly less than 1½ years later itself would indicate that the plaintiff was never ready and willing to perform his part of contract under the oral agreement.

12. Viewed in that context, certainly, findings recorded by the trial Court as well as the Appellate Court amounting to concurrent findings on the questions of fact and no perversity of findings is to be found nor being projected either in the grounds of appeal or in the arguments tendered by the learned counsel. Therefore, it is a case where interference is unwarranted.

13. It is no doubt true that one of the substantial questions of law is touching refusal to receive and mark so called additional evidence filed by the plaintiff under Order 41 Rule 27 of C.P.C. The mere fact that the plaintiff did not encash the demand draft is not a ground to view the *bona fides* on the part of the plaintiff for the reason the delay of more than one year four months in issuing the first notice

under Ex.A2, dated 31.10.1996, itself would completely belie the stand taken by the plaintiff.

14. Therefore, the present Second Appeal is liable to be dismissed and, accordingly, dismissed at the admission stage. No order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Second Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 18.07.2017
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