

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.1171 of 1999

JUDGMENT:

The unsuccessful defendant filed this Second Appeal aggrieved by the judgment and decree dated 15.09.1999 in A.S.No.18 of 1998 passed by the Senior Civil Judge, Rajam confirming the judgment and decree dated 18.08.1997 in O.S.No.77 of 1992 passed by the District Munsif, Rajam.

2) The parties in this appeal are referred as they were arrayed before the Trial Court.

3) The facts in nutshell are thus:

a) The plaintiff's case is that defendant being the manager of joint family agreed to sell the plaint schedule property to him for an amount of Rs.8,000/- for discharging the sundry debts and also for family requirements, executed Ex.A1—agreement of sale dated 26.06.1991 by receiving Rs.6,250/- towards advance and agreed to execute a registered sale deed within one year on receipt of balance sale consideration of Rs.1,750/- that he is always ready and willing to perform his part of contract; he requested the defendant several times to receive the balance sale consideration and execute a registered sale deed, but the defendant postponing the same on one pretext or the other; hence, Ex.A2—notice dated 27.06.1992 was issued requesting the defendant to execute a registered sale deed; defendant got issued Ex.A3—reply notice dated 08.07.1992 with all false allegations.

Hence, the suit.

b) Defendant filed written statement contending that he never agreed to sell the suit property to the plaintiff or to any body and he had not at all executed the alleged agreement to sell, which is a rank forgery. He denied receipt of Rs.6,250/- towards advance. He also contended that his major children are also having share in the plaint schedule property and hence the plaintiff is not entitled to decree for specific performance. He prayed to dismiss the suit.

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

1. *Whether the suit agreement is a forged document?*
2. *Whether the plaintiff is entitled for specific performance?*
3. *Whether the plaintiff is entitled for refund of Rs.8,000/- with a charge over the property?*
4. *To what relief the plaintiff is entitled to?*

d) During trial, PWs.1 to 4 were examined and Exs.A1 to A6 were marked on behalf of plaintiff. On the other hand, DWs.1 to 3 were examined but no documents were marked on behalf of defendant.

e) On appreciation of facts and evidence, the trial Court decreed the suit on the observation that there is no evidence to show that defendant got properties and he had no necessity to sell the plaint schedule property to the plaintiff and therefore there is every possibility for him to agree to sell the plaint schedule property to the plaintiff under Ex.A1 and on the other hand, he failed to prove that the suit agreement is a forged document. The trial Court also observed that defendant failed to perform his part of

contract to execute the registered sale deed in favour of plaintiff. Accordingly the trial Court decreed the suit with costs.

f) Aggrieved, the defendant filed A.S.No.18 of 1998 before the Senior Civil Judge, Rajam challenging the judgment of the Trial Court. After hearing both sides, the first appellate Court dismissed the appeal on 15.09.1999 by confirming the judgment and decree passed by the trial Court.

Hence, the instant Second Appeal by defendant.

4) While admitting the instant appeal, this Court framed the following substantial questions of law for consideration:

- 1) *Whether the judgment and decree of the lower Appellate Court is not vitiated for not framing proper issues as contemplated under Order 41 Rule 33 CPC?*
- 2) *Whether the respondent is entitled for relief of specific performance when the attesting witness clearly deposed that no consideration passed on between the parties, such an agreement is unenforceable agreement?*
- 3) *Whether Courts below are justified in decreeing the suit for specific performance without giving any finding that the sale transaction is for the benefit of joint family in the light of specific objection raised by the appellant that even though he was karth of the joint family, there was a major son at that time?*
- 4) *Whether Courts below are justified in decreeing the suit for specific performance in respect of the joint family property when the other co-sharers were not made as parties to the suit and whether the suit is not liable to be dismissed for non-joinder of necessary parties?*

5) Heard arguments of Sri M.V.S.Suresh Kumar, learned counsel for appellant and Sri Srinivasa Rao, learned counsel for respondent.

6) **Substantial Question No.1:** It is contended on behalf of appellant that the trial Court has not framed proper issues and hence the judgments of the Courts below were vitiated. Before trial Court, the defendant took a specific plea that Ex.A1—agreement to sell is a rank forgery and he has not executed the same and he did not receive the part of sale consideration as mentioned in the plaint. He, however, admitted that suit property is the joint family property and he is Kartha of joint family. In that view of the matter, the trial Court framed four issues as mentioned in para-3(c) of this judgment. I find absolutely no incorrectness in the issues framed by the trial Court. It shall be reminded that material propositions of facts or law propounded by one party and denied by the other party will be crystalized in the form of an issue to guide the Courts for trial. Since, the issues framed are absolutely correct, I find no merit in the argument of the appellant.

This question is answered accordingly.

7) **Substantial Question No.2:** PW2 is one of the attestors of Ex.A1—agreement to sell. In chief examination he stated that about six years prior to his deposition the defendant executed agreement to sell in favour of plaintiff in his presence. This witness and one Raja Trinadha Rao attested Ex.A1 and one Satyam master scribed the document. He further stated defendant signed Ex.A1 in their presence. In the cross-examination he, however, stated that in his presence no consideration was passed under

Ex.A1, but he stated that he has seen the defendant signing on Ex.A1. Basing on the aforesaid evidence, the appellant contested before the Courts below and also this Court that the plaintiff failed to prove passing of consideration and hence he does not deserve decree for specific performance. This argument does not hold water. It is not the case of defendant that he executed the agreement but consideration was not passed. On the other hand, his plea as stated earlier is one of total denial of Ex.A1 i.e. rank forgery. Regarding execution of Ex.A1 by the defendants, PWs.1 and 2 have clearly deposed to the effect that defendant executed the agreement to sell and signed on it. Even the stamp paper for the document was also purchased in his name. PW1 clearly deposed that out of sale consideration of Rs.8,000/-, the defendant received advance of Rs.6,250/-. In the light of weighty evidence proving execution of agreement to sell and also passing of consideration, the stray sentence of PW2 to the effect that no consideration was passed in his presence need not be given much importance. Even otherwise, when the execution of Ex.A1—agreement is clinchingly established, its contents including passing of consideration, shall be deemed to have been established as is held in ***Govula Ramakistiah v. Yerram yellappa***¹. In the said decision a Division Bench of this Court held thus:

“16. The next question that arises is whether this document is for consideration. What is contended on behalf of the appellant is that admittedly on the date of the document no cash amount was paid, the recital in the document clearly shows that after the settlement of accounts of Sureshchandra & Co., an amount of Rs. 18001 was

¹ AIR 1959 AP 653

found due, and as the plaintiff-respondent had not produced any accounts or any evidence and proved that consideration was given to the defendant-appellant, he cannot get a decree for the same. There is no force in this contention. The defendant-appellant has denied that he ever executed this document.

In such a case, the plaintiff/respondent had only to prove the execution of the document and once the execution is proved, the contents follow. As discussed above, in our opinion, the execution of the document is proved. In this connection, we may refer to the cases of Udebhan Zangoji v Vittoba Ukandaji. AIR 1939 Nag 78, Yadhava Rao v. Maoji's Baba (decided by the then Judicial Committee). 34 Decan LR 95 and Ratanlal v. Koshla 'Full Bench case of the erstwhile Hyderabad High Court) 39 Dn LR 183."

Therefore, there is no substance in the argument of appellant.

This question is answered against the appellant.

8) **Substantial Question Nos.3 and 4:** These two questions are taken up together as they are more or less inter-related. It is the plea of defendant in his written statement that he is having a major son, two minor sons and two daughters and his daughters are unmarried and they are also having share in the suit house. It is pertinent to note that it is not in dispute that he is the Kartha of joint family. His only plea is that there are other coparceners in respect of suit schedule property. It is trite principle of Hindu Law that a Kartha of joint family can alienate joint family property for its welfare. In the instant case, in Ex.A1 it is mentioned that the defendant agreed to sell the suit property for discharging the sundry debts and for his family expenses. Reiterating the same fact, PW1 in his evidence stated that defendant took an advance of Rs.6,250/- out of sale consideration of Rs.8,000/- for his family expenses i.e. for education of

his children and to discharge the sundry debts. Whereas the defendant in his cross-examination stated that he is manager of the family and his sons and daughters are living with him jointly; his elder daughter and son studied M.A. and his elder daughter completed her M.Phil and doing job since three years. Thus, from his evidence it is clear that he provided good education to his children for which he requires money which fact probablises that defendant agreed to sell the suit property for welfare of the joint family i.e. education of his children and to meet the other family expenses. When the alienation is for welfare of joint family, Kartha alone can do so. Considering all these aspects, the Courts below rightly held that suit transaction is for the benefit of joint family. I find no factual or legal infirmity in the findings given by the Courts below.

These questions are answered accordingly.

9) As a result, the Second Appeal is dismissed by confirming the judgment of the Appellate Court in A.S.No.18 of 1998. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 28.12.2017
Murthy