

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.1810 of 2001

JUDGMENT:

Assailing the judgment and decree, dated 4.1.2001, in a regular Original Suit No.597 of 1994 on the file of the I-Additional Senior Civil Judge, Visakhapatnam, whereby and whereunder the prayer for recovery of Rs.1,60,844/- towards compensation on account of loss said to have sustained by the appellant was dismissed, the present Appeal is preferred under Section 96 of the Civil Procedure Code, 1908 (for short, 'the Code').

2. Substantially, the case set out by the plaintiff is that he was owning and possessing an extent of 620.60 sq. yards of house plot bearing Plot Nos.21 and 22 in L.P. 17/71 in Sy. No.50/5 of Madhavadhara Village; he constructed compound wall by spending Rs.30,000/-; for levelling the land he spent Rs.10,000/-; for digging a well spent Rs.2,000/- and thereafter, he sought for approval of the plan for construction of a house thereon by making an application, dated 3.8.1990, by paying the requisite fee of Rs.3,870/-. He approached VUDA as directed by the Municipality, Visakhapatnam, and, after some sort of correspondence between the parties, it came out that there was a proposal of laying 60 feet wide road through his plots. Ultimately, there was proposal to give the said plots by the plaintiff to the defendant, who, in turn would allot 624 sq. yards and the same

was fructified and, accordingly, the plaintiff was given a plot of 624 sq. yards which has got access on two sides and crystallized into execution of Exchange Deed on 8.2.1993. The plaintiff sought for every pie he has spent on the said plot, including registration fee, stamp duty, etc., making a claim of Rs.1,60,844/-. Of course, irrelevant details are unnecessary to advert.

3. The claim was resisted by the respondent/defendant giving vivid details and stating that the claim is not maintainable, sought to dismiss the suit with costs, and necessary details have been narrated in the written statement, which are unnecessary to refer to.

4. The learned Senior Civil Judge settled the following issues basing on the pleadings.

“(1) Whether the plaintiff is entitled for recovery of an amount of Rs.1,60,844/- with interest at 24% p.a.?

(2) Whether the plaintiff is entitled for mandatory injunction directing the defendants to return the original Exchange Deed, dated 9.2.1993?

(3) Whether the plaintiff is entitled for mandatory injunction directing the defendants to remove the electricity power line running across the plaintiff schedule property?

(4) Whether the plaintiff is entitled for recovery of damages of Rs.1,000/- per month till the time of removal of electricity power line?

(5) Whether the suit is bad for want of notice under Section 685 of the HMC Act?

(6) To what relief?”

5. On Issue No.1, elaborately discussing the documentary evidence Exs.A1 to A14 in the light of various claims made by the plaintiff, learned Senior Civil Judge recorded that there were no conditions stipulated or undertaking given by the defendant to pay any amount under various counts complained by the plaintiff. Each of them were discussed under various paragraphs upto paragraph-20. The sum and substance in arriving at the conclusion on Issue No.1 has been that there were no terms and conditions incorporated in Exchange Deed obligating the defendant to pay the amounts sought for by the plaintiff in the plaint, thereby held Issue No.1 against the plaintiff.

6. On Issue No.2, observing that during pendency of suit, original Exchange Deed was handed over to the plaintiff, though, it was not tendered earlier to filing of the suit, recorded a finding that the said issue becomes infructuous and, accordingly, answered.

7. On Issue No.3 also, the learned Senior Civil Judge held that it has become infructuous by recording reasons.

8. On Issue No.4 as to claim for damages at the rate of Rs.1,000/- per month from the date of the suit till the date of removal of electricity power lines, the learned Senior Civil Judge opined that in view of the finding recorded on Issue No.1, the plaintiff is not entitled to any damages and thereby recorded finding against the plaintiff.

9. On Issue No.5, the learned Senior Civil Judge satisfied himself that Ex.A18 – Notice, dated 10.4.1994 – substantially complies with the requirements of Section 685 of HMC Act, held in favour of the plaintiff recording a finding that the suit was not bad for want of notice under Section 685 of HMC Act.

10. On Issue No.6, weighing the findings recorded on Issues 1 to 4, held that the plaintiff is only entitled to Rs.13,218/- with subsequent interest at 12% p.a. from the date of suit till realization which is towards half share of stamp duty and registration expenses which the defendant was obligated to pay on Exchange Deed.

11. Aggrieved over the same, the present Appeal is preferred contending in the grounds of appeal that the learned Senior Civil Judge has not properly evaluated the evidence on proper lines. According to the appellant, an amount of Rs.40,000/- incurred for construction of compound wall is corroborated through the evidence of P.Ws.2 and 3 and, therefore, the Court below ought not to have rejected it.

12. On Ex.A14 – Exchange Deed – the appellant would agitate that the learned trial Court ought to have directed to pay entire amount of registration fee and stamp duty, as it was not the plaintiff, who initiated the issue relating to exchange, and, on the other hand, he was compelled to accept the terms of the defendant.

13. The appellant also agitates that the Court below ought to have considered the damages plea of Rs.1,000/- per month for failure to remove the electricity lines in view of the deferred act of shifting and causing mental agony to him.

14. Heard Sri Challa Gunarajan, the learned counsel for the appellant. Perused the evidence both, oral and documentary, let in by the appellant. In fact, the respondent/defendant has not adduced any evidence.

15. The reasons assigned in recording findings on each of the Issues by the Court below have been mentioned in the above. While narrating the view taken by the learned Senior Civil Judge, so far as the construction of compound wall and recovery of expenses incurred at Rs.40,000/- is concerned, it is an admitted fact that no prior permission was taken from the Municipality though, a permanent structure was raised. Therefore, the appellant is not entitled to such amount, as rightly held by the Court below.

16. So far as the other amounts are concerned, it is to be observed that when proposal was accepted by the plaintiff to give his site in exchange of the site allotted by the respondent, he ought to have negotiated with the respondent as to loss he would suffer or the damages which he now claimed and ought to have been incorporated in the Exchange Deed obligating the respondent to pay the said amounts. When the contract entered into by them do not reflect any

such obligations being cast on either party, certainly, after Exchange Deed was fructified, it is not open to the plaintiff to raise claims on various counts. That has been what was observed by the learned Senior Civil Judge in negating the Issues while recording findings.

17. The findings recorded by the learned Senior Civil Judge since based on process of reasoning on appreciation of evidence on record none of the findings warrant interference as they do not suffer from any legal infirmity.

18. The learned Senior Civil Judge has rightly held that half of the expenses has to be borne by both the parties thereto equally expended towards registration fee and stamp duty so far as Ex.A4 – Exchange Deed - is concerned as it is not a Sale Deed, casting obligation on the Vendee to pay the registration charges and stamp duty. It is not in dispute, that both parties could play dual role of vendee and vendor respectively is an exchange deed.

19. Thus, viewed from any angle, there is absolutely no merit in the present Appeal. Hence, the Appeal deserves to be dismissed and, accordingly, dismissed. The parties shall bear their own costs.

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

A. SHANKAR NARAYANA, J

Dt. 16.08.2017

gbs