

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No. 879 of 1999

ORDER:

This is an appeal filed against the judgment and decree dated 05.12.1998 passed by the learned Senior Civil Judge, Proddatur in O.S.No. 62 of 1988.

As this is a first appeal, the parties are referred to as plaintiff and defendant only.

The brief facts of the case are that:

On 17.11.1984, defendants 1 to 5 and late K.Bhupal Reddy entered into an agreement with the plaintiff for sale of the scheduled mentioned property. It was agreed that the plaintiff should pay defendants @ Rs. 3000/- per cent. Out of the extent of Ac.1.29 cents, the first defendant and his joint family are owners of Ac.0.69 cents, and defendant Nos.2 to 6 Ac.0.60 cents. Defendant No.1 received Rs.30,000/- while the defendant Nos.2 to 5 and late K.Bhupal Reddy received Rs.30,000/-. It has been further agreed that the defendants should get the land measured and that the plaintiff should pay the balance consideration on or before 15.03.1985 and obtain a proper sale deed and the expenses were to be borne by the plaintiff. The measurement of the land was being postponed from time to time; that I.PNo. 4 of 1987 was filed before this Court and it is learnt that the defendant Nos.2 to 5 and K.Bhupal Reddy were adjudicated insolvents *ex parte* and the petition filed to set aside the same was pending. The

plaintiff was always ready and willing to perform his part of contract and paid the defendants a total amount of Rs.2,58,000/-. In total the defendant No.1 had received an amount of Rs.1,33,000/- as against total amount of Rs.2,07,000/- for Ac.0.69 cents belonging to his family. Defendant Nos.2 to 5 and late K.Bhupal Reddy have received in all Rs.1,25,000/-. The balance amount to be payable by the plaintiff to the defendants is Rs.1,29,000/- and plaintiff is ready and willing to deposit the amount together with expenses for registration. As the defendants were evading execution of sale deed, plaintiff got issued a notice on 22.04.1988 against defendants 1 to 6, but defendant No.1 alone sent reply. Defendant No.2 late K.Bhupal reddy, defendant Nos.5 and 6 received notice, but did not sent any reply and defendant No.3 refused to receive the notice. Defendant No.1 in his reply claimed interest while suppressing the payment of Rs.60,000/- dated 07.06.1985. Defendant Nos.2,3 and late K.Bhupal Reddy have been adjudicated as insolvents, defendant No.9-official receiver was added as party. As K.Bhupal Reddy was reported dead, his legal representatives were added as defendants 10 to 13. Defendant Nos.15 to 19 were subsequently added as legal representatives of defendant No.2.

The defendants filed their written statements contending *inter alia* as follows:

Defendant No.1 filed a written statement raising various defenses, but both in paragraphs 4 and 5 he expressed his intention/readiness to perform the contract provided interest is paid. Similarly, defendant Nos.2 and 4 filed written statements raising number of issues, but in Para 7, they admit that they are entitled to interest at 18%. They also state that they prepared to execute sale deed, if the balance sale consideration is paid. The written statement on behalf of defendant Nos. 11 to 14, who were subsequently added is also to the same effect. The other defendants adopted the written statement by filing memos. Hence, the suit for specific performance of the agreement dated 17.11.1984 for possession of the suit property.

On the basis of the issues framed, the parties went to trial. To prove his case, plaintiff examined himself as P.W.1 and marked Exs.A.1 to A.17. D.Ws.1 to 4 were examined on behalf of the defendants. After hearing, the lower Court decreed the suit and directed specific performance. The present appeal is filed by the appellants questioning the said decree.

Heard Sri M.N.Narasimha Reddy for appellants and Sri K.Sairam Murthy for Sri K.V.Subrahmanya Narasu for respondents.

The short and simple question involved in this appeal is, whether the three appellants are entitled to interest @18% on the balance sale consideration.

It is pertinent to note that only three of the defendants in the suit are aggrieved by the judgment and decree dated 05.12.1988 in O.S.No.62 of 1988. All the defendants including the present appellants have expressed their readiness and willingness to execute the registered sale deed in favour of the plaintiff in the suit except for the claim for interest.

Hence, both as per the submissions made and the grounds of appeal filed, the question is essentially limited to the interest, if any, payable. Appeal grounds 2, 3 and 8 focus on interest. The other grounds are on the question of breach of contract, which has a bearing on the delay and consequently on interest.

It is an admitted fact that the agreement of sale dated 17.11.1984 (Ex.A.1) did not contain any stipulation with reference to payment of interest. The defendant Nos.6, 7 and 8 who are the only appellants, did not make a “counter claim” for interest, but expressed their readiness in their pleadings etc., to execute a sale deed if interest is paid. So the essential question to be decided in this appeal is whether the appellant established any factual or legal foundation and proof for the claim for interest. In the written statement there is no “basis” pleaded for the claim for interest. D.W.1 in his chief-examination claims interest @ 18% as per trade; custom prevailing at Proddatur Town.

Trade custom and usage is a matter of pleading and proof. The existence of such trade; custom and usage should be pleaded with certainty. The evidence of the existence of such trade; custom and usage should also be established with certainty particularly when the claim is with reference to such custom/trade in a particular town.

In the case on hand, the existence of such a trade custom to pay interest @ 18% on such land transactions is neither pleaded nor proved. Defendant No.8, who was examined as D.W.2 claimed interest @ 18 % from the date of the agreement. He also did not specify or lay down a basis for his claim for interest @ 18%. Interest rates are also not static and they vary and change from time to time depending on market conditions. Each trade has its own rates of interest. Different advances are given with different interest rates depending on the market conditions; terms of the agreement etc. In the absence of any specific factual and legal basis; interest cannot be awarded on the basis of mere assertion of a party to the proceedings.

Even otherwise, in the facts and circumstances of this case; there is an important clause in this case in Ex.A1 agreement that specifies that the land to be sold must be measured at the cost of the land owners. The parties were at issue on this and the evidence of the defendant's witnesses is that the land was surveyed through one "Bhikari Sab" who

works in the local Taluk Office as a surveyor. As rightly pointed out by the learned counsel for the respondent:

a) there is no clear pleading about this survey with details like its date; result etc.,

b) there is no documentary proof to show that the services of a surveyor were engaged for this purpose

c) there is no report or document filed to show that a survey was in fact carried out

d) nether the surveyor nor anyone independently associated with the survey were examined

e) as admitted by DW.1 in his cross-examination “he did not issue any notice to plaintiff” that the property was measured through Bakari Sab and demanding the plaintiff to pay the balance consideration and obtain a regular sale deed.

This Court finds considerable force in the contention of the learned counsel for the respondents in this regard. Since Ex.A.1 agreement stipulates the measurement of the land it was incumbent on the land owners to get the land measured. This should have been done and informed to the plaintiff. Having failed to do so, they cannot urge that the plaintiff was at default and consequently claim interest.

One last issue that survives for consideration is about a payment of Rs.60,000/- said to have been made under Ex.A.5 endorsement on 07.06.1985. This is detailed in the plaint para 4. There is no express denial of the same in the written statement and infact, some of the defendants admit the

contents of para 4 of the plant. In the chief-examination; as per the learned counsel, this endorsement was marked “subject to objection” and hence he contended that the said payment is not proved.

This Court is of the opinion that the said submission is not tenable. The objection with regard to an exhibit or a document should be clear and concise. Objections can be varied and myriad. Objection can be with regard to the admissibility of a document, say for example that it is not duly stamped; that it is a copy; it is not registered as required under law etc. Objection can be about the capacity of a witness to prove a document. It is not possible to make an exhaustive list. However, it is clear that the contents of a document or exhibit are to be tested by cross-examination etc., to establish that the contents are not proved as required by law or that the contents are not reliable. Merely saying “marked subjected to objection” is not enough. This much a lawyer raising an objection has to do: he has to specify the objection then and there and with clarity to enable the Court to pronounce on the tenability immediately or later as per the objections raised. ***Bipin Shantilal Panchal Vs. State of Gujarat and Anr.***¹. Hence, this Court is of the opinion that there is no sustainable objection with regard to Ex.A.5 payment in this case. From the submission it appears that the objection is about the receipt of the part of the advance on that day

¹ AIR 2001 SC 1158

(A.5). This is a matter of evidence and cannot form the subject matter of “an objection” to the marking. The truth or otherwise of Ex.A.5 transaction should be tested by cross-examination only. Lastly, the learned counsel for contesting respondent/ plaintiff pointed out that the balance sale consideration was also deposited vide a challan dated 03.02.1999 to the verdict of the suit. This is a post-decree deposit and is not very material to decide the claim for interest in view of the discussion made supra.

For all the reasons mentioned above, the appellants are not entitled to interest as claimed.

The appeal is dismissed. In the circumstances, no costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 16.11.2017
KLP