

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

SECOND APPEAL Nos.18 and 43 of 2017

Between:

Shaik Mubarak Noorjahan and another.

....Appellants

and

Shaik Masthan Bee (since died)
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 06.02.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

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1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
 2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : No
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : No

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

SECOND APPEAL Nos.18 and 43 of 2017

COMMON JUDGMENT:

These two Second Appeals are being disposed of by this common judgment as they are filed by defendant Nos.1 and 2 respectively in a suit arising out of specific performance.

O.S.No.291 of 2004 was filed by the first respondent herein before the Court of learned Principal Junior Civil Judge, Markapur, seeking specific performance of the agreement of sale dated 10.02.1987. The said suit was filed with the averments that on 10.02.1987, the first defendant agreed to sell the suit schedule site to the plaintiff for a consideration of Rs.6,000/-, received the entire sale consideration and delivered possession of the suit schedule property to the plaintiff. It was agreed that she would execute the sale deed in favour of the plaintiff at her expense as and when required by the plaintiff. Since the date of such agreement, the plaintiff was in exclusive possession and enjoyment of the suit schedule site. While so, on 07.07.1988, the first defendant sold the southern boundary site of the suit schedule site to one Shaik Samiunnisa, W/o.Shaik Khajamiah, and executed a registered sale deed. The plaintiff and her husband did not feel it necessary to obtain a registered sale deed from the first defendant. But, when they entertained an idea of constructing a house in the suit schedule site by securing loan from bank, it was thought that a regular sale deed was necessary. In the circumstances, the plaintiff requested the

first defendant to execute the regular sale deed in her favour at her expense in the month of March, 2004. When the first defendant evaded, the plaintiff got issued a notice through her Counsel on 05.04.2004 and the said notice was returned unserved with an endorsement that the first defendant was absent. The said notice was followed by another notice dated 13.05.2004 and the same was also returned. When another notice was issued on 03.07.2004 calling upon the first defendant to attend the office of the Sub-Registrar at 10:30 am on 12.07.2004 and execute the sale deed, the first defendant refused to receive the said notice. In those circumstances, the suit was filed for specific performance in respect of Ac.0.02½ cents in Survey No.250/2 of Markapur Village, Markapur Sub District, Prakasam District.

A written statement was filed by the defendants denying the plaint averments. It was also denied that the first defendant entered into agreement of sale with the plaintiff on 10.02.1987 or on any other date. The delivery of possession was also denied. It was stated that the plaint schedule property was sold to Maramreddy Srinivasulareddy of Markapur Town under a registered sale deed dated 18.07.2005 and possession of the property was delivered to the said Maramreddy Srinivasulareddy, who is the second defendant, and he is in possession of the same.

Before the trial Court, the plaintiff examined herself as P.W.1, besides examining P.Ws.2 to 5 and marked Exs.A1 to A7.

The first defendant examined herself as D.W.1 and the second defendant, who was the subsequent purchaser, was examined as D.W.2. Besides them, D.Ws.3 to 6 were also examined and Exs.B1 was marked.

The trial Court framed the following issues:

- “1. Whether the suit agreement dt.10.02.1987 is true, valid and binding on the defendants 1 & 2?
2. Whether the sale deed dt.18.07.05 executed in favour of 2nd defendant by the 1st defendant?
3. Whether the Plaintiff is entitled the Specific Performance of contract against the 1st defendant as prayed for?
4. To what relief?”

After considering the oral and documentary evidence, the trial Court dismissed the suit for specific performance by judgment and decree dated 18.10.2011. Against the said judgment and decree, the plaintiff preferred A.S.No.29 of 2015 on the file of the learned VI Additional District Judge, Markapur, who framed the following points for consideration:

- “1. Whether the suit agreement dated 10.02.1987 is true, valid and binding on the defendant no.1 & 2?
2. Whether the suit is in time and failing to file the suit within reasonable time, disentitles the plaintiff to claim the relief of specific performance, as it is a discretionary relief?
3. Whether the sale transaction under Ex.B1 is hit by ‘Doctrine of lis pendence’ and not binding on plaintiff?
4. Whether there are grounds warranting interference with the findings of the trial court?
5. To what relief?”

The learned VI Additional District Judge, Markapur, by judgment and decree, dated 28.03.2016, allowed the appeal by setting aside the judgment and decree passed the learned Principal Junior Civil Judge, Markapur in O.S.No.291 of 2004

dated 18.10.2011. Against the same, the above Second Appeals are preferred.

Learned Senior Counsel appearing for the appellants fairly submitted that there was concurrent finding of fact with regard to the execution of agreement of sale dated 10.02.1987 and he cannot impeach the same. However, with regard to the possession, it is stated that there is no iota of evidence to say that possession was delivered on the date of execution of agreement of sale.

The only point raised by the learned Senior Counsel on behalf of the appellants is that the long delay in filing the suit for specific performance disentitles the plaintiff from obtaining the discretionary relief of specific performance. He relied on **Manjunath Anandappa v. Tammanasa**¹ and submitted that the long delay of 17 years is not a reasonable time.

A perusal of the judgment of the trial Court shows that since the plaintiff failed to explain the delay of 15 years in order to obtain sale deed from the first defendant and in the absence of bona fides on the part of the plaintiff, the discretionary relief of specific performance was denied. The lower appellate Court framed a specific point with regard to the delay and observed that, what is reasonable time depends on various circumstances and conduct of the parties. It took into account the decisions of the Supreme Court in **Lourdu Mari David v. Louis Chinnaya**

¹ (2003) 10 SCC 390

Arogiaswamy², K.S.Vidyanadham v. Vairavan³, G.Jayashree v. Bhagwandas S.Patel⁴ and Azhar Sultana v. B.Rajamani⁵,
and ultimately held as follows:

“Thus, from the settled legal position referred above, it is clear that the suit for specific performance shall be filed within a reasonable time and what is reasonable time depends upon the facts and circumstances of each case and that, the plaintiff has to approach the Court with clean hands. When once the 1st defendant received entire sale consideration and entered into an agreement of sale of property for her benefit under Ex.A1, it doesn't cause any prejudice in any way to her even if the plaintiff waited for 16 years together to perform his part of contract by demanding her to execute regular registered sale deed in her favour.

In the instant case on hand, the only explanation offered by the plaintiff is that, all these days the plaintiff and her husband did not feel the necessity of obtaining a registered sale deed from the 1st defendant. Now the plaintiff entertained idea of constructing of a house on plaint schedule site by securing loan from any bank or financial institutions, for which a title deed is necessary, so the plaintiff requested the 1st defendant to execute the regular registered sale deed in her favour. Hence, it is a reasonable cause to wait for 16 long years and that too when the appellant/plaintiff paid entire sale consideration and obtained possession of suit schedule property on the date of execution of Ex.A1 itself. Therefore, the plaintiff approached the court with reasonable delay, as if he has got right to seek specific performance keeping Ex.A1 alive in perpetuity. In those circumstances, by applying the principles laid down in the catena decisions referred supra, this court feels that it is appropriate to exercise discretion under Section 20 of the Specific Relief Act in favour of appellant/plaintiff. The trial court did not appreciate the law in proper perspective, but dismissed the suit without properly exercising its discretion, totally in flagrant violation of the principles laid down by various courts referred in the earlier paras and committed an error in dismissing the suit. Hence, the trial court committed an error in dismissing the suit for specific performance of contract of sale and the same is liable to be set aside, as it is erroneous on the face of record, taking into consideration of the conduct of the plaintiff from the date of execution of Ex.A1 till the date of filing suit. Accordingly, the point is held in favour of appellant/plaintiff and against respondents/defendants.”

Thus, there is no dispute with regard to the execution of the agreement of sale and handing over possession of the suit schedule property on the date of execution itself. Those

² AIR 1996 SC 2814

³ AIR 1997 SC 1751

⁴ (2009) 3 SCC 141

⁵ 2009 (4) ALD 21 (SC)

circumstances must have weighed with the plaintiff in not seeking immediate relief of specific performance. The plaintiff approached the Court when she felt the need for obtaining the registered sale deed which cannot be found fault and the suit cannot be dismissed on the ground of delay. Though the relief of specific performance is discretionary, that discretion has to be exercised judicially. The lower appellate Court rightly took into account that the consideration of reasonable time depends upon various circumstances and conduct of the parties. Hence, the judgment relied on by the learned Senior Counsel appearing for the appellants is not helpful to the case of the appellants. No other point was urged, nor any other decision was shown to this Court to come to a different conclusion than that was arrived at by the lower appellate Court. This Court sees no question of law, much less a substantial question of law arising in the above appeals.

Hence, both the Second Appeals are dismissed at the admission stage confirming the judgment and decree passed by the learned VI Additional District Judge, Markapur, in A.S.No.29 of 2015, dated 28.03.2016. The miscellaneous petitions pending in these appeals, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

06.02.2017
vs