

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

SECOND APPEAL No.678 of 2012

JUDGEMENT:

This Second Appeal is filed by the plaintiff assailing the decree and judgment dated 14.02.2007 in A.S.No.86 of 2005 on the file of the Court of VII Additional District and Sessions Judge, Fast Track Court, Vijayawada, wherein and whereby the decree and judgment dated 15.04.2005 in O.S.No.838 of 1997 on the file of the II Additional Senior Civil Judge, Vijayawada, dismissing the Suit filed by the plaintiff for Specific Performance was confirmed.

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed before the Trial Court, to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: The plaintiff is a Society registered under the Societies Registration Act, 1860, in the year 1937. One Valluru Venkata Subbaiah agreed to sell the suit schedule property to the plaintiff and received the entire sale consideration of Rs.70,000/- and delivered the possession of property. As per the terms and conditions of agreement of sale, dated 10.11.1980, Venkata Subbaiah has to execute sale deed in favour of plaintiff Society after obtaining necessary permission from Urban Land Ceiling Authority. On 26.5.1985, Valluru Venkata Subbaiah died leaving behind him defendant Nos.1 to 7 as his legal heirs. Defendant No.7 filed O.S.No.251 of 1995 against the plaintiff-Society, seeking perpetual

injunction in respect of the suit schedule property. In spite of repeated requests of the plaintiff, the defendants did not execute the sale deed and as such, the plaintiff got issued legal notice dated 26.12.1995 directing the defendants to execute the sale deed. The plaintiff is always ready and willing to perform its part of contract. Hence, the suit for specific performance of agreement of sale.

4. Defendant No.3 filed written statement supporting the claim of the plaintiff. Defendant No.7 filed written statement denying all the averments made in the plaint *inter alia* contending that late Valluru Venkata Subbaiah never executed agreement of sale dated 10.11.1980 in favour of plaintiff-Society after receiving entire sale consideration of Rs.70,000/-. Valluru Venkata Subbaiah died on 26.5.1985. Late Valluru Venkata Subbaiah executed a registered Will dated 29.11.1974 bequeathing the suit schedule property in favour of defendant No.7 and the same was not revoked even in the Will executed subsequently on 19.12.1984 in respect of the other properties. This defendant filed O.S.No.251 of 1995 on the file of District Munsiff Court, Vijayawada for permanent injunction against the plaintiff. Defendant No.1 is the step-mother and defendant Nos.2 to 6 are step-sisters of defendant No.7 and with a *mala fide* intention, defendant Nos.1 to 6 are supporting the case of N.Dharma Rao, who filed the suit as Managing Trustee of the plaintiff-Society. The said Dharma Rao is the husband of defendant No.4, brother-in-law of defendant Nos.2, 3, 5 and 6, and son-in-law of defendant No.1. Late Venkata Subbaiah filed a

declaration before Competent Authority (ULC) in C.C. No.2662 of 1981 taking specific plea that he sold the suit schedule property in favour of the plaintiff-Society under agreement of sale dated 10-11-1990. The competent authority passed orders disbelieving the agreement of sale set up by the plaintiff Society. The agreement of sale is contrary to the provisions of the Urban Land (Ceiling & Regulation) Act, 1976; therefore, the plaintiff is not entitled for specific performance of agreement of sale.

5. Basing on the above pleadings, the Trial Court framed the following issues:

- (1) Whether agreement is true and valid?
- (2) Whether the suit is not maintainable for not claiming relief of possession?
- (3) To what relief?

Additional Issues:

- (1) Whether the plaintiff is a Society, registered under the Societies Registration Act XXI of 1960 and it is still in existence as on the date of suit and subsequently?
- (2) Whether Nalluru Dharma Rao, who filed the suit representing as Managing Trustee of the plaintiff, is competent to represent the plaintiff's Society and to file the present Suit?
- (3) Whether the registered Will dt.29-11-1974 said to have been executed by late Valluru Venkata Subbaiah bequeathing the schedule property to 7th defendant as pleaded by her, is true, valid and binding on the plaintiff?
- (4) Whether the plaintiff is entitled to the equitable relief of Specific Performance on the basis of suit agreement of sale, dt.10-11-1980?
- (5). Whether the suit agreement of sale said to have been executed by late Valluru Venkata Subbaiah in violation of the provisions of Urban Land Ceiling Act 33 of 1976 is void and unenforceable under Law?
- (6). Whether this Court has got jurisdiction to question the final order made by the Special Officer & Competent Authority of the Urban Land Ceiling made in C.C.2662/81, dt.20-3-1982, computing the schedule land to the holding of the declarant, late Valluri Venkata Subbaiah, treating the said agreement as a nonest and invalid?

(7) Whether the suit is barred by time?

(8) Whether the plaintiff is entitled to the relief of Specific Performance of suit agreement of sale without prior permission from the Urban Land Ceiling Authority?

6. To substantiate the case, the plaintiff examined P.W.1 and got marked Exs.A1 to A22. Defendant No.7 besides examining himself as D.W.1 examined DWs.2 to 5 on his behalf and got marked Exs.B1 to B19 and Exs.X1 to X3.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court came to a conclusion that agreement of sale-Ex.A2 is not legally enforceable and dismissed the suit. Feeling aggrieved by the judgment and decree dated 15.04.2005 in O.S.No.838 of 1997, the plaintiff preferred A.S.No.86 of 2005 on the file of the Court of VII Additional District and Sessions Judge (Fast Track Court), Vijayawada. The first appellate Court after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that Ex.A2-agreement of sale is not legally enforceable and dismissed the appeal concurring with the findings recorded by the trial Court. Hence, the unsuccessful plaintiff preferred the present second appeal.

8. During the pendency of second appeal, defendant No.7 died and her legal representatives are brought on record as respondent Nos.8 to 17, by virtue of the order dated 14.9.2017 in SAMP No.1543 of 2017.

9. Heard the learned counsel for the appellant-plaintiff, the learned counsel for the respondent Nos.8 to 17 and perused the material available on record.

10. The question of law that urged in this second appeal is as follows:

Whether the findings recorded by the Courts below are not based on evidence much less legally admissible evidence and perverse?

11. It is admitted that the suit schedule property originally belongs to one Valluru Venkata Subbaiah. Defendant No.1 is the second wife and defendant Nos.2 to 6 are the children of Venkata Subbaiah and defendant No.7 is the daughter of Venkata Subbaiah through his first wife. The case of the plaintiff is that Venkata Subbaiah executed agreement of sale dated 10.11.1980 agreeing to sell the suit schedule property in favour of the plaintiff-Society, after receiving the entire sale consideration of Rs.70,000/-. Venkata Subbaiah died on 26.5.1985. Defendant No.7 filed O.S.No.562 of 1998 on the file of the Court of II Additional Senior Civil Judge, Vijayawada, seeking permanent injunction against the plaintiff-Society in respect of the suit schedule property. The trial Court decreed the Suit in favour of defendant No.7 and against the plaintiff-Society. The plaintiff-Society did not choose to prefer an appeal challenging the decree and judgment dated 15.4.2005 in O.S.No.562 of 1998. Hence, the decree and judgment in O.S.No.562 of 1998 became final and binding on the plaintiff.

12. The case of the plaintiff is that Valluru Venkata Subbaiah executed agreement of sale in favour of plaintiff-Society-Ex.A2 on 10.11.1980. It is the case of the defendant No.7 that the plaintiff created Ex.A2-agreement of sale to deprive her rights, who got the suit schedule property under registered Will dated 29.11.1974 (registration extract of the Will marked as Ex.B3). The plaintiff is seeking the relief of specific performance; therefore, the burden of proof lies on him. Once the plaintiff discharges the burden, then the onus of proof shifts on to defendant No.7 to prove the Will dated 29.11.1974 executed by Venkata Subbaiah.

13. As seen from the terms and conditions of agreement of sale, Valluru Venkata Subbaiah has to execute sale deed in favour of plaintiff after obtaining necessary permission from the ULC Authority. A perusal of the record reveals that the Competent Authority, under ULC Act, passed orders on 20.3.1982 (Ex.B16) in C.C.No.2662/1981 declaring that the agreement of sale dated 10.11.1980-(Ex.A2) is not legally enforceable. This fact is very much known to the plaintiff. For one reason or another, the plaintiff did not choose to challenge the orders dated 20.3.1982 i.e., Ex.A16. The order passed by the Competent Authority under the ULC Act is binding on the plaintiff.

14. P.W.1 claims himself as the Managing Trustee of the plaintiff-Society by placing reliance on Ex.A17 (appointment letter) and Ex.A18 (resolution). But for one reason or other, P.W.1 did not

produce the Minutes Book of the plaintiff-Society appointing him as its Managing Trustee. It is a known fact that, if a particular person is appointed as managing committee members, certainly his name would be reflected in the Minutes Book. For the reasons best known, P.W.1 did not choose to produce Minutes Book of the plaintiff-Society. In the cross-examination, PW1 admitted that he was not present at the time of execution of Ex.A2 by Valluru Venkata Subbaiah. Mere filing of document would not amount to proof of the same. P.W.1, having admitted that the scribe and one of the attestors are alive, failed to examine any one of the attestors or the scribe, to prove Ex.A2 alleged agreement of sale. P.W.1 failed to prove that he was the Managing Trustee of the plaintiff Society.

15. It is needless to say that a person, who seeks the discretionary relief, must come to the Court with clean hands, by placing all facts much less material facts before the Court. Section 20 of the Specific Relief Act confers a discretionary power on the Courts either to grant or reject the relief of specific performance. The Court has to exercise its discretionary power judiciously basing on sound principles of law. It is a settled principle of law that the relief of specific performance is a discretionary relief.

16. This Court cannot lightly interfere with the concurrent findings recorded by the Courts below, in view of the scope of Section 100 CPC. If the findings of the courts below are based on no evidence or based on evidence, which is not legally admissible, those findings can be termed as perverse. In case of perverse

findings, this Court can interfere while exercising jurisdiction under Section 100 of CPC. The plaintiff failed to prove Ex.A2 agreement of sale alleged to have been executed by Valluru Venkata Subbaiah in favour of the plaintiff. In the instant case, the plaintiff has not approached the Court with clean hands. I am fully endorsing with the findings recorded by the courts below that the plaintiff failed to prove execution of Ex.A2-agreement of sale. The findings recorded by the Courts below are supported by evidence much less legally admissible evidence. Therefore, I am unable to accede to the contention of the learned counsel for the appellant that the findings recorded by the Courts below are perverse. There is no question of law much less substantial question of law involved in this appeal.

17. Having regard to the facts and circumstances of the case, I am of the considered view that the point raised by the learned counsel for the appellant-plaintiff will not fall within the ambit of Section 100 of C.P.C. There is no question of law much less substantial question of law in this appeal.

18. In the result, the Second Appeal is dismissed at the admission stage. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

11th December, 2017
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