

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.327 OF 2017

JUDGMENT:

The present Second Appeal is preferred by the unsuccessful plaintiff all through in getting a decree for specific performance of agreement of sale, dated 25.06.1981 and supplementary agreement dated 20.04.2000 concerning suit schedule property, which consists of Plot bearing No.4/B/1, ad measuring 200 square yards in Survey No.74/6, situated at East Marredpally, Secunderabad.

2. The appellant herein is the plaintiff in the aforesaid suit, while the respondents are the defendants. For the sake of convenience, the parties herein are referred to as they were arrayed in O.S. No. 417 of 2007 on the file of the Principal Rent Controller - cum - XVII Junior Civil Judge, City Civil Court, Secunderabad.

3. The plaintiff's case has been that he paid a sum of Rs.20,000/- to defendant No.1 towards advance out of total sale consideration of Rs.50,000/- in respect of sale of plot No.4/B/1, ad measuring 200 square yards in Survey No.74/6, situated at East Marredpally, Secunderabad; the balance was to be received after fully discharging the debt due and payable to the South Central Railways by defendant No.1 and handing over the original title deeds of the suit schedule property; and for completion of respective obligations, a week's time was fixed after receipt of title deeds.

i) The plaintiff alleges that due to certain unavoidable circumstances, defendant No.1 could not discharge the debt payable to the South Central Railways and the plaintiff claims that subsequently he learnt in the year 2000 that the debt was discharged even in the year 1992 itself by defendant No.1. Since defendant No.1 has not abided by the terms of the agreement and went on postponing the conveyance of property, a supplementary agreement was entered into on 20.04.2000. Despite the same, defendant No.1 did not comply with his part of obligation and failed to execute a sale deed, though, the plaintiff was always ready and willing to perform his part of obligation in paying the balance sale consideration of Rs.30,000/-.

ii) Despite the supplementary agreement, defendant No.1 failed to perform his part of obligation. Therefore, the plaintiff filed the aforesaid suit for specific performance of agreement of sale.

4. Defendant No.1 remained *ex parte* before the trial Court. Defendant No.3 filed written statement, which was adopted by defendant Nos.2 and 4 to 6.

i) In his written statement, various pleas were advanced by defendant No.3. He attributed collusion between defendant No.1 and the plaintiff to play fraud on the Court and on them and the very fact that defendant No.1 remained *ex parte* would indicate the same.

ii) Defendant No.3 has set up his case that defendant No.1 entered into an agreement with his father on 10.08.1981 and failed to

register a sale deed. Therefore, his father filed a suit for specific performance in O.S. No.1533 of 1983 on the file of the III Additional Judge, City Civil Court, Secunderabad and the same was decreed on 22.04.1985. As against the said decree, defendant No.1 filed City Civil Courts Appeal (CCCA) No.62 of 1986 before this Court. Though, the father of defendant Nos.2 to 6 deposited the balance sale consideration amount in the year 1986, sale deed could not be obtained, since defendant No.1 obtained stay in the year 1986. Later, their father died, defendant Nos.2 to 6 were brought on record in the aforesaid CCCA. Subsequently, this Court dismissed the said CCCA by judgment, dated 10.12.2002, confirming the judgment and decree passed by the trial Court in O.S. No.1533 of 1983.

iii) Thereafter, defendant Nos.2 to 6 filed E.P. No.95 of 2004, wherein a notice was ordered to defendant No.1 and defendant No.1 appeared and filed counter stating that the plaintiff has filed suit in O.S. No.417 of 2007 and, as such, he cannot execute the sale deed and, thereafter, defendant Nos.2 to 6 filed an application and got themselves impleaded in the suit. Therefore, they plead that the alleged agreement is a fabricated document, brought into existence to defeat their rights and defendant No.1, despite contesting the case in O.S. No.1533 of 1983, did not disclose about the suit agreement of sale at any point of time and, therefore, sought to dismiss the suit.

5. Basing on the aforesaid pleadings, the trial Court settled the following issues for trial.

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- 1) Whether the plaintiff is entitled for specific performance of agreement of sale as prayed for?
- 2) To what relief? ”

6. Before the trial Court, besides plaintiff examining himself as PW.1, has examined one Maqbool as PW. 2 and Exs.A-1 to A-11 were marked. On behalf of defendants, neither oral nor documentary evidence was let in.

7. The trial Court has answered the issues against the plaintiff and in favour of the contesting defendants.

i) Concerning the letters covered by Exs.A-4 to A-11 said to have been addressed by defendant No.1 to the plaintiff asking time for execution of sale deed, the trial Court held that all the letters are on ruled paper of same quality and though, the plaintiff was very careful to preserve the said letters and was able to file the same into Court, but he did not choose to file postal covers through which the said letters were sent to him. Even in regard to agreement under Ex.A-1 and supplementary agreement under Ex.A-3, the Trial Court disbelieved the evidence of PW.2 by assigning cogent reasons and did not agree with the plaintiff, and basing on the probabilities even dismissed the suit by judgment, dated 22.09.2010.

8. As against the said judgment, when the appeal is preferred by the plaintiff in A.S. No.26 of 2014 on the file of the XXVII

Additional Chief Judge, City Civil Court, Hyderabad, the appellate Court having formulated the following points in paragraph No.9:

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1) Whether the trial court decree and judgment in dismissing the suit is unsustainable and is liable to be set aside and if so, to what extent this court while sitting in appeal can interfere with trial court decree and judgment impugned and with what observations?

2) To what relief? ”

placing reliance on the decisions in **Gomathinayagam Pillai and others v. Pallaniswami Nadar**¹; **Purushottam Reddy v. Pratap Sales Ltd.**,²; and **Malanbee (died per L.Rs.) v. Syed Amjed Hussain (died per L.Rs.)**³ concerning whether time is essence of contract or otherwise, held that though, the agreement of sale was dated 25.06.1981 and supplementary agreement was dated 20.04.2000, culled out the probabilities which disfavoured the plaintiff giving rise to any amount of doubt as to the genuineness of transactions under Exs.A-1 and A-3 and also referred to the suit proceedings in O.S. No.1533 of 1983 on the file of the III Additional Judge filed by the father of defendant Nos.2 to 6; even execution proceedings in E.P. No.95 of 2004 and the failure of plaintiff in not choosing to add defendant Nos.2 to 6 as defendants therein and also viewing the circumstance of failure to give notice intimating defendant No.1 that he was ready and willing to perform his part of contract as vital circumstance dis-favouring the plaintiff's case and

¹. AIR 1967 SC 868

². AIR 2002 SC 771

³. 2011 (2) ALT 34

also concurring with the findings recorded by the trial Court in regard to Exs.A-4 to A-11 and on re-appraisal of evidence on record, confirmed the judgment and decree passed by the trial Court, dismissing the appeal, by judgment dated 14.10.2016.

9. Aggrieved over the same, the plaintiff preferred the present Second Appeal raising various grounds. In fact, when concurrent findings have been recorded by the Courts below, there is no need to refer to the evidence on record on factual side. No doubt, if the appellant - plaintiff succeeds in projecting that the judgment rendered by the First Appellate Court is tainted with patent illegality or utterly perverse, interference of this Court is warranted.

10. In that direction, if the evidence on record and the findings recorded by the Courts below are examined, certainly, the findings cannot be overturned as nothing favours the plaintiff. When looked at the conduct of plaintiff in his failure to issue notice to defendant No.1 expressing his readiness and willingness to perform his part of obligation under the agreement of sale as well as supplementary agreement and the very delay in instituting the suit constituting yet another circumstance, which disfavours him, besides the earlier proceedings in which defendant No.1 completely failed and defendant Nos.2 to 6 were successful and even got the sale deed executed through process of the Court by institution of execution proceedings. Thus, the findings recorded by the Courts below cannot be faulted.

11. Therefore, there is no substantial question of law that arises in the present case, and the substantial questions of law which the appellant projects in paragraph Nos.1 to 13 preceding the grounds in the present Memorandum of Second Appeal do not deserve any consideration. They do relate to the factual aspect, but not to any question of law as such.

12. In view of the aforesaid discussion, the appeal is without any merit and, consequently, the same is dismissed at the admission stage. There is no order as to costs.

As a sequel thereto, miscellaneous applications, if any pending in the second appeal, stand closed.

June 13, 2017.
Mgr

A. SHANKAR NARAYANA, J

