

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.900 OF 2015

JUDGMENT:

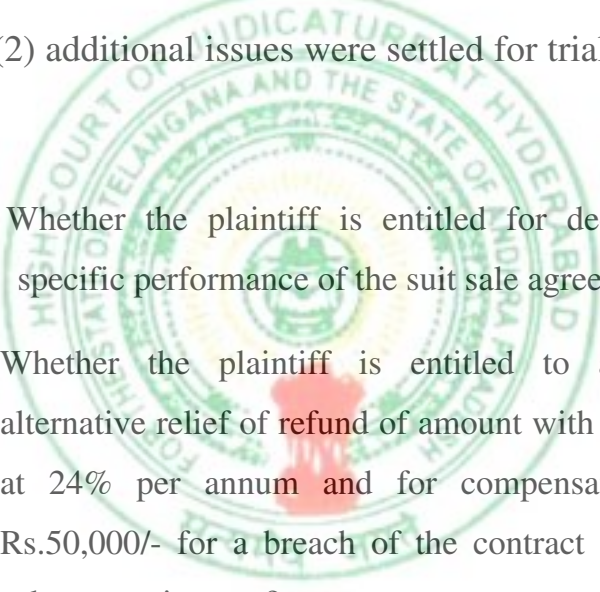
Plaintiff is the present appellant. He was unsuccessful in the trial Court as well as the first appellate Court in a suit for enforcement of agreement of sale. Respondents are defendants.

2. For convenience sake, the parties are hereinafter referred to as arrayed in the original suit before the trial Court.

3. The plaintiff instituted a regular suit in O.S. No.302 of 1995 on the file of Principal Senior Civil Judge, Visakhapatnam, for the relief of specific performance of the contract, dated 10.06.1992, and in the alternative for refund of Rs.5,000/- advance together with interest at 24% per annum from the date of agreement till the date of filing of the suit and compensation of Rs.50,000/- for breach of the contract. The extent is 311.11 square yards. The total consideration agreed between the parties was Rs.60,000/- (Rupees sixty thousand only). Claiming that on his demand, since the defendant did not agree to execute the sale deed, he addressed a letter dated 11.05.1994 and thereafter, he got issued a legal notice on 04.04.1995 requiring the defendant to perform his part of contract expressing that he is ready and willing to perform his part of contract.

4. The defendant has taken stand that the plaintiff was not ready and willing to perform his obligations within the time stipulated as three (3) months period was provided in the agreement of sale and long thereafter only, he has come forward beyond the period of limitation that too due to escalation in prices of the lands and he has already sold away the plaint schedule land and therefore, sought to dismiss the suit.

5. Originally, the following five (5) issues were settled for trial and later two (2) additional issues were settled for trial on 01.07.2003, thus:

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- “1) Whether the plaintiff is entitled for decree of specific performance of the suit sale agreement?
 - 2) Whether the plaintiff is entitled to ask an alternative relief of refund of amount with interest at 24% per annum and for compensation of Rs.50,000/- for a breach of the contract and for subsequent interest?
 - 3) Whether the suit maintainable under law?
 - 4) Whether the suit is barred by time?
 - 5) To what relief?”

Additional Issues were framed on 01.07.2003, thus:

- “1) Whether contract made by plaintiff as a void transaction?
- 2) Whether D-2 is in possession of the suit property?”

6. To substantiate his case, the plaintiff, besides examining himself as PW.1, has examined two more witnesses as PWs.2 and 3 and marked Exs.A-1 to A-3. The defendant examined himself as DW.1 and marked Exs.B-1 and B-2.

7. The trial Court having taken up issue No.1, additional issue No.1 and issue No.3 together, opined that even in Ex.A-2, notice got issued by the plaintiff, no whisper is made that the plaintiff was ready with the balance sale consideration and that it was the defendant, who refused to receive the payment as contended by the plaintiff in his evidence and even PW.1 has admitted that he could not pay Rs.25,000/- within three (3) months as stipulated and did not issue any notice immediately when the defendant refused to receive Rs.10,000/- balance within three (3) months, disbelieved the case of the plaintiff. The trial Court has also referred to the evidence on record both, oral and documentary, and held that the conduct of the plaintiff disentitles him seeking the reliefs of enforcement as well compensation of Rs.50,000/- and, thereby, dismissed the suit in its entirety. Aggrieved over the same, the plaintiff preferred the first Appeal in A.S. No.16 of 2004 on the file of VI Additional District Judge, Visakhapatnam.

8. The first appellate Court formulated the following three (3) points for consideration:

“1. Whether the plaintiff is always ready and willing to perform his part of contract and as such whether the plaintiff is entitled for specific performance of the contract?

2. Whether the Judgment and decree of the trial court is not on sound Principles of law and as such is it liable to be set aside?

3. To what relief?"

9. On re-appraisal of the evidence on record, the appellate Court while disagreeing with the trial Court and on its finding on limitation that the suit was barred by limitation, opined that the suit was within limitation. As regards the alternative relief, the first appellate Court, observing that during the course of arguments, the learned counsel for the plaintiff since convinced that there was no default clause in the agreement and the plaintiff is entitled for refund of the advance amount and since the learned counsel for the defendant represented that the defendant has no objection to return the earnest money of Rs.5,000/- without any interest thereon, the same was acceded to directing to refund the earnest money of Rs.5,000/- and thus, allowed the appeal in part.

10. Assailing further, the present Second Appeal is preferred by the plaintiff.

11. Heard Sri A. Srinivasa Sharma, learned counsel for the plaintiff (appellant), and Sri B. Subrahmanyma, learned counsel for the defendant (respondent), and perused the evidence, both, oral and documentary.

12. The Second Appeal has been coming up for admission. In fact, no substantial question of law is involved in the present appeal, though, in the grounds of appeal, the following have been shown as substantial questions of law.

“1. Whether is it not illegal on the part of the deceased 1st defendant, during his life time, to issue notice or intimation to the plaintiff before selling the suit schedule property to 3rd parties, during the subsistence validity of Agreement of Sale, hen according to the courts below that the plaintiff was ready and willing to perform his part of contract to get the sale deed and when the appellant did not pay any instalment nor get extension of time even after completion of agreed period of 6 months time?

2. Whether the is it not illegal on the part of the deceased 1st defendant or his legal heirs in not submitting the details of the 3rd parties to whom the suit schedule property sold? Whether is it not illegal when the defendants deliberately suppress the material facts and documents before the courts below, which substantiates the sale of the suit schedule property to the 3rd parties? Whether the action of the defendants not amounts to suppression of material facts and documents? Whether the action of the defendants not amounts to deceiving the law courts attracting criminal prosecution?

3. Whether the action of the defendants curtailed the right of the Appellant/plaintiff in bringing the 3rd parties to whom the suit schedule property has been sold by the defendants, as parties in the courts below?”

13. Now, during the course of arguments, the learned counsel for the plaintiff would submit that the first appellate Court was not correct in depriving the plaintiff of his request for interest and the earnest amount and the first appellate Court was not right in depriving the same and, therefore, sought to award interest on the earnest money of Rs.5,000/-. While referring to the findings recorded by the first appellate Court hereinabove, it is stated during the course of arguments that the plaintiff sought the alternative relief for refund of Rs.5,000/- earnest money.

14. In view of conspicuous absence of forfeiture clause in the agreement and the first appellate Court acceding to it, however, did not award interest for the reason that the request made by the plaintiff was to the extent of refund of earnest money only. Of course, even to grant interest, there must be a condition or stipulation therefor in the contract itself. When what was not asked for and conceded by the learned counsel for the plaintiff before the appellate Court, certainly, the same cannot be re-agitated in the second appeal during the course of arguments by the learned counsel for the plaintiff.

15. Therefore, there is no substantial question of law involved, but, also on merits, there is no case for the plaintiff as the findings recorded by the Courts below, more particularly, the first appellate Court, cannot at all be viewed as patently illegal or perverse.

16. Therefore, the Second Appeal fails and is dismissed.

There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the Second Appeal stand closed.

A. SHANKAR NARAYANA, J

June 23, 2017.
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