

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Second Appeal No.659 of 2016

JUDGMENT :

This Second Appeal is preferred against the judgment and decree dt.01.06.2016 in A.S.No.347 of 2011 on the file of IX Additional District Judge, West Godavari District at Kovvur, confirming the judgment and decree dt.01.08.2011 in O.S.No.125 of 2009 on the file of Junior Civil Judge, Jangareddigudem [previously O.S.No.456 of 2007 before the I Additional Junior Civil Judge, Kovvur.]

2. The appellant is plaintiff in the above suit.

Pleadings in the plaint

3. He filed the suit for specific performance of a contract dt.15.02.1984 [Ex.A.1], executed by respondent in his favour in respect of 1/5th joint undivided share of the respondent in Ac.0.40 cents of vacant site situate in R.S.No.289 of Jangareddigudem Village on 15.02.1984; and in the alternative for refund of sale consideration amount with interest at the rate of 24 % per annum with costs.

4. The appellant contended that the respondent executed agreement of sale Ex.A.1 on 15.02.1984 agreeing to sell his 1/5th joint share in the above property for Rs.4,000/-, that the entire sale

consideration was paid to respondent, but the respondent did not deliver possession of property.

5. He stated that there was a dispute pending at that time between the Gram Panchayat, Jangareddigudem and the family of respondent, and that was why possession of the property was not delivered to him, that the respondent directed him to file a suit against the Gram Panchayat for recovery of possession of Ac.0.40 cents and promised to execute a regular sale deed after the final litigation against the Gram Panchayat concluded.

6. He stated that he was given Power of Attorney by the family members of the respondent on the basis of which he filed O.S.No.63 of 1989 before the Sub-ordinate Judge, Kovvur against the said Gram Panchayat for recovery of possession of the Ac.0.40 cents of land and for other reliefs, that the suit was decreed, and though the Gram Panchayat preferred an appeal to the High Court in A.S.No.2304 of 1991, the same was also dismissed.

7. He stated that thereafter, the respondent filed O.S.No.107 of 1992 before the Senior Civil Judge, Kovvur for partition of the estate of his mother, impleading the respondent's brother and three sisters; that he, i.e. the appellant, contested the same as general Power of Attorney holder of the respondent's sisters; that the said suit was dismissed on merits; that the respondent filed A.S.No.200 of 2001 before the I Additional District Judge, Eluru, but the said appeal was

also dismissed on merits; that as general Power of Attorney to the plaintiff in O.S.No.63 of 1988, which had been filed against the Gram Panchayat, he obtained possession through Court of Law in execution proceedings; that he also filed petition for *mesne* profits and therefore, the present suit is within limitation.

8. He stated that that he got issued legal notice Ex.A.5 dt.30.12.2006 to the respondent, and thereafter filed the present suit for specific performance.

Pleadings in the written statement

9. The respondent filed a written statement denying the execution of Ex.A.1 pointing out that the appellant is none other than his maternal uncle and also brother-in-law.

10. He contended that the Appeal A.S.No.2304 of 1991 filed in the High Court against the judgment in O.S.No.63 of 1988 was dismissed on 05.12.1994, and the appellant therefore should have enforced the alleged suit agreement of sale within three (03) years from 05.12.1994, and since he had not done so, the suit is barred by limitation prescribed under Article 54 of the Limitation Act, 1963 (**for short, 'the Act'**).

11. He alleged that his signatures were taken on white papers by the appellant and the appellant's son-in-law by name Ramachandra Rao, who is the younger brother of respondent, and probably the agreement of sale was fabricated on such documents.

12. Subsequently, the suit which had been filed as O.S.No.456 of 2007 before the I Additional Junior Civil Judge, Kovvur came to be transferred to the Court of Junior Civil Judge, Jangareddigudem and was re-numbered as O.S.No.125 of 2009.

THE ISSUES

13. The following issues were framed by the Court below :

- “1. *Whether the suit is within time ?*
2. *Whether the sale agreement dt.15.2.1984 is true and valid ?*
3. *Whether the plaintiff is entitled for specific performance of contract of agreement dt.15.2.1984 as prayed for ?*
4. *To what relief ?”*

14. Before the Trial Court, the appellant examined P.Ws.1 to 3 and marked Exs.A.1 to A.9. The respondent examined himself as D.W.1, and got marked Exs.B.1 to B.8.

THE DECISION OF TRIAL COURT

15. By judgment and decree dt.01.08.2011, the Trial Court dismissed the suit with costs. It held that there are suspicious circumstances surrounding the document Ex.A.1, that the respondent had denied that he received consideration under Ex.A.1, that there is a stamp of the firm, started by the respondent, on Ex.A.1, the stamp paper, on which Ex.A.1 was drafted, is of the year 1976 and stood in the name of the son-in-law of the appellant, and therefore, the

appellant was not entitled to relief of specific performance or refund of the amount mentioned therein.

16. It also held that as per the recitals in Ex.A.1 agreement, the appellant was to obtain regular registered sale deed after disposal of the litigation against the Gram Panchayat, Jangareddigudem, and since the appeal A.S.No.2304 of 1991 filed in the High Court by the said Gram Panchayat against the family members of respondent was dismissed on 05.12.1994, the appellant ought to have filed the suit within three (03) years from that date.

17. It held that there was a refusal to honour the agreement of sale Ex.A.1 by respondent in O.S.No.107 of 1992 in the year 2000, and therefore the appellant could have filed the suit at least within three (03) years from that date, but he filed the suit only in 2007, belatedly.

THE DECISION OF THE LOWER APPELLATE COURT

18. Challenging the said judgment, the appellant filed A.S.No.347 of 2011 before the IX Additional District Judge, West Godavari, Kovvur. The said appeal was dismissed on 01.06.2016.

19. The lower Appellate Court came to the conclusion that Ex.A.1 was a fabricated agreement of sale and was brought into existence by the appellant. It rejected the contention of appellant that the suit was within limitation since there was no refusal on the part of respondent to execute registered sale deed in response to the legal notice Ex.A.5 issued on 30.12.2006.

20. It also took note of the fact that the respondent, as P.W.1, in O.S.No.107 of 1992 had given evidence stating that Ex.A.1 agreement of sale is not true and valid, and within three (03) years from that date the suit was not filed seeking specific performance.

21. Challenging the same, this Second Appeal is filed.

CONTENTIONS OF THE APPELLANT

22. The counsel for appellant mainly contended that in the absence of any refusal by respondent to execute sale deed after receiving Ex.A.5 Legal Notice on 30.12.2006, it cannot be said that the suit for specific performance is barred by limitation. He also disputed the findings of the Courts below that Ex.A.1 agreement is a fabricated one.

23. Relying on Article 54 of the Act, he contended that the period of limitation prescribed therein is three (03) years from the date fixed for performance, or if no date is fixed, when the plaintiff has noticed that performance is refused, and since in the present case, there was no refusal by respondent of the said Ex.A.5 Legal Notice issued by the appellant, the suit is within time.

24. The counsel for appellant relied on the following decisions in **Rathnavathi and another v. Kavita Ganashamdas¹** and **Chand Rani (Smt.) (Dead) By LRs v. Kamal Rani (Smt.) (Dead) by LRs.²**

¹ (2015) 5 SCC 223

² (1993) 1 SCC 519

25. A perusal of Ex.A.1 Agreement of Sale shows that it is executed on a stamp paper of Rs.2/- purchased in the year 1976 and it contains a recital that the respondent would execute sale deed on the completion of the litigation which the family of respondent had against the Gram Panchayat, Jangareddigudem.

26. The suit against the Gram Panchayat, Jangareddigudem filed by the family of respondent in respect of the subject property in O.S.No.63 of 1988 was decreed and the appeal A.S.No.2304 of 1991 filed by the Gram Panchayat, Jangareddigudem against the judgment of the Trial Court was dismissed on 05.12.1994.

27. Therefore, assuming that the agreement of sale relied upon by the appellant is true and genuine, since the agreement itself specified that it will be performed by the respondent after the end of the litigation with the Gram Panchayat, Jangareddigudem, time began to run from the date when A.S.No.2304 of 1991, the appeal filed the said Grampanchayat against the respondent and other family members [challenging the judgment in O.S.No.63 of 1989 before the Subordinate Judge, Kovvur], was dismissed on 05.12.1994.

28. So, the appellant ought to have filed the suit for specific performance within (3) years from that date, but he filed the suit in 2007, long afterwards. Therefore, the suit is clearly barred by limitation.

29. In **Tarlok Singh vs. Vijay Kumar Sabharwal**³, the respondent's father had obtained an agreement of sale on 21.12.1984 from the appellant to alienate land. In view of pending proceedings, time for conveyance was extended by an agreement dt.18.08.1984 stipulating that the appellant shall be required to execute sale deed within (15) days from the date of the order vacating the injunction granted in a suit. When the suit for specific performance was filed, the appellant pleaded that the suit is barred by limitation. The Trial Court rejected it and decreed the suit. This was confirmed in the First Appeal as well as in the Second Appeal in the High Court. The Supreme Court held that since the contract was to be performed within (15) days from the date when the stay was vacated, the limitation began to run from 06.04.1986, i.e., the date when the order granting injunction was vacated, and since the suit for specific performance was instituted on 25.08.1989 it was clearly barred by limitation. This case illustrates the principle that when Art.54 of the Limitation Act,1963 uses the words "date fixed for performance", the intention of the Legislature is that such a date need not be mentioned as date/month/year specifically and it is adequate if it can be determined with reference to any particular event.

30. The decision in **Rathnavathi** (1 supra), sought to be relied by the counsel for appellant, dealt with the latter part of Article 54 of the Act, which dealt with the period of limitation commencing from the

³ (1996) 8 SCC 367

date when the plaintiff had notice that performance is refused. Therefore, the said judgment is not relevant to the present case.

31. The decision in **Chand Rani** (2 supra) cited by counsel for the appellant also did not deal with the issue as to when the period of limitation would commence. It dealt with the question in what circumstances time would be treated as essence of an agreement for sale.

32. Both the Trial Court as well as the Appellate Court have also held that even if the latter part of Article 54 of the Act is taken into account [which dealt with the plaintiff having notice of refusal of defendant], since there was a denial by the respondent in O.S.No.107 of 1992 about Ex.A.1, and since the said denial, according to the lower appellate Court, was in the deposition of the respondent given in 2000, the date of refusal would be that when the respondent deposed in O.S.No.107 of 1992. So, even then, the suit filed by appellant was barred by limitation.

33. Though the counsel for appellant, sought to contend that the findings of both the Courts that Ex.A.1 is a fabricated document, are not valid, I do not accede to the said contention. The said findings were rendered on appreciation of evidence and do not appear to be perverse. So I am not inclined to interfere with the said concurrent findings of fact of the Courts below.

34. Therefore, I do not find any merit in the Second Appeal and it is accordingly dismissed at the stage of admission. No order as to costs.

35. As a sequel, miscellaneous applications pending if any in this Second Appeal, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-04-2017

Ndr/*

