

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No.941 of 1999

JUDGMENT:

This appeal is filed by the unsuccessful plaintiff against the judgment and decree dated 22.07.1994 in O.S.No.173 of 1987 on the file of the Principal Subordinate Judge, Kakinada.

2. This is a first appeal and for the sake of convenience, the parties are referred to the plaintiff and the defendants only.

3. The suit was filed by one P. Mangaiahmma against one M. Surya Rao and others. The facts of the case are that the defendants are the owners of the suit schedule property admeasuring in Ac.1.30 cents in R.S. No.111 of Rajupalem village. To discharge a debt, the first defendant offered to sell the suit schedule property to the plaintiff for a sum of Rs.35,600/-. An agreement was concluded between the parties. As per the terms of the said agreement, the plaintiff has to discharge the two debts of the first defendant viz., a) a debt due under a register a simple mortgage deed in favour of Smt. N. Anasuyamma and b) a promissory note debt to K. Sathi Reddy. Both the debts were discharged and documents were collected by the plaintiff. After discharge of these two debts and the payment of Rs.5,600/- as advance, the entire sale consideration was paid and therefore, the

plaintiff states that he is entitled to a decree for specific performance.

4. In reply to this, the first defendant (before his death) filed a written statement wherein he emphatically denied the execution of the agreement, the alleged deeds etc. As per him, the agreement of sale is a rank forgery. During the pendency of the suit, the main contesting first defendant died and his legal representatives were added as defendants 4 & 5.

5. On the basis of the aforesaid pleadings, the court framed the following issues for trial:

- i) whether the plaintiff is entitled for specific performance of the suit agreement of sale, dated 01.01.1985, as claimed?
- ii) whether the suit is not maintainable at Law?
- iii) whether the plaintiff is entitled for the alternative relief of refund of the advance money, if so, with any interest and for what period?
- iv) to what relief?

6. For the plaintiff, PWs.1 to 6 were examined and Exs.A.1 to A.7 were marked. For the defendants, 3rd defendant was examined as DW.1 and he filed one document as Ex.B.1. The lower Court after analysis of the entire evidence and hearing submissions etc., held that the plaintiff is not entitled to a decree for specific performance. The Court held that the plaintiff was not entitled to the main or the alternative relief. It is this judgement dated 22.07.1994 that is impugned in the present appeal.

7. I have heard Sri M.V. Suresh, learned counsel for the appellant/plaintiff and Sri Krishna Mohan Rao, learned counsel for the respondents/defendants.

8. Before proceeding to the merits into the matter, one important feature that had to be noticed and which prevailed on the lower Court is the fact that Ex.A.2 agreement is dated 01.01.1985. However, it is executed on stamp papers of 01.02.1974 and 02.08.1978. This was the factor that was highlighted by the learned counsel for the appellant and which was in the attention of the lower Court also. When this issue was raised during the course of submissions before this Court, Sri M.V. Suresh, the learned counsel for the appellant/plaintiff submitted that there is no prohibition under law for using old stamp papers and drew attention of this Court to the judgment reported in ***Thiruvengadam Pillai v. Navaneethammal and another***¹. In this case, the Hon'ble Supreme Court held in para-14 that the fact that very old stamp papers of different dates have been used, may certainly be a circumstance that can be used as a piece of evidence to cast a doubt on the authenticity of an agreement, but that cannot be a clinching evidence. Therefore, it is the submission of the learned counsel for the appellant that the fact that old stamp papers are used should not be held against the agreement holder/plaintiff in this case, particularly in view of this Supreme Court judgment.

¹ (2008) 4 SCC 530

9. In reply thereto, the learned counsel for the respondents/defendants submitted that the fact that old stamp papers with different dates have been used is a critical piece of evidence to cast a doubt on the authenticity of the agreement. Against this backdrop, both the counsels attempted to prove the respective contentions by relying upon the facts and circumstances of this case.

10. The learned counsel for the appellant relying on **Thiruvengadam Pillai's** case contends that when there is a dispute about the authenticity of the signature or a finger print, the court should not embark on an enquiry by itself on the authenticity or correctness of the signatures. The learned counsel argued that the lower Court made a mistake in assessing the signatures on the various pages of the document Ex.A.2. He argued that the defendants who took a plea of rank forgery did not take any steps to get the document examined by an expert. Therefore, the learned counsel contends that the findings of the lower Court that Ex.A.2 is a doubtful document are incorrect.

11. On the other hand, the learned counsel for the respondents/defendants points out that the findings of the lower Court are well reasoned findings and drew the attention of this Court to para-29 of the judgment wherein the lower Court in points of (a) to (j) came to a conclusion that the case of the defendants is a better case than that of the plaintiff.

12. This Court after hearing both the counsels and after perusal of the record noticed that the plaintiff's case is that he has discharged the debts of the defendants and therefore, there is no need for him to pay anything further and that he is entitled to a decree for specific performance. The documents which are important are Exs.A.1, A.2 and A.3 and the discharge endorsements. Ex.A.1 is a registered simple mortgage deed executed in favour of N. Anasuyamma by defendants 1 to 3. According to PW.1, this document was given to him by the mortgage holder because he has discharged the debt. The endorsement of discharge of the debt is separately marked as Ex.A.5. As per this endorsement on 11.06.1985, the holder of the debt received a sum of Rs.10,275/- in full satisfaction of the debt from the present plaintiff. Ex.A.2 is the agreement of sale dated 01.01.1985 executed on stamp papers of 1974 and 1978. The next important document is Ex.A.3, which is promissory note and on the reverse of the promissory note, Ex.A.4 is discharge endorsement dated 01.06.1985. According to this discharge, the promissory note holder received a sum of Rs.14,725/- in discharge of the entire deed. Ex.A.5 is the discharge of the mortgage debt due under Ex.A.1. It is dated 11.06.1985.

13. The learned counsel for the respondents points out that in the evidence of PW.1, it was very clearly elicited as follows:

“I came to know about the debt of K. Sathi Reddy under Ex.A.1. K. Satti Reddy informed me about the debt in the year 1986. He informed that the first defendant contemplating to sell the suit property and about the debt. He later brought that note and shown to me.”

Therefore, according to the learned counsel for the respondents/defendants, the plaintiff was aware of the debt due to K. Sathi Reddy in the year 1986 and thereafter he saw the promissory note. So, he asserts that PW.1 could not have discharged the debt on 01.06.1985 by virtue of Ex.A.4 endorsement, which is dated 01.06.1985. He also points out that if K. Sathi Reddy informed PW.1 about the debt in 1986, the contents of Ex.A.2 agreement are also wrong. In Ex.A.2, which is dated 01.01.1985 itself, it is mentioned that the agreement holder will discharge the debt due to K. Sathi Reddy and taken an endorsement on the reverse of the pro-note. Therefore, the contention of the defendants that PW.1's evidence runs contrary to the case pleaded.

14. The learned counsel for the respondents/defendants also points out that the date of promissory note-Ex.A.3 is a matter of doubt. He points out that even the lower Court noticed the same. The figures 9-6-8 are clear but there is perforation or a hole had after the figure '8' in the original promissory note (Ex.A.3). According to PW.1, this promissory note is dated 09.06.1984. PW.1 agrees in his cross-examination that there is a hole in Ex.A.3 at the figure in the

date. He also states that he cannot say whether the date was interpolated by correct it from 1981 to 1984. He also agrees that he did not ask K. Sathi Reddy about the date on the pro-note-Ex.A.3. It is the contention of the learned counsel that Ex.A.3 contained a date on 09.06.1984 and to bring it within limitation, a hole or perforation was put to make it appear along with the light correction that it is 1984. The learned counsel also points out that PW.1 himself agreed in the cross-examination as follows:

“There is a hole in Ex.A.3 and the figure ‘4’ in the date. I cannot say whether the date was interpolated by correcting it from 1981 to 1984.”

15. The learned counsel also points out that PW.1 is not a party to Ex.A.2 agreement. He states that the agreement holder was not examined. It is clear from a reading of this agreement that Ex.A.2 bears the date as 01.01.1985 and it is signed by the witnesses and scribed by one Yarlagadda Satyanarayna. PW.1 is also not party to Ex.A.1 or Ex.A.5. His signature is only found as witness in Ex.A.4, which is the discharge on the promissory note (Ex.A.3). The learned counsel for the respondents strenuously argued that unless the author of deed is examined, the contents of the deed cannot be taken to be proved. There is some force in this argument. There was cross-examination on the old stamp papers. No explanation is given as to why old stamp papers were being used to enter into the agreement. The witness

PW.1 is also not aware of the contents of Ex.A.2. He is also not aware that the first defendant at the very outset/inception demanded an inspection of Ex.A.2 agreement in his reply lawyers notice. He denied the suggestion that Ex.A.2 was created. He is not aware of all the terms of Ex.A.2 agreement. Therefore, it is the contention of the learned counsel for the respondents that the contents of Ex.A.2 are not proved.

16. This Court also finds that the reason for usage of old stamp papers has not been satisfactorily examined. PW.1 is not party to Ex.A.2. He is neither attester nor a scribe. The scribe of Ex.A.2 was examined in chief, but he was not produced for cross-examination (PW.6). Hence, his testimony cannot be accepted.

17. The learned counsel also points out that the other two witnesses who were examined with regard to Ex.A.2 are PWs.2 & 3. PW.2 is one attester of Ex.A.2. He clearly deposed in the cross examination as follows:

“I do not know the full name of first defendant. I did not see first defendant signing in any document. I do not know whether the first defendant purchased the stamps on the same day or not. I did not see whether the stamp papers purchased.”

18. The next witness is the second attester of Ex.A.2, who was examined as PW.3 wherein he deposed that he does not know about the contents of Ex.A.2. Therefore, it is the submission of the learned counsel for the respondents that

the contents of Ex.A.2 document are not proved as per law and nobody connected with the document was examined to prove its contents. No reason is forthcoming why the plaintiff was not examined as a witness. On the other hand, the learned counsel for the appellant/plaintiff argued that it is enough if the attester states that he attested the document and it is not necessary that the attester should be aware of the contents of the entire document in a case like this. While this submission is correct, this Court has to agree with the respondents submission that when an agreement of 1985 is executed on old stamp papers, which are of the years 1974 and 1978, a greater duty is cast upon the plaintiff to explain the reason why such the old stamp papers were used to draft an agreement, particularly when the evidence also suggest that there were prior transactions between the parties.

19. The relief of specific performance is a relief of equity and a person who seeks a relief of equity is also to be in equity. According to the learned counsel for the respondents, Section 16 of the Specific Relief Act enjoins upon the courts to examine the personal conduct of the plaintiff too, before granting a relief. Therefore, he argued that the plaintiff must prove that his conduct was equitable. It is the submission of the learned counsel that admittedly there were earlier transaction between PW.1 and deceased first defendant. The debt due under Ex.A.1 is in the name of the wife of PW.1. Therefore, it is the submission of the

learned counsel that the old stamp papers were utilized to create this agreement-Ex.A.2.

20. The other important point that is highlighted in the course of arguments was on Ex.A.3 promissory note. It is a fact that the fourth witness was examined for the plaintiff is K. Sathi Reddy who is the original promissory note holder under Ex.A.3. According to the cross-examination of PW.4 also, the condition of Exs.A.3 & A.4 is torn and slips were attached to the same. He also agrees that there is a hole at the figure '4' in the year. He also admits that he did not give any notice to the first defendant to discharge the loan. He also agrees that it is not written in Ex.A.4 endorsement that the discharge was made for and on behalf of the agreement of sale holders of Ex.A.2. This Court finds that in Ex.A.4 endorsement which is executed on 01.06.1985 (viz., six months after Ex.A.2 agreement), there is no mention that the sale consideration payable under Ex.A.2 is being used to discharge the debt. Therefore, this Court finds force in the contention of the learned counsel for the respondents that this discharge on 01.06.1985 cannot be used as proof of payment of the sale consideration in Ex.A.2 agreement. The learned counsel points out that in Ex.A.5 agreement, there is a reference to the agreement holders name. But, in Ex.A.4 according to him, there is no reference her name at all. Therefore, it is his submission that Ex.A.4 endorsement cannot be treated as payment made by the agreement holder

of Ex.A.2. It is his contention in the alternative that even if Ex.A.2 is held to be a genuine document, payment of the consideration is not proved.

21. On a review of the entire case including the evidence of the witnesses, this Court is of the opinion that the reasons for using such old stamp papers are not satisfactorily explained. The deposition of the witnesses does not inspire confidence or explain the discrepancies and inconsistencies. The promissory note does contain a hole/perforation at the year. The lower Court also analyzed the reasons which probabalised the case of the defendants and gave a finding against the case of the plaintiff. PW.1 is not a party to the main documents. He is not a competent witness to speak on behalf of the same. The conclusions in para-29 of the lower Court judgment were also not satisfactorily explained to enable this Court to discredit the same and are to over turn the judgment of the lower Court. The preponderance of probabilities is in favour of the defendants. The conduct of the plaintiff does not inspire confidence to grant the equitable relief in this case. Even in the case law relied on by the appellant, the defendants denied the agreement. The Hon'ble Supreme Court reiterated the oft quoted proposition that the burden was on the plaintiff to prove that the first defendant executed the agreement (para19).

22. Therefore, for all the above reasons, this Court concurs with the finding of the lower Court. This Court does

not find any reasons to interfere with the impugned order. In the opinion of this Court, the judgment of the lower Court is correct and no reasons are made out to interfere with the same.

23. In the result, the appeal is dismissed. The judgment and decree of the lower Court are upheld. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Date: 30.01.2018
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D.V.S.S. SOMAYAJULU, J

