THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Appeal Suit No.964 of 1997

JUDGMENT:

This first appeal, under Section 96 of the Code of Civil Procedure, 1908, by the appellant-plaintiff is directed against the decree and judgment, dated 28.04.1997, of the learned I Additional Senior Civil Judge, Vijayawada of Krishna District, passed in OS.No.127 of 1983.

2. I have heard the submissions of Sri Polavarapu Srinivas, learned counsel appearing for the appellant-plaintiff, and of Sri M.Balasubrahmanyam, learned counsel appearing for the 4th respondent. I have perused the material record.

3. The parties in this appeal shall hereinafter be referred to as the appellant-plaintiff and the defendants for convenience and clarity.

4. Before proceeding further, it is necessary to refer to the cases of the parties.

5. The case of the plaintiff, in brief, is this: - 'The defendants 1 to 3 are brothers and the 4th defendant is their sister. The 5th defendant is the mother of the defendants 1 to 4. The defendants 1 to 3 are members of a joint family and are living together after the death of their father, Donthireddy Subba Reddy. They inherited the properties of their said father by means of succession and survivorship. The defendants 4 & 5 also succeeded to the properties of Subba Reddy as per the provisions of the Hindu Succession Act. The said Subba Reddy, who is the manager of the Hindu undivided joint family died intestate. The plaint schedule property in two items viz., of an extent of Ac.2.14 cents in R.S.No.529/1 and of an extent of Ac.0.80 cents in

RS.No.529/3 in Sori village belonged to late Subba Reddy. He died without discharging the debts he had contracted during his life time. Hence, the defendants had no option but to sell the plaint schedule property, which is a portion of the family property, to discharge the debts contracted by late Subba Reddy during his life time in his capacity as joint family manager for the benefit of the joint family. Therefore, all the defendants agreed to sell the plaint schedule property at the rate of Rs.7,100/- per acre and execute an agreement of sale. As per the terms of the agreement of sale, dated 30.12.1980, the plaintiff shall discharge the debts contracted by late Subba Reddy, by 10.01.1981, and retain the vouchers with him. The defendants delivered possession of the plaint schedule property to the plaintiff, on 30.12.1980 itself. The plaintiff discharged the debts mentioned in the agreement of sale within the stipulated time and retained the vouchers with him and continued in uninterrupted possession and enjoyment of the plaint schedule property right from the date of agreement of sale. The defendants are aware of the debts discharged by this plaintiff. In all the plaintiff paid Rs.19,894.99 ps to the creditors of late Subba Reddy and obtained vouchers. The 5th defendant was under depression due to the death of Subba Reddy, her husband. Though the name of the 5th defendant was also mentioned in the agreement of sale, she has not signed the agreement. However, she is bound to execute the registered sale deed along with the other defendants in respect of the plaint schedule property in favour of the plaintiff since the debts contracted by her husband are binding on her also and a duty is cast upon her to discharge the same as per law. The defendants 1 & 2 agreed to execute the sale deed in respect of the plaint schedule properties not only on their behalf but also on behalf of their minor children. They further agreed to obtain permission from Urban Land Ceiling (ULC) authority by incurring the necessary expenditure and register the sale deed in favour of the plaintiff in respect of the plaint schedule property. However, the defendants failed to inform the plaintiff as to whether they obtained clearance from the ULC authority. The plaintiff is always ready and willing to perform his part of the contract. The plaintiff personally and through village elders demanded the defendants to execute the registered sale deed pursuant to the agreement of sale. However, the defendants failed to execute a regular registered sale deed in favour of the plaintiff in respect of the plaint schedule property. When one G. Krishna Reddy obtained a decree against the defendants herein in OS.No.1986 of 1980 on the file of the Court of the learned Junior Civil Judge, Vijayawada, and filed an execution petition in EP.No.84 of 1981 and brought to sale Ac.2.41 cents of dry land in RS.No.529/1, which is covered by the present agreement of sale and when the Court was about to proceed with the auction of the said property in the above said execution proceedings, this plaintiff paid Rs.4,500/- in open Court. Thus, excess amount was paid towards sale consideration. And, the defendants are bound to reimburse the same to this plaintiff. The plaintiff is entitled to reimbursement of Rs.3,529.99 ps besides the relief of specific performance of the suit agreement of sale, dated 30.12.1980. When the plaintiff got issued a notice, dated 20.12.1982, to the defendants demanding them to obtain permission from ULC authority and to execute regular registered sale deed in respect of the plaint schedule property in favour of the plaintiff and also reimburse the amount paid in excess, the 1st defendant alone received the notice but did not give any reply. The other defendants refused to receive the notice. Hence, the suit is filed for specific performance.'

6. The defendants 1 & 2 remained ex parte.

7. The averments in the written statement of defendants 3 & 4, in brief, are as follows: - 'The plaintiff acting as a family friend represented that some papers are necessary for being filed before the Estate Duty Authorities and obtained the thumb impressions of defendants 3 & 4 on suit documents; the defendants 3 & 4 did not execute any agreement of sale in favour of the plaintiff. But for the misrepresentation, these defendants 3 & 4 would not have affixed their thumb impressions on the suit agreement of sale. The defendants 3 & 4 have no right in the plaint schedule property as the same was acquired with the funds of the mother, that is, the 5th defendant, and from out of the income from her jewellery and assets. Even during the life time of late Subba Reddy, the plaint schedule property was treated as the exclusive property of the 5th defendant and she has been in exclusive possession and enjoyment of the same in her own right. Hence, it remained untouched during the partition between the defendants 1 to 5. The defendants 3 & 4 being illiterate persons affixed their thumb impressions in the circumstances stated by them by blindingly believing the version of the plaintiff. The suit is liable for dismissal.'

8. The averments in the written statement of the 5th defendant, in brief, are as follows: - 'The material allegations in the plaint are false. The plaint schedule property was acquired by late Subba Reddy with the stridhana funds of this defendant, which she got from out of the disposal of her jewellery and as income from her lands. Though the property was purchased in the name of

late Subba Reddy, the beneficial interest in the property is with this defendant who is his wife. The property has been in exclusive uninterrupted possession of this defendant during the life time of Subba Reddy and even thereafter. The elders who acted as mediators at the time of partition have left this property untouched as this property is the stridhana property of this defendant. The defendants 1 to 4 have no manner of right, title or interest over the suit property to enter into any kind of transactions with respect to the said property. The allegations that Subba Reddy died without discharging the debts contracted by him during his life time and that, therefore, the defendants had no option but to sell the properties of the family to discharge the said debts are false. The family has got sufficient means to discharge the debts of late Subba Reddy. For discharge of any debts contracted by late Subba Reddy, the defendants 1 to 4 have no right to sell the plaint schedule property, which belongs to the 5th defendant. The plaintiff with a *mala fide* intention to grab the plaint schedule property worth Rs.1.5 lakhs, for a paltry amount of Rs.20,000/- fraudulently got the alleged suit agreement of sale with full knowledge that the defendants 1 to 4 have no manner of right over the same. The plaintiff has not brought to the notice of this defendant the existence of the suit agreement of sale. With the main intention of grabbing the plaint schedule property, this defendant's signature was not obtained on the suit agreement of sale. This defendant has no knowledge of the suit agreement of sale till she received the notice in the suit. No duty or obligation is cast upon this defendant to execute the sale deed. She never asked the plaintiff to discharge the debts of late Subba Reddy. This defendant was not served with any notice and she never refused to receive the legal notice. No duty is cast upon this defendant to obtain clearance from the ULC authority. The acts of the plaintiff is discharging the debts of late Subba Reddy do not bind this defendant. The suit is liable for dismissal.'

9. On the basis of the above pleadings, the trial Court framed the following issues for trial:

1. Whether the contract of sale dated 30-12-1980 is true, valid and binding on the defendants?
2. Whether the plaintiff is entitled to specific performance of suit contract?
3. Whether the defendant Nos.1 to 4 are entitled to the properties covered by the suit contract?
4. Whether the suit is bad for misjoinder of causes of action?
5. To what relief?

10. During the course of trial, PWs1 to 4 were examined and exhibits A1 to A21 were marked on the side of the plaintiff. On behalf of the defendants, DWs1 to 3 were examined and exhibit B1 is marked.

11. On merits and by the judgment impugned in this appeal, the trial Court partly decreed the suit of the plaintiff. The operative portion of the judgment of the trial Court reads as under:

> **'IN THE RESULT, the suit is decreed with costs directing the defendant Nos.1 to 4 to execute a registered sale deed in favour of the plaintiff in pursuance of Ex.A.1 agreement of sale to the extent of their shares in the plaint schedule property as on the date of Ex.A.1 i.e. to the extent of 4/5 shares within three months from today at the expense of the plaintiff, after obtaining permission from the Urban Land Ceiling Authority, Vijayawada. In case D1 to D4 fail to comply with these directions, the plaintiff shall be at liberty to obtain sale deed from the Court. The defendant Nos.1 to 4 shall also pay a sum of Rs.3,250/- to the plaintiff.'**

12. Aggrieved thereof the plaintiff brought this appeal suit.

13. Learned counsel for the appellant-plaintiff contended as follows: - 'The trial Court having accepted that the suit agreement of sale is true, valid and binding, ought to have decreed the suit as prayed for instead of partly decreeing the suit against defendants 1 to 4 and dismissing it against the 5th defendant. The trial Court ought to have granted decree for the entire suit schedule property instead of 4/5th share and ought not to have disallowed the relief of specific performance for the remaining 1/5th share of the 5th defendant. The trial Court ought to have seen that on the death of Subba Reddy, the property devolved upon all his legal heirs, that is, his children and wife, that is, defendants 1 to 5. The trial Court accepted that the suit agreement of sale was executed by defendants 1 to 4. Defendants 1 to 4 executed the suit contract of sale for the entire property. After the death of the 5th defendant, their mother, the defendants 1 to 4 became entitled to the entire plaint schedule property. Therefore, the defendants 1 to 4 derived title in respect of the entire plaint schedule property as per the provision of Section 19 of the Specific Relief Act, 1963, and Section 43 of the Transfer of Property Act, 1882. Therefore, by applying the principle enshrined in the doctrine of 'feeding the grant by estoppel', the trial Court ought to have decreed the suit in entirety. Though the 5th defendant has knowledge about exhibit A1 agreement of sale, dated 30.12.1980, she deliberately and intentionally avoided to sign the agreement of sale. The trial Court ought to have held that the suit contract of sale is true, valid and binding on all the defendants by taking into consideration the facts and circumstances and the intention of the parties. The trial Court erred in accepting the contentions in the written statement of the 3rd defendant

though the 3rd defendant did not appear as a witness before the trial Court and failed to substantiate his pleaded defence. The trial court having not accepted the defence that the plaint schedule property is the stridhana property of the 5th defendant ought to have decreed the suit of the plaintiff as prayed for instead of partly decreeing the suit. The trial Court ought to have decreed the suit 'as prayed for' more particularly as the plaintiff has taken delivery of the plaint schedule property and was and is in possession and enjoyment of the same from the date of suit agreement of sale.'

14. Per contra, learned counsel for the 4th defendant while supporting the decree and judgement of the trial Court contended that the trial Court rightly held that the plaintiff is not entitled to a decree against the 5th defendant and that the provision of Section 19 of the Specific Relief Act has no application to the facts of the present case and further submitted that the appeal is devoid of merit and is liable to be dismissed.

15. I have given earnest consideration to the facts and submissions.

16. In the light of the facts and contentions and the narrow compass of the *lis* at this stage, the point for determination is – 'whether the plaintiff, in the facts and circumstances of the case, is entitled to a decree for specific performance against the 5th defendant also and in respect of the 1/5th share of the 5th defendant, though she has not executed the suit agreement of sale, however, in view of her death during the pendency of the suit and devolution of her interest in the plaint schedule property on the defendants 1 to 4, who are her children?'

17. **POINT:**

The principal contention of the plaintiff is that though the 5^{th} defendant has not signed the suit agreement of sale, on her death during the pendency of the suit, her right, title and interest in the property devolved upon the defendants 1 to 4, who are her children, and that since defendants 1 to 4 executed the suit agreement of sale for the entire property and as the share of the deceased 5^{th} defendant in the said property devolved upon them, the plaintiff is entitled to a decree for the relief of specific performance even in regard to the $1/5^{th}$ share of the deceased 5^{th} defendant as the defendants 1 to 4 acquired right, title and interest in the entire property during the pendency of the suit, that is, subsequent to the death of their mother, the 5^{th} defendant.

18. In support of the said contentions, the learned counsel for the plaintiff first places reliance upon Section 19 of the Specific Relief Act, 1963, and further contends that since the defendants 1 to 4, who are the children of the deceased 5^{th} defendant, became owners of the entire plaint schedule property during the pendency of the suit and as they have all executed the agreement, the plaintiff is entitled to a decree for specific performance in respect of the entire plaint schedule property including the $1/5^{th}$ share of the deceased 5^{th} defendant. In that view of the matter, now it is necessary to refer to the provision of Section 19 of the Specific Relief Act, which reads as under:

Section 19 of the Specific Relief Act:

19.Relief against parties and persons claiming under them by subsequent title.— Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against
—(a) either party thereto;
(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

It is undisputed that the 5th defendant has not executed the suit agreement of sale, exhibit A1. Therefore, the plaintiff is not entitled to sue her for specific performance as she is not a party to the contract and there is no privity of contract between the plaintiff and the 5th defendant. The defendants 1 to 4, who executed the suit contract of sale, suffered a decree in the suit and are not challenging the decree passed against them for specific relief in respect of their 4/5th share in the plaint schedule property. Even during the pendency of the suit, the 5th defendant died. Her share in the property devolved upon defendants 1 to 4 is not in dispute. However, the fact of the matter is that she did not execute the suit contract of sale. Therefore, she was under no obligation, during her life time, to execute any sale deed in favour of the plaintiff in respect of her share in the plaint schedule property. Therefore, her share devolved upon the defendants 1 to 4 free from any obligation or liability. Therefore, the defendants 1 to 4 are entitled to deal with the share of their mother in the manner they desired. Since the 5th defendant has not admittedly executed the suit agreement of sale and the defendants 1 to 4 are not persons claiming under the executant of the agreement of sale and as the 5th defendant has no obligation under facts and law to execute a sale deed in respect of her share, the defendants 1 to 4 are equally not liable to execute a sale deed in respect of 1/5th share of their mother, the 5th defendant. The decision of the

Kerala High Court in **K.S.Abraham v. Mrs.Chandy Rosamma and others**[1], dealing with the above provision of law relied upon by the learned counsel for the appellant-plaintiff is also not helpful to the plaintiff-appellant as in the cited case the 2nd defendant, who was considered a necessary party, to the suit for specific performance is the wife of the 1st defendant, who executed the agreement of sale with recital that the alleged ground rent deed executed by the 1st defendant in favour of the 2nd defendant was not intended to be acted upon. As noted, there is no such false representation or misrepresentation in the case on hand and the plaintiff is aware of all the facts from the inception.

19. Be that as it may. Learned counsel for the plaintiff also placed reliance upon the principle enshrined in the doctrine of 'feeding the grant by estoppel' and *inter alia* contended as follows: - 'Though the defendants 1 to 4 had no right at the inception to execute the suit contract of sale in respect of the share of their mother, it is undisputed that they had subsequently, that is, on the death of their mother, had acquired right, title and interest in respect of the entire property including the share of their mother. On acquisition of right, title and interest in the share of their mother, the defendants 1 to 4 became owners of the entire plaint schedule property (in two items). The defendants 1 to 4 admittedly executed the suit contract of sale. The trial Court also decreed the suit against the defendants 1 to 4 and granted the relief of specific performance in respect of their 4/5th share in the plaint schedule property. Since the defendants 1 to 4 acquired right, title and interest in respect of the entire property during the pendency of the suit, they being the executants of the suit contract of sale, are bound to convey the share of their mother also in

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the plaint schedule property to the plaintiff. Therefore, the plaintiff is entitled to a decree as prayed for in respect of the entire plaint schedule property.'

20. Before proceeding further, it is necessary to refer to the provision of Section 43 of the Transfer of Property Act, which reads as under:

> "43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—Where a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists."

From the material record, it is discernable that even the plaintiff as PW1 deposed that after the death of Subba Reddy, defendants 1 to 5 wanted to dispose of the plaint schedule property in order to discharge certain debts of the family, which were incurred by late Subba Reddy as kartha and manager of the family, and that defendants 1 to 4 executed exhibit A1 suit agreement of sale though it was prepared for execution by all the defendants 1 to 5 and that the 5th defendant, who initially agreed to sign the agreement of sale, subsequently went back. Thus, defendant no.5 admittedly refused to sign the suit agreement of sale. She is having a 1/5th share in the plaint schedule property is undisputed. The plaintiff is also aware that the 5th defendant is having a 1/5th share in the plaint schedule property and yet he remained contented even though she has refused to sign the suit agreement of sale at the inception. Therefore, as on the date of agreement of sale, the defendants 1 to 4 had only a 4/5th share and they had no right to execute the agreement of sale for the entire property. Obviously, the agreement was prepared for that reason for being signed by all the defendants. However, the 5th defendant did not sign the suit agreement of sale. From the above factual matrix, it is apparent that the defendants 1 to 4 did not execute the suit agreement of sale by narrating that they are the owners of the entire property. Even the plaintiff had knowledge that the defendants 1 to 4 are having 4/5th share in the plaint schedule property and that the 5th defendant, who refused to sign the agreement of sale, is having 1/5th share in the plaint schedule property. Therefore, it is not a case where the defendants 1 to 4 professed to transfer the entire property for consideration by fraudulently or falsely representing to the plaintiff that they are authorised to transfer the entire subject immovable property. On the other hand, the agreement of sale which is supposed to be executed by all the defendants 1 to 5 was executed by defendants 1 to 4 only and the 5th defendant refused to sign the suit agreement of sale. Therefore, the contentions of the plaintiff based on the principle enshrined in the doctrine of 'feeding the grant by estoppel' are of no avail to the plaintiff as the said provision of law is not attracted to the case on hand. Learned counsel for the plaintiff fairly conceded at one stage of the argument that Section 43 of the T.P. Act does not, in terms, apply to the facts of the present case; but, however, further contended that the principle enshrined therein is an equitable principle and hence, it can be applied to the facts of the present case. In support of the said contention, he placed reliance on the decision of the Supreme Court in **Renu Devi v. Mahendra Singh and others** [(2003) 10 SCC 200]. I have gone through the cited decision. The principle of law enshrined in the Section or the equitable principle based partly on the common law doctrine of estoppel by deed and partly on the equitable doctrine that a man who has promised more than he can perform must make good his contract when he acquires the power of performance has no application to the facts of the instant case for the reason that none of the defendants 1 to 4 have promised more than they can perform as the agreement was prepared for execution by all the defendants 1 to 5 and the defendants 1 to 4 signed the agreement to bind their respective shares, but the 5th defendant refused to sign the agreement.

21. On the above analysis of facts, evidence and legal position obtaining, this Court finds that there is no merit in any of the contentions of the appellant-plaintiff.

22. Viewed thus, this Court finds that the plaintiff is not entitled to a decree for specific performance insofar as the 1/5th share of the deceased 5th defendant and that the defendants 1 to 4 are neither obligated nor liable to execute the sale deed in favour of the plaintiff in respect of the 1/5th share of their mother, which devolved upon them on her death during the pendency of the suit, and that the judgment of the trial Court brooks no interference. Point is accordingly answered.

23. In the result, the Appeal Suit is dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

24.01.2018
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