

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Second Appeal No.544 of 2018

JUDGMENT:

Aggrieved by the judgment dated 16.06.2017 in A.S.No.23 of 2015 passed by the learned II Additional District Judge, Nalgonda at Suryapet, allowing the appeal and consequently decreeing the plaintiff's suit in O.S.No.65 of 2008 on the file of Senior Civil Judge, Suryapet, the defendants preferred the instant Second Appeal.

2) The parties in the appeal are referred as they were arrayed before the Trial Court.

3) The factual matrix of the case is thus:

a) Plaintiff and defendants are known to each other and out of the aid acquaintance, the defendants offered to sell the schedule property to the plaintiff @ Rs.54,500/- per acre and executed Ex.A1—sale agreement dated 29.05.2005. As per terms of Ex.A.1, the defendants received earnest money of Rs.13,000/- from the plaintiff and agreed to receive the part of sale consideration of Rs.1,17,000/- by 10.06.2005 and the remaining balance of sale consideration of Rs.33,000/- on measuring the land on 01.01.2006 and to execute a registered sale deed in favour of plaintiff. The plaintiff had paid the part of the sale consideration of Rs.1,17,000/- to the defendants on 11.06.2005 and obtained endorsement to that effect. Thereafter, he requested the defendants on several occasions to perform their part of contract by expressing his readiness and willingness to pay the balance of sale

consideration but the defendants postponed the matter on one pretext or the other. Finally, the plaintiff got issued Ex.A.2—legal notice to defendants on 21.07.2007 calling upon them to perform their part of the contract. The defendants refused to receive Ex.A.2—notice.

Hence, the suit.

b) The 1st defendant filed written statement and the same was adopted by defendant No.2. The defendants while admitting Ex.A.1 and receiving of Rs.13,000/- and Rs.1,17,000/- contended that the suit was not maintainable either in law or on facts. The defendants submitted that the plaintiff did not turn up to comply with the terms of agreement subsequent to the payment on 11.06.2005 nor made any effort to pay the balance sale consideration but he kept quiet thereafter. It was also contended that plaintiff failed to perform his part of contract and that he was never ready and willing to pay the balance sale consideration in order to obtain a regular sale deed in his favour and thus Ex.A.1 was rescinded after 01.01.2006. Thus the defendants prayed to dismiss the suit.

c) The trial went on.

d) The Trial Court though came to conclusion that the plaintiff was entitled for specific performance of contract of sale dated 29.05.2005 on payment of balance of sale consideration, however, directed the defendants to return the earnest money of Rs.1,30,000/- with interest @ 24 % per annum from the date of filing suit till realisation.

e) Aggrieved, the plaintiff preferred AS No.23/2015 before the II Additional District Judge, Nalgonda at Suryapet. Basing on the respective pleas of both parties, the lower Appellate Court framed the following points for consideration:

- i) *Whether the appellant is entitled for Specific Performance of Contract in pursuance of Ex.A.1 or the trial Court is justified in granting alternative relief for refund of part of sale consideration?*
- ii) *Whether the decree and judgment of trial court is sustainable under law or need to be modified?*
- iii) *To what relief?*

f) The lower Appellate Court observed that when the Trial Court held that plaintiff was entitled for specific performance of contract, it was not justified in granting only alternative relief for refund of part of sale consideration. It ultimately allowed the appeal and decreed the suit in favour of the plaintiff.

Hence the Second Appeal at the instance of defendants.

- 4) Heard arguments of Sri M.Laxman Rao, learned counsel for appellants and Sri K. Raghuvver Reddy, learned counsel for respondent.
- 5) The main contention of learned counsel for appellants is that the plaintiff could not show his readiness and willingness to perform his part of the contract by paying balance amount within the stipulated time and that issue was not correctly dealt with by the lower appellate court.

6) Per contra, learned counsel for respondent would submit that the plaintiff paid the substantial amount of Rs.1,30,000/- and he was ready to pay the balance amount also. Considering the same, the lower appellate court granted the decree and no substantial questions of law involved in this case.

7) I gave my anxious consideration to know whether the substantial questions of law are involved in this case. The Trial Court in Issues 1 and 2 framed in its judgment, having found that the plaintiff is entitled to specific performance of the contract and that suit agreement cannot be rescinded by the defendants, however, in Issue No.3, held that the plaintiff is entitled to recover the earnest money of Rs.1,30,000/-. It accordingly, decreed the suit partly and directed the defendants to refund the amount of Rs.1,30,000/- to plaintiff with interest @ 24 % per annum from the date of filing of the suit till the date of realisation. Aggrieved, the plaintiff preferred A.S.No.23/2015. The lower appellate court too having regard to the evidence on record, held that the plaintiff is entitled to specific performance of contract in pursuance of Ex.A.1 and it further held that the Trial Court was not justified in granting the alternative relief of part of the sale consideration. Accordingly, the lower Appellate Court modified the decree and judgment passed by the Trial Court and decreed the suit in favour of the plaintiff for specific performance of contract in pursuance of Ex.A.1—agreement of sale dated 29.05.2005 and directed the defendants to execute a regular sale deed in favour of the plaintiff in respect of suit land within three(3) months from the date of judgment, failing which, plaintiff was at liberty to get the sale deed executed through due process of law. Aggrieved by the aforesaid judgment, the

defendants preferred the instant second appeal. His main contention is that the plaintiff could not show his readiness and willingness to perform his part of the contract and the lower appellate court has not appreciated this aspect in proper perspective. I am afraid, this argument lacks conviction, for, both the Courts below, having regard to the evidence on record gave a concurrent finding to the effect that the plaintiff is entitled to decree for specific performance.

8) The facts are that the plaintiff and defendants are known to each other and out of such acquaintance, the defendants offered to sell the schedule property to the plaintiff @ Rs.54,500/- per acre and executed Ex.A.1—sale agreement dated 29.05.2005. As per terms of Ex.A.1, the defendants received earnest money of Rs.13,000/- from the plaintiff and agreed to receive the part of sale consideration of Rs.1,17,000/- by 10.06.2005 and the remaining sale consideration of Rs.33,000/- on measuring the land on 01.01.2006 and to execute registered sale deed in favour of plaintiff. The plaintiff has paid the part of the sale consideration of Rs.1,17,000/- to the defendants on 11.06.2005 and obtained endorsement to that effect. Plaintiff's case is that thereafter he requested the defendants on several occasions to perform their part of contract by expressing his readiness and willingness to pay the balance of sale consideration. However, the defendants did not come forward and finally the plaintiff got issued Ex.A.2—legal notice to defendants on 21.07.2007 calling upon them to perform their part of the contract. The defendants refused to receive Ex.A.2—notice. Hence he filed the suit.

9) Most of the facts in this case are admitted as defendants admitted execution of Ex.A.1 and their receiving Rs.1,30,000/- towards part of the sale consideration. The only issue raised by the defendants is that the plaintiff was never ready and willing to pay balance of sale consideration to the defendants in terms of Ex.A.1 and therefore, they rescinded the contract after 01.01.2006. The lower appellate court found that PW.1 was cross-examined altogether on different aspects. He was cross-examined by the defendants to the effect that the schedule property belonged to one G.Manemma, which was not their case in the written statement. PW.1 denied the said suggestion and he also denied that he never approached the defendants to pay the balance amount of Rs.30,000/- after coming to know that the defendant had no title over the suit property. The lower appellate Court thus observed that the entire cross-examination was quite different from the defence setup by the defendants in their written statement. The lower appellate Court has further observed that the defendants did not put any suggestion to the plaintiff that Ex.A.1 was not a genuine document and defendants never offered to sell the schedule property to him nor received an amount of Rs.1,30,000/- from the plaintiff. It was also not suggested to PW.1 that he was not ready and willing to perform his part of the contract and that Ex.A.1 was rescinded after 01.01.2006. Basing on the aforesaid observations, the lower Appellate Court held that in the absence of such cross-examination, the evidence of PW.1 cannot be discarded and as there was no reason to disbelieve his evidence.

a) PW.2 was the attestor of Ex.A.1, who deposed that the defendants are the owners and possessors of the suit schedule property and they offered to sell the same to plaintiff @ Rs.54,500/- per acre. PW.2 further deposed about the execution of Ex.A.1 and the payment of part of sale consideration. PW.2 was cross-examined in the same lines as that of PW.1 to the effect that scheduled property belonged to one Manemma. Another suggestion given to PW.2 seems to be that 1st defendant had not received any amount under Ex.A.1. The lower appellate court rightly observed that the evidence of PW.2 was consistent and believable.

b) Then it appreciated the evidence of DW.1. The lower appellate court observed that in the cross-examination DW.1 admitted that he did not issue any legal notice to PW.1 for cancellation of Ex.A.1 and he did not mention in the written statement about Ex.A.2. It also observed that it was not the evidence of DW.1 that he never executed Ex.A.1 in favour of plaintiff nor received the part of sale consideration of Rs.1,30,000/- from PW.1. It was also not his evidence that himself and 2nd defendant were not the owners of the schedule property but it belonged to Manemma.

c) Then regarding the evidence of DW.2, the lower appellate court observed that he supported the case of plaintiff regarding the execution of Ex.A.1 and payment of earnest money of Rs.13,000/- on the date of agreement and payment of part of sale consideration of Rs.1,17,000/- by PW.1 etc. DW.2, however stated as if plaintiff did not perform his part of the contract by showing his readiness to pay the balance amount. The lower appellate court observed that neither the evidence of DW.1 nor DW.2 in any

way helpful to the defendants to buttress their defence. On the other hand, the testimony of plaintiff supported his case. It ultimately held that the evidence of PWs.1 and 2 and the contents of Exs.A.1 to A.7 coupled with the admissions of DWs.1 and 2 amply established the execution of Ex.A.1 and it also proved that the plaintiff was ready and willing to pay the balance of sale consideration to obtain regular sale deed and it was the defendants, who were postponing or dodging the matter on one pretext or the other to avoid execution of regular sale deed in terms of Ex.A.1. It further held that there was no basis for defendants to contend at a subsequent stage that the suit property belonged to one Manemma and hence such plea cannot be entertained. The lower appellate court ultimately held that when the execution of Ex.A.1 is established, the defendants are bound to receive the balance sale consideration from plaintiff and to execute a registered sale deed on measuring the suit property. It accordingly, decreed the suit as prayed for.

10) On a threadbare analysis of judgment of the lower appellate court, I find no irregularity or illegality in it. The facts and evidence would show that defendants admittedly executed Ex.A.1 and received Rs.1,30,000/-. Balance amount left over was only a paltry sum of Rs.33,000/-. The evidence on record clearly shows that plaintiff was always ready and willing to perform his part of contract and the defendants only dodged the matter. Further, they took a different plea during the course of trial as if they were not the owners of the property. Considering all these aspects, the lower appellate court rightly decreed the suit in favour of the plaintiff as prayed for.

11) So on a conspectus of the entire facts and evidence, no questions of law, muchless substantial questions of law are involved in this appeal.

12) Accordingly, this Second Appeal is dismissed at the admission stage.

As a sequel, pending miscellaneous petitions, if any, shall stand dismissed.

U. DURGA PRASAD RAO, J

Date: 18.09.2018

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