

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD

+ C.C.C.A.Nos.43 & 67 of 2015

% 09-04-2018

C.C.C.A.No.43/ 2015

BETWEEN:

1. E. Anantha Padmanabha Reddy, S/o. Balaram Reddy, R/o. Flat No.302, Sardar Apartments, Khairatabad, Hyderabad, presently staying at Nellore.
2. Dharama Teja @ Teja, S/o. J.V.K. Choudhary, Occ: Film Director, R/o. 222-A, Road No.17, Jubilee Hills, Hyderabad.

... Appellants/ defendants

Vs.

Chadalavada Srinivasa Rao, S/o. Late Ch. Lakshmaiah,
R/o. Plot No.174, Road No.72, Prashashan Nagar,
Jubilee Hills, Hyderabad.

... Respondent/plaintiff

C.C.C.A.No.67/ 2015

BETWEEN:

E. Anantha Padmanabha Reddy S/o. Balaram Reddy,
R/o. Flat No.302, Sardar Apartments, Khairatabad,
Hyderabad, presently staying at Nellore.

... Appellants/plaintiff

Vs.

1. Chadalavada Srinivasa Rao S/o. Late Ch. Lakshmaiah, R/o. Plot No.174, Road No.72, Prashashan Nagar, Jubilee Hills, Hyderabad.
2. P.R.K. Rao, S/o. Paruchuri, R/o. 3B, Rajarathnam Building No.59, TTK Road, Alwarpet, Chennai.
3. Chadalavada Tirupati Rao, S/o. Late Ch. Laxmaiah, R/o. Plot No.174, Road No.72, Prashashan Nagar, Jubilee Hills, Hyderabad.
4. Geetha, W/o not known, C/o. P.R.K. Rao, S/o. Paruchuri, R/o. 3B, Rajarathnam Building No.59, TTK Road, Alwarpet, Chennai.

... Respondents/ defendants

! Counsel for the Appellants : Mr. M.V.S. Suresh Kumar

Senior Counsel, representing
Mrs. A. Chayadevi

Counsel for Respondents : Mr. N. Subba Rao

< Gist:

> Head Note:

? Cases referred:
Nil.



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD

C.C.C.A.Nos.43 & 67 of 2015

COMMON JUDGMENT: (per VRS, J.)

These appeals arise out of a common judgment rendered by the II Additional Chief Judge, City Civil Court, Hyderabad, decreeing a suit for specific performance filed by the agreement purchaser and dismissing a suit for permanent injunction filed by the agreement vendor.

2. We have heard Mr. M.V.S. Suresh Kumar, learned Senior Counsel appearing on behalf of Mrs. A. Chayadevi, learned counsel for the appellants and Mr. N. Subba Rao, learned counsel appearing for the respondents.

3. The sole respondent in C.C.C.A.No.43 of 2015 and the 1st respondent in C.C.C.A.No.67 of 2015 filed a suit in O.S.No.125 of 2010 praying for (i) a decree for specific performance of an agreement of sale cum General Power of Attorney dated 11.06.2009 (ii) the cancellation of a deed of cancellation of the General Power of Attorney dated 03.03.2010 and (iii) a decree of permanent injunction restraining the appellants from alienating the suit schedule property. The said suit was filed on 09.03.2010.

4. On 11.03.2010 the sole appellant in C.C.C.A.No.67 of 2015 and the 1st appellant in C.C.C.A.No.43 of 2015 filed an independent suit in O.S.No.128 of 2010 for a decree of permanent injunction restraining the agreement holder from interfering with his peaceful possession and enjoyment of the suit property. Both the suits were taken up together for disposal and evidence was let in common. Thereafter, by a common judgment dated 19.12.2014, the trial Court dismissed the suit for

permanent injunction filed by the agreement vendor and decreed the suit for specific performance filed by the agreement purchaser. Therefore, the agreement vendor has come up with one appeal against the dismissal of his suit for permanent injunction and has come up with another appeal as against the decree of specific performance.

5. For the purpose of convenience we shall refer to the main contestants as agreement vendor and agreement purchaser and the other parties to these appeals by reference to their relationship with either of the parties.

6. The averments with which the agreement purchaser filed O.S.No.125 of 2010 for specific performance of an agreement of sale, in brief, were as follows:

a) That the agreement vendor, claiming to be the owner and possessor of the property bearing D.No.8-2-293/82/A/1363 in Plot No.1363 consisting of ground and first floor, admeasuring 1245 sq. yards or 1040.82 sq. mts., with a built up area of ground floor 2300 sq. feet and first floor 2300 sq. feet, situated at Road No.45, Jubilee Hills, Hyderabad, offered to sell the same to the agreement purchaser for a total consideration of Rs.3 crores;

b) that accordingly an agreement of sale cum GPA with possession was executed on 11.06.2009 and the same was attested by the daughter and son-in-law of the agreement vendor;

c) that the son-in-law of the agreement vendor was arrayed as 2nd defendant in the suit;

d) that the agreement purchaser paid the entire sale consideration of Rs.3 crores as detailed in Clause-2 of the agreement;

e) out of the entire sale consideration, a sum of Rs.1,32,25,000/- was paid by way of cheques and Demand Drafts on various dates to the nominee of the agreement vendor before the execution of the agreement;

f) that the balance of Rs.1,67,75,000/- was paid by way of cash by the agreement purchaser on the date of execution of the agreement;

g) that the agreement vendor admitted, confirmed and acknowledged the receipt of entire sale consideration in the agreement itself;

h) that the agreement vendor also delivered vacant and peaceful possession of the suit property to the agreement purchaser on the date of the agreement;

i) that it was agreed between the parties that the suit property was free from all encumbrances and that no person had any claim;

j) that the agreement vendor executed an irrevocable General Power of Attorney and it was coupled with interest;

k) that after the execution of the agreement of sale cum General Power of Attorney, the agreement purchaser came to know that the agreement vendor had earlier agreed to sell the suit property to one Mr. P.R.K. Rao and also received a sum of Rs.90 lakhs towards part of the sale consideration;

l) that the agreement purchaser had to settle the matter with P.R.K. Rao in order to have the property free of all encumbrances, by repaying the advance amount paid by him;

m) in or about the same time, the agreement purchaser also came to know that the son-in-law of the agreement vendor (2nd defendant) had obtained a loan from the City Financial Consumer Finance India Limited by

mortgaging the suit property and that without discharging the loan they transferred the suit property to the agreement vendor (1st defendant);

n) that the agreement purchaser agreed to pay the outstanding amount in instalments to the said Finance Company, at the request of the son-in-law of the agreement vendor, in order to have the property freed from mortgage;

o) that the agreement purchaser also paid some instalments;

p) that the agreement purchaser is a bona fide purchaser of the property for valuable consideration;

q) that the agreement vendor and his son-in-law suppressed the agreement of sale with Sri P.R.K. Rao (wrongly mentioned as P.R.K. Reddy in para-III.C of the plaint) and suppressed the fact about the loan due on the mortgage and induced the agreement purchaser to purchase the property;

r) that the alleged loan transaction and alleged mortgage were never disclosed to the agreement purchaser;

s) that the agreement vendor specifically represented that the suit property was not subjected to any mortgage;

t) that on 04.03.2010 at about 10 p.m., the agreement vendor and his son-in-law came to the suit property along with 50 to 70 anti-social elements wielding lathies and other weapons and trespassed into the suit property by beating the watchman and threatening to kill them;

u) that the agreement vendor and his son-in-law with their henchmen forcibly took possession in an illegal manner;

v) that the agreement purchaser reported the matter to Jubilee Hills Police Station, who registered a case in Crime No.80 of 2010 for the

offences under Sections 448, 420 and 506 I.P.C., but the police did not flush out the trespassers, as they are very influential people;

w) that the agreement purchaser therefore filed a petition before the A.P. State Human Rights Commission on 08.03.2010 in H.R.C.No.2141 of 2010;

x) that the Human Rights Commission passed an order dated 08.03.2010 directing the Assistant Commissioner of Police, Banjara Hills to file a report by 10.03.2010;

y) that the agreement purchaser also came to know that the agreement vendor executed a deed of cancellation of the General Power of Attorney on 03.03.2010,

z) that as per the deed of cancellation dated 03.03.2010, the agreement of sale remained intact but the power of attorney alone got revoked;

aa) That the agreement vendor has no right either to cancel the agreement of sale or to revoke the General Power of Attorney;

ab) that the agreement purchaser is always ready and willing to perform his part of the obligations;

ac) that the conduct of the agreement vendor in cancelling the G.P.A and forcibly taking possession shows that he was not willing to perform his obligations;

ad) that the deed of cancellation is illegal, fraudulent and not binding on the agreement purchaser and that in view of these developments, the agreement purchaser was obliged to file the suit for specific performance as well as for cancellation of the deed of cancellation of GPA and for permanent injunction.

7. The agreement vendor and his son-in-law, who were arrayed as defendants 1 and 2 in the suit for specific performance in O.S.No.125 of 2010, filed a common written statement contending *inter alia* that the agreement vendor never offered or agreed to sell nor negotiated with the agreement purchaser to sell the suit schedule property; that the suit schedule property is worth more than Rs.10 crores and even as per the Government prevailing market rate the value of the property was Rs.7,72,30,000/- on the date of the agreement, viz., 11.06.2009 and hence there was no occasion to sell the property for Rs.3 crores; that the document dated 11.06.2009 was executed for the purpose of securing the investment made by the agreement purchaser in a Telugu feature film titled "Keka" directed by the son-in-law of the agreement vendor, viz., the 2nd defendant; that the agreement purchaser is a film financier, producer and distributor of Telugu feature films; that the agreement purchaser and the son-in-law of the agreement vendor had business dealings; that the agreement purchaser used to finance the production and distribution of feature films made by the son-in-law of the agreement vendor and the accounts used to get settled between the parties after the release of the film; that the agreement purchaser requested the son-in-law of the agreement vendor to give him distribution rights for Nizam area for the feature film "Keka" and invested money for the said purpose; that for securing the money so invested, the son-in-law requested the agreement vendor to provide his property; that without verifying the facts and without taking any consideration, the agreement vendor executed an agreement cum GPA as a nominal document; that the said document is not a sale transaction; that even admittedly the agreement purchaser paid the amounts mentioned in the sale agreement, to the 2nd defendant (son-

in-law of the agreement vendor), who is not the owner of the suit schedule property; that the document was witnessed by the agreement vendor's daughter and son-in-law, since it was a business transaction; that the agreement purchaser did not pay any consideration to the agreement vendor for the purpose of sale transaction; that the amounts paid by the agreement purchaser were towards the investment made for the feature film directed by the son-in-law of the agreement vendor; that the amounts paid by the agreement purchaser through cheques and Demand Drafts were prior in point of time to the date of the agreement; that most of the amounts paid by the agreement purchaser are to the account of Chitram Movies and not to any individual, showing thereby that they were part of a business transaction; that the agreement vendor never handed over the possession of the property; that the document dated 11.06.2009 was only a nominal document and there was no legal sanctity for the same; that the son-in-law of the agreement vendor obtained loan from a Finance Company and the property documents were actually kept as collateral security with the Finance Company; that the creation of the charge over the property in favour of the Finance Company was within the knowledge of the agreement purchaser; that the plea of the agreement purchaser that the property was represented to be free of all encumbrances, is false as the agreement purchaser himself had given cheques for Rs.7,20,000/- directly to the Finance Company towards the installments payable by the son-in-law of the agreement vendor; that the agreement vendor had actually let out the suit schedule property to one P.R.K. Rao; that the said P.R.K.Rao agreed to purchase the property for Rs.9 crores, but subsequently failed to honour his own contract and also stopped paying rent; that the agreement purchaser never settled any

dispute between P.R.K. Rao and the agreement vendor; that the said P.R.K Rao vacated the suit schedule property and handed over the possession to the agreement vendor; that the agreement vendor never handed over the possession of the property to the agreement purchaser; that the agreement vendor and his son-in-law are respectable and well known persons and as such the question of their visiting the suit property with anti social elements on 04.03.2010 does not arise; that the agreement purchaser filed a false complaint against the agreement vendor and got it registered with influence; that the agreement vendor is not aware of the complaints lodged by the agreement purchaser with the Human Rights Commission; that the agreement vendor rightly cancelled the GPA on 03.03.2010, as the agreement purchaser came to the property and tried to dispossess the agreement vendor; that once the document dated 11.06.2009 is a nominal one, not supported by any consideration, the same will not survive after its cancellation; that the agreement vendor, who is the actual owner of the property had not received any consideration from the agreement purchaser and as such the document dated 11.06.2009 was not coupled with any interest; that the suit schedule property is the subject matter of a mortgage with City Financial Consumer Finance India Limited, Hyderabad; that the value of the suit property is more than Rs.10 crores and as such, selling the property for Rs.3 crores does not arise; and that therefore, the suit was liable to be dismissed.

8. After the defendants filed the written statement in the suit for specific performance, the plaintiff (agreement purchaser) got his plaint amended so as to include the relief of recovery of possession. As a consequence, the agreement vendor and his son-in-law, who were the

defendants, filed an additional written statement denying the averment that the agreement purchaser was originally put in possession of the suit property. They also pleaded in the additional written statement that the criminal complaint lodged by the agreement purchaser was closed.

9. On the above pleadings, the Court below framed the following issues for consideration.

- (i) Whether the Agreement of Sale cum General Power of Attorney with possession dated 11.06.2009 is true, valid and binding on the defendant No.1?
- (ii) Whether the transaction referred under Agreement of Sale-cum-General Power of Attorney dated 11.06.2009 was nominal and whether the said document was obtained as security for the investment made by the plaintiff for the picture (movie) "KEKA" under the Directorship of second defendant?
- (iii) Whether the plaintiff lost possession on 04.03.2010 on account of trespass and high-handed dispossession?
- (iv) Whether the plaintiff has been ready and willing to perform his part of obligation pursuant to Agreement of Sale-cum-General Power of Attorney dated 11.06.2009 and whether the said transaction is concluded contract and whether the plaintiff is entitled for decree of specific performance?
- (v) Whether the plaintiff is entitled for perpetual injunction as prayed for restraining intervention of defendants in any manner?
- (vi) Whether the deed of cancellation dated 03.03.2010 is bad, void and illegal and whether the same is not binding on the plaintiff?
- (vii) Whether the Court fee paid is proper?
- (viii) To what relief?

10. In his own independent suit O.S.No.128 of 2010 filed for a permanent injunction, the agreement vendor made averments almost on identical lines, as in his written statement in the suit for specific performance. Therefore, we do not wish to repeat all the averments contained in the plaint in O.S.No.128 of 2010, except those that are not found in the written statement filed in the other suit. The additional pleadings contained in O.S.No.128 of 2010 are that the suit schedule property was acquired by the agreement vendor under a registered gift

settlement deed dated 19.06.2006 executed by his daughter; that the daughter herself became the owner of the property by virtue of a sale deed dated 24.09.2002; that the son-in-law of the agreement vendor by name Dharma Teja is a renowned Film Director; that there were monetary transactions between the son-in-law of the agreement vendor and the agreement purchaser; that the suit property was under mortgage with City Financial Consumer Finance India Limited and the original documents of title were deposited with the Bank by way of equitable mortgage; that as a security for the monetary dealings between the agreement purchaser and the son-in-law of the agreement vendor, an agreement of sale cum GPA was executed on 11.06.2009; that when the agreement vendor sensed that the agreement purchaser would play foul by using the said agreement of sale, he cancelled the GPA on 03.03.2010; that thereafter, the agreement purchaser lodged a police complaint; that on finding that they are trying to knock away the suit property, the agreement vendor was forced to file a suit for permanent injunction.

11. The agreement purchaser filed a written statement in the suit for injunction, viz., O.S.No.128 of 2010, just repeating the same allegations as contained in his own suit for specific performance.

12. On the basis of the pleadings in O.S.No.128 of 2010, the Court below framed two issues in O.S.No.128 of 2010. Those issues were –

1. Whether the plaintiff is entitled for the relief as prayed for?
2. To what relief?

13. The agreement purchaser (plaintiff in the suit for specific performance) examined himself as PW.1. The agreement vendor examined himself as DW.1. No other witnesses were examined on both sides.

14. On behalf of the agreement purchaser, 43 documents were marked as Exs.A.1 to A.43. On behalf of the agreement vendor, 4 documents were marked as Exs.B.1 to B.4.

15. Upon consideration of the pleadings and the evidence on record, the trial Court came to the conclusion on issue No.1 in the suit for specific performance that the agreement of sale cum GPA with possession dated 11.06.2009 was true, valid and binding on the agreement vendor. On the second issue the trial Court held that the agreement of sale was not a nominal document and that it was not executed as security for the investment made by the agreement purchaser for the feature film "Keka". On issue No.4 in the suit for specific performance, the trial Court concluded that the agreement purchaser was always ready and willing to perform his obligations and that the transaction was a concluded contract entitling the plaintiff to a decree for specific performance. On issue No.6 the Court below held that the deed of cancellation of G.P.A, dated 03.03.2010 was illegal and not binding on the agreement purchaser.

16. On Issue No.3 in the suit for specific performance, which revolved around the alleged loss of possession of the property on 04.03.2010, the Court below held that the agreement vendor took forceful possession of the suit property. On account of this finding on Issue No.3 in the suit for specific performance, the Court below answered Issue No.1 in the suit for perpetual injunction filed by the agreement vendor that he was not entitled to an injunction.

17. On Issue No.5 in the suit for specific performance, the Court below held that as the agreement purchaser lost possession, he was not entitled to the relief of permanent injunction. Therefore, eventually, the Court below held that the suit for specific performance and recovery of

possession was liable to be decreed and that the suit for injunction filed by the agreement vendor was liable to be dismissed. Accordingly, the Court below decreed the suit for specific performance and dismissed the suit for perpetual injunction. Hence the above appeals.

18. Assailing the judgment and decrees of the Court below, it is contended by Mr. M.V.S. Suresh Kumar, learned Senior Counsel appearing for the appellants that the plaint in the suit for specific performance did not comply with the requirements as stipulated in Form Nos.47 and 48 of the Appendix-A to the Civil Procedure Code, read with Order VI Rule 3 CPC; that the fact that the transaction between the parties was one of monetary dealings and not actually an agreement for sale of immovable property was not appreciated by the court below; that the nature of the transaction was actually self evident from the recitals contained in the document dated 11.06.2009 as well as the attendant circumstances; that the fact that the agreement purchaser came to Court with a false case was borne out even by his own documents; that it was extremely unnatural for a person to offer for sale, a property, whose market value was indicated in the agreement of sale itself to be more than Rs.7 crores, for a sale consideration of Rs.3 crores; that it is also unnatural for an agreement purchaser, who claims to have paid the entire sale consideration of Rs.3 crores even by the date of the agreement of sale cum GPA, viz., 11.06.2009, to pay an additional amount of Rs.80,00,000/- to a prior agreement holder cum tenant by name P.R.K. Rao; that none of the payments made by way of cheques and Demand Drafts indicated in Clause 2 of the agreement of sale was ever paid to the agreement vendor, but were paid to the account of Chitra Movies showing thereby that the transaction was not one for the sale and purchase of immovable property;

of Rs.3 crores partly by way of cheques and Demand Drafts and partly by way of cash stood proved by these documents and that therefore, the trial Court was right in decreeing the suit for specific performance.

20. We have carefully considered the rival submissions. From the rival contentions, it is seen that the following points arise for determination in the above appeals:

1. Whether the plaint in the suit for specific performance, viz., O.S.No.125 of 2010 did not adhere to the stipulations contained in Form Nos.47 & 48 of Appendix-A read with Order VI Rule 3 of C.P.C, and if so, whether the suit was liable to be thrown out on that score?
2. Whether the suit document Ex.A.1 was intended to be an agreement of sale cum GPA with possession or whether it was executed merely as a security for the investments made by the agreement purchaser in the production and distribution of films by the 2nd defendant, who is the son-in-law of the agreement vendor?
3. Whether it was open to the agreement vendor, after having admitted the execution of the agreement of sale, to go back on the recitals contained therein and set up a different case, especially in the light of Section 92 of the Indian Evidence Act, 1872?
4. Whether the agreement purchaser has made out a case for specific performance of the agreement of sale and whether the discretion to decree the suit for specific performance was properly exercised by the trial Court?
5. Whether the agreement vendor was entitled to a decree of permanent injunction, especially in the light of the allegation by the

agreement purchaser that he was forcibly dispossessed on 04.03.2010?

6. To what relief the parties are entitled?

Point No.1:

21. The first point arising for determination is whether the plaint in the suit for specific performance, viz., O.S.No.125 of 2010 did not adhere to the stipulations contained in Form Nos.47 & 48 of Appendix-A read with Order VI Rule 3 of C.P.C, and if so, whether the suit was liable to be thrown out on that score?

22. The contention of Mr. M.V.S. Suresh Kumar, learned Senior Counsel for the appellant is that Order VI Rule 3 of the Code requires the Forms in Appendix-A to be used as nearly as may be, for all pleadings. Appendix-A of the code prescribes two forms in Form Nos.47 & 48 for use in a suit for specific performance. Paragraphs-2 and 3 of Form No.47 read as follows:

“2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has at notice.”

23. Paragraphs 2 and 3 of Form No.48 read as follows:

“2. On the _____ day of _____, 19__20__, the plaintiff tendered _____ rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the _____ day of _____, 19__20__, the plaintiff again demanded such transfer. (Or the defendant refused to transfer the same to the plaintiff.)”

24. In Ouseph Varghese v. Joseph Aley¹ which was cited with approval in Abdul Khader Rowther v. P.K. Sara Bai², the Supreme Court held that a suit for specific performance has to conform to the

¹ (1970) 1 SCR 921

² (1989) 4 SCC 313

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9TH April, 2018.
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