

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

A.S.No. 702 of 1999

J U D G M E N T :

This is an appeal filed against the judgment and decree dated 23.11.1998 in O.S.No.536 of 1993 by the II Additional Senior Civil Judge, Ranga Reddy District, Hyderabad.

The unsuccessful plaintiff is the appellant. Since this is a first appeal, the parties are arrayed as they are in the lower Court itself.

The brief averments of the plaint are as follows:

The plaintiff, defendant and one Sri Madan Mohan Reddy entered into an agreement of sale for purchase of land in an extent of Acs.76.37 guntas on 26.01.1987 for a total consideration of Rs. 43,00,000/-. Out of that the second defendant received an amount of Rs. 3,10,000/- and also an amount of Rs.1,00,000/- and four sale deeds were executed in favour of purchasers. Subsequently the plaintiff, defendant and Madan Mohan Reddy got incorporated Hyderabad Health Research Private Limited under the Indian Companies Act. First defendant has become Managing Director and the plaintiff and other partners become Directors. The first defendant, instead of filing a suit for specific performance has filed a suit in O.S.No.358 of 1988 on the file of the Principal Sub-Judge, Ranga Reddy, against second defendant for recovery of an amount of Rs.4,59,190/-.

In that suit, plaintiff is arrayed as second defendant. The second defendant herein has filed an application for transposing him as plaintiff No.2. Defendants 1 and 2 have compromised the matter and the suit is withdrawn. The first defendant has promised to pay an amount of Rs.60,000/- to the plaintiff collected by her from Palle Narayana Reddy and Smt.Susheela and the plaintiff has demanded the first defendant to pay the amount. The second defendant, without setting the claim of the plaintiff, has settled the matter with the first defendant. Therefore, second defendant also liable to pay the amount. Hence the suit.

The defendants 1 and 2 filed their written statements-cum-counter claims.

The brief averments of the written statement-cum-counter claim filed by the first defendant are as follows:

It is true that an agreement of sale was entered into with the second defendant and also about the formation of Health Research Private Limited. The plaintiff and another promoter having joined with the second defendant herein did not co-operate with him to complete the transaction.

Therefore, it became necessary to file the suit for recovery of the amount paid to second defendant and to repay the same to the members of the society. It is false that he has agreed to pay an amount of Rs. 60,000/- to the plaintiff and that neither the plaintiff collected that amount nor paid it to him at any time. The defendant has no independent right without

his consent to issue any notice to the second defendant and to demand to pay Rs. 50,000/-. He also stated that the plaintiff, in fact, caused heavy loss to the member depositors due to his illegal acts and therefore, the suit of the plaintiff is liable to be dismissed. He also stated that the plaintiff has not contributed a single pie towards the share capital after the development of the project and the defendant spent Rs.46,070/- towards expenses for surveying the land and making it into plots. The defendants have also spent an amount of Rs. 25,000/- towards court fee and advocates fee for filing the suit and spent an amount of Rs.20,000/- to defend another case in O.S.Nos.542 of 1989 and 495 of 1990. The total expenditure is Rs.91,070/- and the plaintiff is liable to pay an amount of Rs. 45,535/- being half of the amount. The plaintiff has collected an amount of Rs.50,000/- from Dr. D.Gopala Krishna and liable to pay the same. As the plaintiff failed to pay the amount, he is liable to pay interest. The total amount payable by the plaintiff is Rs.92,935/-.

The brief averments of written statement of second defendant are as follows:

It is true that an agreement of sale was executed. The plaintiff and first defendant could not complete the transaction and they have become defaulters. The first defendant filed suit in O.S.No.358 of 1988 for recovery of Rs.4,54,190/- and the defendant had settled the matter with the parties and paid back reasonable amount out of Court

and first defendant has withdrawn the suit. The plaintiff had nothing to do with the settlement and the defendant is not liable to pay Rs.60,000/- to the plaintiff and therefore, he prays for dismissal of the suit.

The brief averments of written statement filed by plaintiff for counter claim are that the first defendant filed O.S.No.358 of 1988 against the second defendant for recovery of an amount of Rs.4,54,190/- and he is made as second defendant in the suit. However, no relief is claimed here against the plaintiff. The plaintiff also filed a petition for transposing him as second plaintiff and while the said petition was pending, defendants 1 and 2 have compromised the matter and consequently first defendant had withdrawn the suit without consent or knowledge of the plaintiff. At that time, defendants 1 and 2 agreed to pay an amount of Rs.60,000/- to the plaintiff and they colluded together and have not paid the amount. Therefore, the plaintiff is constrained to file the suit. The first defendant herein has already collected the amount with costs of the suit amounting to Rs.25,000/- from second defendant herein. As such, the counter claim of first defendant for recovery of half of the expenses is neither maintainable nor recoverable from the plaintiff. If the first defendant not received the entire amount and costs, he would have withdrawn the suit and hence, the counter claim is absolutely false.

On the basis of the pleadings and the counter claim, the following two issues were settled for trial

1. whether the plaintiff is entitled to recover the suit amount?
2. whether the defendant is entitled to a counter claim of Rs.92,935/- from the plaintiff as prayed in written statement?

Based on these two issues, the parties went to trial. On behalf of the plaintiff, PW.1 was examined and Exs.A.1 to A.4 documents were marked. On behalf of defendants, DW.1 was examined and Exs.B.1 to B.18 were marked. After trial, the lower Court passed the impugned order dismissing the claim made and allowing the counter claim in part. This order is now assailed in the appeal. The unsuccessful plaintiff challenged both the dismissal of the claim and also the award of the counter claim in part.

I have heard Sri A.Pulla Reddy on behalf of the appellant. The respondents did not appear or argue despite an opportunity being granted and the matter was reserved for orders.

The learned counsel for the appellant submits that the order of the lower Court is wrong and that the lower Court did not take into consideration the documents and the pleadings of the parties. The lower Court, in the impugned judgement, noticed certain admitted facts. (a) that the plaintiff along with the first defendant and N.Madan Mohan Reddy entered into an agreement for purchase of land. Subsequently, the

plaintiff, first defendant and the said Madan Mohan Reddy incorporated a private limited company under the name and style of Hyderabad Health Research Private Limited. Later, this project failed and litigations were commenced by certain depositors, who advanced money for this project.

It is the specific case of the plaintiff as per the averments in the plaint that the suit is filed for recovery of a sum of Rs.60,000/- collected by her from two persons (a) Palle Narayana Reddy (Rs.50,000/-) and Smt.Susheela, (Rs.10,000/-). Since, the plaintiff got the investment/money from these two persons, she has filed a suit claiming responsibility for refund of the said amount to these two people. The defendants denied that this amount was collected from Narayan Reddy and Smt.Susheela respectively. The defendants, apart from denying the claim also set up a counter claim for the amounts spent by them towards the suits which they force to defend etc.

The first and foremost issue that is to be decided is, whether the plaintiff, who is claiming the amount, has proved that she has in fact collected Rs.60,000/- from the two people mentioned in the plaint and whether the same has handed over to the defendant. Following that if these two issues are established, then, the question of refund etc., would arise.

The documents filed by the plaintiff are Exs.A.1 to A.4. These documents do not reveal that Rs.50,000/- and Rs.10,000/- were collected by the plaintiff for this project.

Ex.A.1 is a lawyer notice dated 18.03.1992 address by the plaintiff to C.Narayana Reddy, the owner of the land. He is second defendant in the suit. The said notice does not mention anything about the amounts collected by the plaintiff for which the suit is filed. Ex.A.2 is another notice dated 13.05.1993 issued by the plaintiff to first defendant. In this document also, there is no specific mention of the amounts collected from these two people. However, she states that there was a compromise in the suit O.S.No.358 of 1998, in which a sum of Rs.60,000/- was agreed to be paid to the plaintiff which she would in turn pay to the intended purchasers. Ex.A.3 is the reply notice to Ex.A.2. In this reply notice, the first defendant clearly denies that an amount of Rs.60,000/- was agreed to be paid at the time of compromise of the suit O.S.No.358 of 1988. It is also stated that the claim for Rs.60,000/- is a false and unfounded claim. Ex.A.4 is a photostat copy of a document showing the collection and expenditure. This document was marked during the evidence of PW.1, but a reading of the evidence shows that she really did not depose about the contents of those documents. A reading of these documents does not in any way appear to support the case of the plaintiff.

The plaintiff has filed the suit and is seeking relief. Therefore, the burden is upon her squarely to establish her case. The two people mentioned in the plaint from whom she supposedly collected the money were not examined as

witnesses. The plaintiff did not also clearly depose when this amount was made over to the defendant. Mere marking of the document is not proof of contents of the document. There should be oral evidence also of the contents (however brief) to support the contents. In the cross-examination of DW.1, he stated that Ex.A.4 was prepared before collecting the amounts. Neither of the parties cross-examined the witnesses about the contents of Ex.A.4. Ex.A.4 even if it is accepted as a true document, shows settlement of accounts and does not reflect any dues payable much less the suit claim. If the document is true; validly executed and proved also, it shows that the entire collection of Rs.4,41,070/- has been accounted for. This Court also is of the opinion that this document cannot be relied upon for the purpose of the suit claim. The suit claim rests upon the collection of Rs.50,000/- and Rs.10,000/- from Sri Palle Narayana Reddy and Smt. Susheela. The name of Smt. Susheela is not mentioned in the list of collection in Ex.A.4. There is a mention of collection from Narayana Reddy through Raghavamma (Rs.50,000/-) in Ex.A.4. This by itself is not enough to decree the suit claim because the case of the plaintiff is that these two amounts were agreed to be refunded to her when O.S.No.358 of 1988 was settled. Therefore, the plaintiff, in order to succeed in this case, will have to prove that in the compromise that was effected in O.S.No.358 of

1988, a further promise was given to her to pay back Rs.60,000/-. This evidence is absolutely lacking in this case.

In addition, the lower Court also observed that Ex.B.18, notice issued by the plaintiff itself does not show the collection of these two amounts from Narayana Reddy and Susheela. It is also rightly noticed by the lower Court that Narayana Reddy and Susheela who were the investors themselves does not seek the refund of the amount deposited. Therefore, this Court holds that the lower Court rightly rejected the claim of the plaintiff. This Court agrees with the findings on issue No.1 in the lower Court.

Issue No.2 is about the counter claim made by the defendant seeking an amount of Rs.92,935/-. These are the amounts which according to the defendant had incurred for defending three suits O.S.Nos.358 of 1988, 542 of 1989 and 495 of 1990. These three suits, according to the defendant, are a result of the failed project. Plaintiff could not prove that she actually contributed anything. The filing of these suits and the closure of the two suits is borne out by the record. According to the plaintiffs own pleading O.S.No.358 of 1988 was compromised. Plaintiff also admits that O.S.No.542 of 1989 was compromised and O.S.No.495 of 1990 was pending. The amounts paid are borne out by the record. The lower Court, after appreciation of the evidence, came to a conclusion that the first defendant spent an amount of Rs.20,000/- for the defence (expenditure) in O.S.Nos.542 of

1989 and 495 of 1990. Out of this, a sum of Rs.14,570/- is borne out by Exs.B.12 and B.15. Therefore, the Court concluded that half the claim can be awarded and proceeded to award a sum of Rs.10,000/-. This Court is of the opinion that since the proof is only available for Rs.14,540/-, the lower Court should have awarded only half of the sum of Rs.14,540/- i.e. Rs.7,270/- only. As far as the second sum of Rs.46,070/-, the plaintiff herself admits that Rs.46,070/- was spent. Therefore, this Court is of the opinion that half of this amount is to be paid by the plaintiff. The lower Court was also right in awarding a sum of Rs.23,035/- as the plaintiff's share which is payable by her. Therefore, this Court holds that the first defendant is entitled to a decree for a sum of Rs.23,035/- + Rs.7,270/- = Rs.30,305/- only and not Rs.33,035/-.

With this modification, the findings of the lower Court are confirmed and the first defendant is entitled to recover from the plaintiff a sum of Rs.30,305/- with interest at 12% from the date of the suit till the lower Court decree and further interest at 6% from the date of the first decree in the lower Court till the date of actual realization.

In the result, the appeal is partly allowed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 19.01.2018
KLP

