

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

SECOND APPEAL No.1031 of 2000

JUDGMENT:

1 This second appeal is filed under Section 100 CPC assailing the judgment and decree dated 04.07.2000 passed in A.S.No.54 of 1996 on the file of the Court of the Senior Civil Judge, Narsapur, wherein and whereby the decree and judgment dated 02.09.1996 passed in O.S.No.60 of 1987 on the file of the Court of the Principal District Munsif, Narsapur decreeing the suit in part directing the 1st defendant to refund an amount of Rs.3,000/- to the plaintiff with proportionate costs and interest at the rate of Rs.12% p.a. from the date of agreement till the date of realisation was confirmed.

2 Heard the learned counsel for both parties.

3 The facts leading to the filing of the present second appeal, in nutshell, are as follows:

4 It is the case of the plaintiff that the first defendant executed an agreement of sale on 09.05.1984 in favour of the second defendant agreeing to sell the suit schedule property for an amount of Rs.5,000/- and received an amount of Rs.3,000/- towards earnest money. As per the terms and conditions of the agreement, the second defendant has to pay the balance amount on or before 31.12.1984 and obtain a regular sale deed, failing which the

second defendant has to pay interest at the rate of 24% p.a. The second defendant transferred the agreement of sale in favour of the plaintiff on 15.4.1986. The first defendant postponed the execution of a regular sale deed on one pretext or the other. Hence the plaintiff got issued a notice on 10.03.1987 directing the first defendant to execute the sale deed. On 24.03.1987 the first defendant got issued a reply stating that she executed a settlement deed in favour of her daughter in respect of part of the property and sold the remaining property to third parties. The plaintiff, having no other alternative, filed the suit for specific performance of agreement.

5 The first defendant filed written statement denying the various averments made in the plaint, *inter alia* contending that the second defendant has not secured the necessary amount to obtain the sale deed. The second defendant has no authority to transfer the agreement of sale in favour of the plaintiff. The second defendant, in collusion with the plaintiff, created the transfer endorsement and hence the suit is liable to be dismissed.

6 The second defendant filed written statement admitting the agreement of sale dated 09.05.1984 and transfer endorsement dated 15.4.1986, *inter alia* contending

that she has no objection to execute sale deed in favour of the plaintiff along with other defendants.

7 The defendant Nos.3 and 4 filed memo adopting the written statement of the first defendant.

8 Basing on the above pleadings, the trial court framed the following issues:

1. "Whether the agreement of sale is cancelled under the circumstances mentioned in the written statement?
2. Whether the transfer endorsement dated 15.4.1986 on the agreement of sale is true, valid, supported by consideration and binding on the defendant?
3. Whether the plaintiff is entitled to any relief either primary or alternative relief?
4. To what relief?"

9 Before the trial court, on behalf of the plaintiff P.Ws.1 to 4 were examined and Exs.A.1 to A.7 were marked. On behalf of the defendants D.Ws.1 to 4 were examined and Exs.B.1 and B.2 were marked.

10 Basing on the oral, documentary evidence and other material available on record, the trial court decreed the suit in part directing the first defendant to pay an amount of Rs.3,000/- with interest at the rate of 12% p.a. from the date of agreement till the date of realisation while rejecting the relief of specific performance.

11 Feeling aggrieved by the judgment and decree dated 02.09.1996 passed by the trial court in O.S.No.60 of 1987,

the plaintiff preferred A.S.No.54 of 1996 on the file of the Court of the Senior Civil Judge, Narsapur. The first appellate Court, after reappraising the oral and documentary evidence available on record afresh, dismissed the appeal. Hence the present second appeal by the unsuccessful plaintiff.

12 The question of law urged by the learned counsel for the plaintiff / appellant is -

‘Whether the Courts below have exercised the discretionary power conferred under Section 20 of the Specific Relief Act, in accordance with law?’

12 Initially the plaintiff filed the suit for specific performance against the defendant Nos.1 and 2. During the pendency of the suit, the plaintiff filed a petition under Order I Rule 10 CPC to implead defendant Nos.3 and 4 and the same was allowed by the trial Court on 17.10.1994.

13 The following admitted facts can be culled out from the pleadings of both parties. The first defendant is owner of an extent of Ac.0-50 cents out of Ac.14-59 cents in R.S.No.45 of Mogalthur village and Mandal of West Godavari District. On 09.05.1984 the first defendant executed an agreement of sale Ex.A.1 in favour of the second defendant agreeing to sell the suit schedule property for a consideration of Rs.5,000/-. The second defendant paid Rs.3,000/- towards advance money and agreed to pay the

balance amount on or before 31.12.1984 and obtain the regular sale deed. On 15.4.1986 the second defendant transferred the agreement Ex.A.1 in favour of the plaintiff under Ex.A.2. On 10.3.1986 the plaintiff got issued a legal notice directing the first defendant to execute the sale deed. Ex.A.3 is the office copy of the legal notice. On 24.3.1986 the first defendant got issued Ex.A.4 reply notice stating that she executed Ex.A.5 settlement deed dated 25.11.1985 in favour of third defendant and Ex.A.6 sale deed dated 26.11.1985 in favour of fourth defendant.

14 P.W.1 is husband of the of the plaintiff. P.Ws.2 and 3 are attestors and P.W.4 is the scribe of Ex.A.2. It is a settled principle of law that admitted facts need not be proved. The first defendant admitted the execution of Ex.A.1 in favour of the second defendant. By examining P.Ws.1 to 4, the plaintiff proved Ex.A.2 transfer endorsement. For one reason or the other, the defendants did not challenge the validity of Ex.A.2. Therefore, this Court is not going into the validity or otherwise of Ex.A.2.

15 Before filing of the suit, the first defendant executed Ex.A.5 settlement deed in favour of the third defendant on 25.11.1985 and sale deed Ex.A.6 dated 26.11.1985 in favour of the fourth defendant. Thus, the first defendant

lost her right over the suit schedule property prior to filing of the suit.

16 It is needless to say that the court has to exercise the discretionary power conferred on it under section 20 of the Specific Relief Act judiciously basing on sound principles of law. Simply because the second defendant transferred the agreement of sale in favour of the plaintiff, that itself is not a valid ground to grant the relief of specific performance. The plaintiff without verifying the title of the first defendant obtained the transfer endorsement Ex.A2 from the second defendant.

17 The trial Court after taking into consideration oral and documentary evidence available on record, rejected the main relief of specific performance and granted alternative relief of refund of advance money with interest. By granting the alternative relief, the trial Court one way protected the interest of the plaintiff. This itself indicates that the trial Court exercised the discretionary power judiciously basing on sound principles of law. The first appellate court, after re-appraising the oral and documentary evidence, arrived at a conclusion that the plaintiff is not entitled to the main relief of specific performance and dismissed the appeal. The first appellate Court also exercised the discretionary power judiciously basing on the sound principles of law. This

Court shall not lightly interfere with the discretionary power exercised by the courts below. The findings recorded by the courts below are based on evidence, much less legally admissible evidence.

18 In the light of the foregoing discussion, I am unable to accede to the contention of the learned counsel for the appellant that the courts below have misconstrued the scope of Section 20 of the Specific Relief Act while rejecting the main relief of specific performance in favour of the plaintiff.

19 In *Municipal Committee, Hoshiarpur v. Punjab SEB*¹ the Hon'ble Apex Court held at para No.16 as follows:

16. Thus, it is evident from the above that the right to appeal is a creation of Statute and it cannot be created by acquiescence of the parties or by the order of the Court. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a Court or Authority with jurisdiction, is a legislative function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance of the conditions mentioned in the provision that creates it. Therefore, the Court has no power to enlarge the scope of those grounds mentioned in the statutory provisions. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The Court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal, on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine-qua-non for the exercise of jurisdiction under the provisions of Section 100 C.P.C. It is the obligation on the Court to further the clear intent of the Legislature and not to frustrate it by ignoring the same. (Vide: Santosh Hazari v. Purshottam Tiwari (dead) by Lrs. AIR 2001 SC 965; Sarjas Rai and Ors. v. Bakshi Inderjeet Singh (2005) 1 SCC 598; Manicka Poosali (Deceased by L.Rs.) and Ors. v. Anjalai Ammal and Anr. AIR 2005 SC 1777; Mst. Sugani v. Rameshwar Das and Anr. AIR 2006 SC 2172; Hero Vinoth (Minor) v. Seshammal: AIR 2006 SC 2234; P.

¹ (2010) 13 SCC 216

Chandrasekharan and Ors. v. S. Kanakarajan and Ors. (2007) 5 SCC 669; Kashmir Singh v. Harnam Singh and Anr. AIR 2008 SC 1749; V. Ramaswamy v. Ramachandran and Anr. (2009) 14 SCC 216; and Bhag Singh v. Jaskirat Singh and Ors. (2010) 2 SCC 250).

20 Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that there is no question of law, much less, substantial question of law, in this appeal.

21 Hence the appeal is dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any pending in this appeal shall stand dismissed.

Date: November 19, 2018
Kvsn

T.SUNIL CHOWDARY, J

