

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Second Appeal No.405 of 2000

JUDGMENT

The second appeal is maintained against the concurrent findings of the Courts below dismissing the plaintiff's suit for specific performance of the contract for sale dated 19.10.1980, by raising substantial questions of law and this Court admitted the Second Appeal on 19.01.2001 for involving with its finding, the following substantial questions of law to adjudicate viz;-

- a). Whether the life interest created in favour of D.1 would enlarge into an absolute right under Section 14(1) of the Hindu Succession Act, when the D.1 has no pre-existing right?
- b). Whether the case on hand would not fall within the provisions of Section 14(2), but not to 14(1) of the HS Act, in view of the life interest created under the Settlement Deed?
- c). Whether the agreement of sale dated 19.10.1980 (Ex.A.2), executed by the D.1 has not been proved as required under law by examining the scribe and the attestors?

2. In fact, the sole plaintiff by name Satti Venkat Reddy S/o Achi Reddy filed the suit against the two defendants by names Goparaju Annapurnamma and Satti Venkata Reddy (for short, 'D.1 and D.2') respectively who filed written statements and contested the suit filed on 24.02.1982 respectively, on 25.08.1982 and 13.08.1982. The learned Prl. District Munsif, at Tanuku, tried the suit along with another suit for permanent prohibitory injunction in O.S.NO.89 of 1982 between the self-same parties with self-same array. Both the suits were ended in dismissal by said common judgment dt.17.12.1990 after recording evidence of sole plaintiff-P.W.1 with three more

witnesses P.Bullireddy, SPRC Murthy, and M.Ramakrishna Rao, and on behalf of defendants, D.1 as D.W.1 and three others D.W.2-Satti Sathi Reddy, D.W.3-Satti Bulli Ammayi and D.W.4-Gudimetla Kasireddy and the documents placed reliance are Exs.A.1 to A.4 viz; registered sale deed dt.11.12.1967 executed by D.1, her husband-G.N.L.Narasimha Rao and others in favour of plaintiff, Ex.A.2-sale agreement dt.19.10.1980 executed by D.1 in favour of plaintiff, Ex.A.3 is registered extract of settlement deed, dt.22.03.1954 executed by G.N.L.Narasimha Rao-husband of D.1 in favour of D.1, and Ex.A.4 is the Photostat copy of the riot passbook obtained by the plaintiff pursuant to the sale agreement of 1980 supra. Among the documents of the defendants, Exs.B.1 to B.9 (Exs.B.1 to B.4-land revenue receipts dt.15.05.1971 and 14.03.1980 paid by D.2 in the name of D.1, Exs.B.5 and B.6 are certified copies of plaint and written statement in O.S.710 of 1981, Ex.B.7 is suit adjustment memo by plaintiff in O.S.No.710 of 1981, Ex.B.8-Ryot passbook in the name of D.1, Ex.B.9-decree in A.T.C.No.223 of 89 and also Exs.X.1 to X.6 marked viz; Ex.X.1-post card written by Goparaju Perraju to Satti Peda Venkatareddy, Ex.X.2 and 3-post cards written by Goparaju Suryanarayana Murthy to Satti Pedda Venkatreddy, Ex.X.4- M.O. receipt for Rs.9313.9ps. sent to Goparaju Suryanarayana Murthy, Ex. X.5-acknowledgment regarding receipt of Money Order for Rs.9313.9 by Goparaju Suryanarayanamurthy and Ex.X.6-acknowledgment regarding receipt of Money Order for Rs.112/- by Goparaju Suryanarayana.

3. From the said evidence with reference to respective pleadings in answering the issues as to whether the sale agreement dated 19.10.1980 is true and plaintiff is entitled to specific

performance and to what relief besides additional issue of whether the D.1 is absolute owner of property by virtue of Section 14 of the Hindu Succession Act (for short, 'the Act') in answering negative of issues 1 and 2 and in positive of the additional issue observed that G.N.L Narasimha Rao is the husband of D.1 who inherited the property from his father.

4. The case of plaintiff for specific performance in nutshell indicates that the relationship between D.1 and her husband since strained were living separate, he executed original of Ex.A.3 registered settlement deed, dt.22.03.1954 in favour of D.1 for the property by giving life interest to her and reserving vested interest on him and while so, the D.1's husband and vested interest right holder in the registered sale deed dated 10.12.1967, sold the property in favour of plaintiff and while so, the D.1 entered into contract for sale under original of Ex.A.2, dt.19.10.1980 in favour of plaintiff life estate of her by receiving advance by part payment of sale consideration to receive balance and to execute sale deed later pursuant to the terms therein. It is averred of D.1 is trying to induct D.2 as if a tenant over the property in seeking permanent injunction relief and therefrom specific performance of the said contract for sale.

5. The contest of D.1 is that the life estate given to her under the settlement deed supra by her husband is enlarged as full estate u/ sec.14(1) of the Act, secondly she became full owner and the sale deed-Ex.A.1 said to have been obtained by the plaintiff from the husband of D.1 in 1957 is null and void and no way binds the D.1. She denied the execution of Ex.A.2 sale agreement dt.19.10.1980 in

favour of the plaintiff and receiving an earnest money saying that is invented and signature of her forged and plaintiff is not entitled to seek for specific performance. She claims that D.2 is cultivating tenant under her and if at all she intends to sell, she has to sell to D.2 u/ sec.15 of the A.P.Tenancy Act.

6. The contest of D.2 is also that he and his family are cultivating tenants for the past 70 years continuously under D.1 and her husband, that plaintiff obtained riot passbook by misrepresenting facts to the Tahasildar, that defendants applied for cancellation of said passbook and to issue fresh passbook in the name of D.1 showing the D.2 as a tenant, that Tahasildar issued the same, that D.2 being statutory tenant in possession, that plaintiff cannot seek permanent injunction against him and that the sale agreement also not true.

7. The trial Court observed therefrom (in arriving the result referred supra) with reference to the pleadings and evidence that the P.W.2 P.Bulli Reddy, is son-in-law of P.W.1-plaintiff and attestor to Ex.A.2 sale agreement and P.W.2 S.P.R.Murthy is scribe and P.W.4 M.R.K.Rao is another attestor. The Ex.A.1 sale deed dt.11.12.67 executed in favour of plaintiff by husband of D.1 contains a recital regarding the life interest in favour of D.1 under Ex.A.3 settlement deed created by her husband and no oral evidence contrary to that of P.W.1 and does not know about same is impermissible to adduce regarding the execution of the so called Ex.A.2 sale agreement under dispute as forged, as per P.W.1's evidence he along with his son-in-law-P.W.2 and P.W.3 so called scribe came to the house of D.1 and she executed the Ex.A.2 sale agreement. Whereas, P.W.2 stated of

Ex.A.2 was executed on single stamp paper and he put his signature on the stamp paper and it belies the so called attestation from the contradictory versions. What P.W.2 in his chief examination stated of D.1 signed in his presence. In the cross-examination stated he went to the house of D.1 and by then execution had already been completed and he was only asked to attest and attested which is also contrary to the evidence of P.W.1. His version is he accidentally went to milk booth and on seeing him, P.W.1 called him which is also not consistent that the evidence of P.W.1 supra about the manner of his presence and attestation. Whereas, the P.W.4 deposed of he was called to attest Ex.A.1 and he simply attested and coming to evidence of P.W.2-the so called scribe of Ex.A.2-sale agreement stated that the plaintiff approached him saying he is going to obtain sale agreement from D.1 and requested to scribe and he told P.W.1 to purchase stamp paper and he brought the stamp paper worth Rs.5/- and at request of P.W.1 he scribed Ex.A.1 by incorporating the recitals. He denied about his acquaintance with the P.W.1 and D.W.1 and it is strange from that evidence also as to without feeding information how he scribed of his own. His evidence on other breadth says, he along with P.W.1 went to house of D.W.1 from taluk office, it is not even consistent with the evidence of P.W.1 supra in the manner of their going to the house of D.1-D.W.1. It is also discussed about the recital regarding without payment of consideration by 30.04.1989 is stated strange to believe said sale agreement and its execution who is the D.2 in fact placed positive evidence as per the trial Court in proof of the claim of he is a tenant under the D.1 since her father -in-law's and husband's time to say P.W.1-sarpanch of Alamuru could aware of

said tenancy even before his entering into the alleged contract for sale sought for specific performance and the other witnesses of the defendants also deposed about tenancy and Exs.X.1 to X.6 also speaks about D.2's father paid land tax during 1930-40 which supports claim of D.2 of he was tenant over the property for the past 70 years since his father's time. The D.1 and D.2 also as stated supra filed O.S.No.710 of 1981 against the plaintiff questioning obtaining of passbook by impleading Collector and Tahasildar who filed their written statement saying the passbook issued indicated about life interest on D.1 and after filing of suit, passbook was issued in favour of D.1 and also indicating the tenancy in favour of D.2 against O.S.No.710 of 1981, A.S.No.52 of 1987 stated preferred by the plaintiff herein was pending which is only against the costs of award. It is observed that if at all the plaintiff possessed the sale agreement by the time of filing of suit for injunction O.S.No.81 of 1982, he should have sought for specific performance therein itself but not bare injunction and D.2 stated about his intention to purchase the plaintiff schedule property from D.1 as a tenant in preference and concluded therefrom of the sale agreement is not proved and specific performance decree cannot be granted. It is also observed referring to the expression of the Apex Court in Vaddeboyina Tulasamma Vs. Vaddeboyina Sessa Reddi¹ of property given in recognition of a pre-existing right which is in lieu of maintenance becomes absolute u/ sec.14(1) of the Act, irrespective of the Act by document creating life interest and not confined to Section 14 of the Act, but for life interest and possession includes constructive possession and once the

¹ AIR 1977 SC 1944

D.1's life interest by virtue of the settlement for maintenance enlarged into absolute interest u/ sec.14(1) of the Act and the sale agreement is not correct, whatever the right he obtained from the husband of the D.1 under Ex.A.1 sale deed of 1967 is of no value for D.1's husband has no vested remainder right remained for Section 14(1) of the Act applies.

8. In the first appeal, impugning the trial Court's decree and judgment supra, for sole plaintiff since died, filed by his legal representatives against the defendants of whom D.2 also since died by legal representatives brought on record, the first appellate Court also on contest by judgment dt.09.12.1999 dismissed the appeal confirming the trial Court's decree and judgment supra dt.17.12.1990, with the observations in answering points formulated of whether the sale agreement Ex.A.2 dated 19.10.1980 is true and binding on D.1 and whether the D.1 became absolute owner u/ sec.14(1) of the Act and whether the plaintiff is entitled to specific performance of the sale agreement supra that the plaint schedule property is of Ac. 1-00 covered by RS.No.154 of Alamuru village owned by the D.1's husband G.L.N.Rao and therefrom disposed between the wife and husband and D.1's husband conveyed life interest over the property in favour of D.1 in lieu of maintenance by remaining vested interest in him covered by original of Ex.A.2 settlement deed, dated 22.03.1954 and so far as Ex.A.2 sale agreement, dt.19.10.1980 said to have been executed in favour of the plaintiff by D.1 claimed by the defendants as forged one concerned, by reiterating what is discussed in the evidence of P.Ws. 1 to 4 and the D.Ws. 1 to 4, the lower

appellate Court observed that if in case the D.1 failed to perform the contract pursuant to the recitals and sale agreement and to deliver possession of the property by specified date to take possession etc., the recitals in the agreement are contravening apart from there is tenancy in favour of D.2 already subsisting and at the time of the sale and sale agreement respectively and even for the D.1 failed to perform, the plaintiff could have sought for expressing readiness and willingness instead of waiting pursuant to the agreement of 1980 even after filing of the suit for cancellation of the passbook filed by D.1 in O.S.No.710 of 1981 including against the plaintiff, instead of keeping fact having known of D.1 is not willing to perform and as held by the trial Court and the D.1 became absolute owner u/ sec.14(1) of the Act by virtue of the recitals of statement of property given in recognition of pre-existing right for maintenance and further D.2 is the subsisting tenant for the property in expressing preference to purchase in respect of enforcing the sale agreement does not arise as also held by the trial Court and thereby not entitled to the specific performance and not even entitled to the injunction, record shows as the possession of D.2 as tenant since long time and no right is accrued under 1967 sale deed executed by husband of D.1 in favour of the plaintiff as D.1 became absolute owner of property u/ sec.14(1) of the Act, leave apart the inconsistency in the evidence of P.Ws. 1 to 4 discussed by the trial court to say sale agreement is not proved.

9. The contentions in the grounds of the second appeal in formulating the above substantial questions of law are that the reasons given by the Courts below are unsound and untenable in law

and sought for setting aside the concurrent findings of the Courts below by allowing the appeal.

10. Heard both sides and perused the substantial questions of law formulated supra and other material on record with reference to facts which no way requires repetition. The very recitals in Ex.A.3 registered settlement deed executed by husband of D.1 to D.1 on 22.03.1954 are very clear of the property given because of the differences between the husband and wife, in lieu of her maintenance in recognition of her pre-requisite right, though the recitals show only life interest and vested remainder reserved in him. Even he executed Ex.A.1 sale deed of 11.12.1967 in favour of the plaintiff, there is no delivery of property as record shows particularly from Exs.X.1 to X.6 of father of D.2 paid taxes for the property in his name or in the name of D.1's father-in-law during the years 1932 to 1941 and also paid Makta by M.Os. that were acknowledged to substantiate the of there is tenancy subsisting over the property in favour of D.2's father and after him in favour of D.2 entered by D.1's father-in-law that continues thereafter by D.1's husband and D.1, and even from subsistence of such tenancy, D.1 is in constructive possession u/ sec. 14 (1) of the Act for actual physical possession is not required as what is given is life interest to D.1 by her husband by reserving vested remainder in him that itself shows from the recitals of Ex.A.3 also of D.1 in possession through D.2 tenant. Once such is the case, the Ex.A.1 sale deed is inoperative as it is subsequent to the Act, 1956 came into force and for the reason therein by the time the Act came into force, the D.1 is in possession of the property settled in her by

her husband in recognition of her pre-existing right. Thereby the right of limited interest granted under the document once ripened as absolute and consequently no right D.1 got thereafter to execute the Ex.A.1 sale deed of 1967 in favour of the plaintiff to create any right much less to claim any right by plaintiff thereunder. Once such is the case, even to execute Ex.A.2 sale agreement by D.1 in favour of the plaintiff, leave about inconsistency in the evidence supra covered by the concurrent findings on fact, of there is no proof of due execution of the sale agreement, for this Court there is nothing to interfere on said factual aspects. Further even taken for arguments sake the so called sale agreement even proved as duly executed, once the sale agreement is void in view of the preferential right D.2 got being a tenant of the property with willingness the purchase recognized by Section 15 of the A.P.Tenancy Act 1956, the said sale agreement, dt. 19.10.1980 cannot be enforced for specific performance in the suit O.S.No.272 of 82. In fact earlier the defendants filed O.S.No.710 of 1981 disputing about the obtaining of the original of Ex.A.4 pattadar passbook by the plaintiff pursuant to the sale agreement alleged if any and the same was cancelled and pattadar passbook was issued in favour of D.1 under Ex.A.8 by mentioning tenancy over the property in favour of D.2 and Ex.B.9 order in ATC No.223 of 1989 was recognizing the D.2 as statutory tenant got preferential purchase. The revenue tax receipts paid by D.2 in the name of D.1 over the property covered by Exs.B.1 to B.4 during the periods 1971 and 1980 also substantiates the above.

11. Having regard to the above, the substantial questions of law formulated by this Court are answered holding that from the recitals of life interest created under Ex.A.3 settlement in favour of D.1 by her husband since enlarged into absolute right u/ sec.14(1) of the Act as held by the Courts below with concurrent findings rightly from the expression of the Apex Court in V.Tulsamma supra, the sale agreement Ex.A.2 placed reliance by the plaintiff as executed by D.1,dt.19.10.1980 is inoperative and invalid apart from not proved even otherwise from subsistence of the statutory tenancy rights over the property in favour of D.2 as tenant under D.1 since her father-in-law's time with preferential right of purchase u/ sec.15 of the APAAT Act and thereby the plaintiff is not entitled to the relief of specific performance of the contract for the same as rightly held by the Courts below.

12. Having regard to the above, the Second Appeal is dismissed with no costs. Consequently, miscellaneous petitions, if any, pending in this Second Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:28.02.2018

vvr