

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

A.S.No.1036 of 2000

JUDGMENT:

This appeal is filed by the plaintiffs against the judgment and decree dated 08-11-1999 in O.S.No.543 of 1990 by the I Additional Senior Civil Judge, Ranga Reddy District.

2. For the sake of convenience, the parties are referred to as plaintiffs and defendants only.

3. The brief averments of the plaintiffs' case are as hereunder:

a) The first plaintiff being sole proprietary concern has undertaken construction of flats on the land belonging to the second plaintiff admeasuring 600 square yards. Both the defendants entered into an agreement with the plaintiffs on 16.04.1990 to purchase a flat therein jointly. It was agreed that the defendants had to pay the entire costs of the flat on or before 31.05.1990 and if they fail to pay the same on or before the stipulated date, the defendants had to pay the outstanding amount with interest @ 18% per annum within two months from 31.05.1990. If the defendants still fail to pay the balance amount as aforesaid, the plaintiffs would be at liberty to rescind from the contract and forfeit 30% of the total costs of the flat. Apart from the amounts earlier paid, the defendants also issued two posted-dated cheques dated 11.09.1990 and 20.09.1990 for Rs.20,000/- each drawn on

Andhra Bank, Vidyanagar Branch. The defendants assured the plaintiffs that the loan of Rs.60,000/- to be sanctioned by HDFC Bank is to be directly paid to them by giving specific instructions to the bank.

b) Believing the said assurances of defendants, the plaintiffs put them in possession of flat No.12 'C' type in II floor with 927 square feet area on 01.09.1990. After obtaining the possession of the said flat, the defendants failed to pay the balance amount by delaying/evasive tactics and requested the plaintiffs to present the said post-dated cheques after some time on the ground of insufficient funds. The plaintiffs came to know that the HDFC Bank sanctioned the said loan of Rs.60,000/-, but was waiting for instructions from the defendants to release the same in favour of plaintiffs directly. However, the defendants did not give any instructions to the bank as promised. Therefore, the plaintiffs issued a legal notice dated 14.11.1990 to the second defendant informing her that on account of her deliberate failure to pay the costs of the suit flat, she is liable to pay the liquidated damages of Rs.21,600/-. Having received the said notice, the defendants did not respond and therefore, the plaintiffs presented the said post-dated cheques for encashment on 21.11.1990. However, the said cheques were bounced with an endorsement 'refer to drawer'. Hence, the defendants are jointly and severally liable to pay the balance costs of the flat i.e., Rs.1,00,000/- with interest @ 18% per

annum. Hence, the suit is filed for recovery of Rs.1,08,850/- from the defendants.

4. In reply, the defendants filed their written statement and later, they have also filed an amended written statement.

a) It is stated in the written statement that after negotiations between both the parties, the defendants agreed to purchase the suit flat and the second plaintiff executed an agreement on 17.03.1989 in favour of the first defendant and executed another agreement on 16.04.1990 in favour of the second defendant to sell the suit flat jointly to the defendants. However, the plaintiffs violated the terms and conditions of the agreement and even by 26.11.1990 the suit flat was not fully equipped or completed. The physical possession of the suit flat was only delivered to the defendants on 01.09.1990 in an unfinished condition with an assurance given by the plaintiffs that the other amenities as agreed will be furnished during the course of time. Believing the said assurance, the defendants have taken the possession of the suit flat and occupied the same.

b) The suit claim is not properly valued and the alleged amounts that are referred to in the plaint are absolutely imaginary and the defendants are not liable for the suit claim and therefore, they prayed to dismiss the suit with exemplary costs.

c) The defendants also made a counter claim in the amended written statement seeking the relief of a decree for specific performance of the agreement dated 10.03.1989 executed by the plaintiffs in favour of the first defendant and agreement dated 16.04.1990 executed by the plaintiffs in favour of the second defendant and to refund a sum of Rs.10,500/- with interest @ 24 per annum. The defendants have paid major portion of sale consideration i.e., Rs.1,43,500/-, which was received and acknowledged by the plaintiffs and according to them, there is only a balance sale consideration of Rs.13,500/- agreed to be paid to the plaintiffs at the time of registration of the suit flat subject to settlement of final accounts, for which the defendants filed a separate petition calling for the settlement of accounts from the plaintiffs.

d) It is further stated that even the said balance amount of Rs.13,500/- was also paid under a valid document during the pendency of the suit and defendants are not due any amount towards the alleged balance of sale consideration to the plaintiffs. It is further stated that the plaintiffs received a total sum of Rs.2,11,500/- paid by the defendants, as detailed hereunder:

The total amounts paid by the defendants received and acknowledged by the plaintiffs	.. Rs.2,11,500/-
a) Cost of suit flat inclusive of electricity Transformer charges of Rs.4,000/-	.. Rs.1,57,000/-
b) Expenses paid towards registration charges of the suit flat received by PW.1	.. Rs. 25,000/-

c) Cost of Sajja collected by PW.1 in advance but not provided	.. Rs. 19,000/-
d) Besides the total receipt of amounts admitted by PW.1	.. Rs. 10,500/-
further sum of Rs.10,500/- being the cost of tiles, sinks, wash basins for two bathrooms and kitchen amounting to Rs.30,000/- for fitting extra door amounting to Rs.1,500/- and cost of colouring, white washing and seeking single phase electricity connection to the suit flat in all totaling to Rs.6,000/-.	
Total	----- .. Rs.2,11,500/- -----

5. Considering the said pleadings, the lower Court framed the following issues and additional issues for trial:

- i) Whether the plaintiffs are entitled for Rs.1,08,850/- from the defendants as prayed for?
- ii) To what relief the plaintiffs are entitled to?
- iii) Additional Issue: Whether the counter claim of defendants is within limitation?

6. Based on the issues, the parties went to trial. For the plaintiffs, one witness was examined as PW.1 and Exs.A.1 to A.13 were marked. For the defendants, three witnesses were examined as DWs.1 to 3 and Exs.B.1 to B.23 were marked including the report of the Engineer (DW3). The lower Court after examining the evidence, pleadings and submissions came to the conclusion that the suit is liable to be dismissed with costs while the counter claim of the defendants for specific performance of the agreements was allowed. Aggrieved by the said judgment and decree, the plaintiffs have filed the present appeal.

7. I have heard Sri P. Giri learned counsel for the appellants/plaintiffs and Sri P. Venu Gopal, learned counsel for the respondents/defendants.

8. The first and foremost point to be noticed is that in terms of the counter claim by the defendants, specific performance was decreed as per the agreements dated 17.03.1989 and 16.04.1990. The same was not challenged by the plaintiffs/appellants. Therefore, that part of the judgment of the lower Court has become final and is binding on the parties.

9. Coming to the claim made by the plaintiffs/appellants, it is their case that the first plaintiff obtained building permission in the land owned by the second plaintiff, who was the wife of the first plaintiff and the agreements were entered into between the first plaintiff-firm and the defendants. The agreements were for construction of the suit flat. The plaintiffs' case is that the defendants were put in possession of the suit flat, even though they have not paid the full value of the flat. The plaintiffs therefore claimed a sum of Rs.1,00,000/- together with interest from both the defendants. The defendants, on the contrary, made a counter claim stating that excess amounts were paid and that they are entitled to recovery of the amount paid in excess. In addition to the specific performance, the lower Court proceeded to analyze the evidence and carefully assessed the facts and figures set out by both the parties. The lower Court

ultimately came to the conclusion that the plaintiffs are not entitled to the claim of Rs.1,00,000/-. The total sale consideration that is agreed upon is Rs.1,57,000/-, and the receipts which are there on record are as follows:

Ex.B.3	..	Rs.24,000/-, dated 15.11.1988
Ex.B.4	..	Rs.21,500/-, dated 10.03.1989
Ex.B.5	..	Rs.52,000/-, dated 06.03.1990
Ex.B.6	..	Rs.63,500/-, dated 15.03.1998
Ex.B.11	..	Rs.12,000/-, dated 16.04.1990

Total	..	Rs.1,73,000/-

Post suit payments which are made as per the orders of the Hon'ble Consumer Forum Rs.13,500/-. Therefore, the learned Judge rightly came to the conclusion that a sum of Rs.1,86,500/- was paid by the defendants to the plaintiffs. The defendants raised certain contentions about the contents of these receipts, but a perusal of the lower court judgment in paras 16, 17 and 18 clearly shown that the issues that were raised were correctly answered by the lower Court including the payment of Rs.63,500/-, which is the subject matter of Ex.B.6 receipt. The plaintiffs raised a contention that it is not a receipt issued by the plaintiffs after payment of the said sum and the receipt is in fact an advance stamped receipt only. On the other hand, the defendants contend that the said receipt was passed after the cheque for Rs.63,500/- was encashed by the sole proprietor of the plaintiffs firm only. DW.2 was the witness from Andhra Bank who was examined to prove this payment of Rs.63,500/-. The witness deposed that he is an officer working in Andhra Bank and that firm

cheque bearing No.279592 for Rs.63,500/- was presented by Ramachander Thalla on 23.03.1990 and it was encashed. In his cross-examination, he clearly admits as follows:

“the amount was not paid to Kanaka Durga, but it was paid to Ramachander Thalla (PW.1).”

Therefore, it is clear that payment under Ex.X.1 cheque is validly proved. It was argued during the course of submissions that Ex.X.1 is a xerox copy and which should not be considered. However, this Court finds that no objection was raised when the document was marked. Any objection as to the admissibility should be raised when the document is proposed to be marked in evidence. A perusal of the record reveals that the original cheque, which was marked as Ex.A.1 also was taken back by the counsel for the defendants and handed over back to the Manager of the Andhra Bank on 29.07.1999. Therefore, the objections raised during the course of the arguments based on the appeal ground are not really sustainable about Ex.X.1. This Court, therefore, concurs with the findings of the lower Court and holds that the payments made by the defendants to the plaintiffs were proved and the claim of Rs.1,00,000/- made by the plaintiffs is not correct. This Court also concurs with the findings of the lower Court that the claim of the plaintiffs is vexatious and that they are not entitled to the relief claimed. Issue No.1 is answered by this Court in favour of the defendants and against the plaintiffs. Similarly, on issue

No.2, this Court also concurs with the finding of the lower Court and states exemplary costs are necessary in a case like this.

10. Regarding the additional issue framed for the counter claim of the defendants, it is a fact that the defendants managed to prove by virtue of the oral evidence and the evidence of the Engineer who was appointed and examined as DW.3 that there was approximately 100 square feet shortfall in the area of the flat delivered by the plaintiffs to the defendants. Admittedly, in this case, even before full payment was made, the defendants were put in possession of the flat on 01.09.1990. Therefore, the lower Court rightly held that the defendants should have agitated this issue within three years from September, 1990 for the short delivery of the area of the flat. The lower Court also rightly held that the claim of the defendants for refund of amount for Rs.10,500/- is also barred by time considering that the flat was delivered on 01.09.1990 and the counter claim was made in 1999 vide an amendment to the original written statement.

11. As far as specific performance is concerned, at the beginning of the judgment itself, it was highlighted that the specific performance was granted on the basis of the admission made by PW.1. In the chief examination itself he deposed as follows:

“I am prepared to register the flat at the existence of the defendants.

To do complete justice the lower court granted the relief of specific performance as delivery of the flat and payment of consideration was proved.

12. This Court is therefore of the opinion that there are no infirmities etc. in the impugned order. The same is a reasoned and well thought out order which is liable to be sustained.

13. In the result, the appeal is dismissed. The judgment and decree dated 08-11-1999 in O.S.No.543 of 1990 by the I Additional Senior Civil Judge, Ranga Reddy District is hereby confirmed in all respects. However, there shall be no further order as to costs. Miscellaneous Petitions, if any pending in this appeal, shall stand closed.

Date: 04.01.2018
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D.V.S.S. SOMAYAJULU, J