

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

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND**

THE HON'BLE MS.JUSTICE J. UMA DEVI

+ APPEAL SUIT No.959 OF 2018

% Date:13.11.2018

Between:

Rayapuneni Ramaiah Naidu,
S/o.Balakistaiah, R/o.Nehru Nagar Society Colony,
Gudur, Nellore District.

... Appellant

v.

\$ Yadama Sanjeeva Reddy, S/o.Ram Reddy,
R/o.Suryapet Road, Jangaon town and Revenue
Mandal, Warangal District.

.. Respondent

! For Appellant : Smt. K. Pallavi

^ For Respondent : Mr. Venkat Reddy Donthi Reddy

< Gist :

> Head Note :

? Cases Referred : Nil

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

APPEAL SUIT No.959 of 2018

JUDGMENT: *(Per V. Ramasubramanian, J)*

This appeal arises out of an order passed by the trial Court rejecting the plaint under Order VII Rule 11 CPC.

2. Heard Smt. K. Pallavi, learned counsel for the appellant and Mr. Venkat Reddy Donthi Reddy, learned counsel for the respondent.

3. The appellant filed a suit in O.S No.30 of 2016, seeking refund of the advance money paid under an agreement of sale dated 31.08.2015. After receipt of summons in the suit, the respondents/defendants moved application for in I.A. No.187 of 2016 under Order VII Rule 11 CPC for rejection of plaint. The application was allowed by the trial Court forcing the plaintiff to come up with the above regular appeal.

4. When an application for interim order of injunction in I.A. No.2 of 2018 came up for hearing before us, we found that the entire issue in the above appeal lay in a very narrow campus. Therefore, the learned counsel on both sides were called upon to argue the appeal itself. Both the learned counsel agreed and advanced arguments on the merits of the main appeal itself.

5. The only ground on which the application under Order VII Rule 11 was allowed and the plaint rejected was that an agreement holder is not entitled to institute a suit for refund of advance money,

without filing a suit for specific performance. This contention is raised by the respondent on the basis of Section 22 (2) of the Specific Relief Act, 1963 (for short 'the Act'). Fortunately, there are no disputes on facts insofar as the present appeal is concerned, as the application under Order VII Rule 11 CPC was based solely upon a question of law. Therefore, the only point arising for consideration in the above appeal is as to whether a suit for refund of money paid under an agreement of sale is not maintainable, without a prayer for specific performance of the agreement or not?

6. Section 22 of the Specific Relief Act 1963 reads as follows:

"22. Power to grant relief for possession, partition, refund of earnest money, etc.—

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

- (a) possession, or partition and separate possession, of the property, in addition to such performance; or
- (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-Section (1) shall be without prejudice to its powers to award compensation under section 21."

7. As can be seen from sub-section (1) of Section 22 of the Act, the same lists out the additional reliefs that a person, filing a suit for specific performance can seek. In other words, what are listed out in Clauses (a) and (b) of sub-section (1) of Section 22 of the Act are the reliefs that can be sought in addition to the relief of specific performance. This is made clear by the use of the expression “any person suing for the specific performance of a contract” appearing in the substantial part of sub-section (1) of Section 22 of the Act. Therefore, the scope of sub-section (1) of Section 22 of the Act is that it lists out additional reliefs that can be sought by a person suing for specific performance.

8. Sub-section (2) of Section 22 of the Act creates a bar. The bar is that a person suing for specific performance of a contract, cannot be granted any other additional relief, unless the same is sought for. The proviso to sub-section (2) of Section 22 of the Act enables amendment of the proceedings, at any time, so as to include a prayer for additional reliefs as indicated in Clauses (a) and (b) of sub-section (1) of Section 22 of the Act. In other words, sub-section (2) of Section 22 of the Act creates a bar for the grant of additional reliefs if they are not sought for in the first instance. The proviso enables a person suing for specific performance to seek appropriate amendment at any stage of the proceedings to include a prayer for an additional relief indicated in Clauses (a) and (b) of sub-section (1) of Section 22 of the Act.

9. Thus, the entire scheme of Section 22 of the Act of revolves around the additional reliefs that a person suing for specific performance of a contract of immovable property, is entitled to. Section 22 of the Act does not talk about the rights to which a person who is a party to a contract for the sale of immovable property is entitled to, in case he does not want specific performance at all. It is to be pointed out that the provisions of Specific Relief Act apply to persons who seek specific reliefs. A person, who wants to wriggle out of a contract and seek merely the refund of money, is not a person suing for the specific performance of a contract. Section 22 of the Act applies to a person suing for specific performance of a contract. To make such a provision apply to a person not suing for specific relief, would be to apply a wrong provision.

10. Reliance is placed upon a decision of a learned Judge of the Madras High Court in **Kochukunja Pillai v. Sathiadhas** decided on 20.04.2010 in C.R.P.(PD) (MD) No.1155 of 2009. The said case arose out of the order passed by the trial Court allowing an application for amendment. The suit as it was originally filed, was only for recovery of money. The application for amendment was to include a prayer for specific performance. Therefore, it is in that context that the Madras High Court held that the enabling provision under the proviso to sub-section (2) of Section 22 of the Act would apply to a reverse case. We do not know how the said decision will go to the assistance of the respondent. As we have pointed out earlier, sub-section (2) of Section 22 of the Act creates a bar for the grant of

additional reliefs, in addition to the relief of specific performance, to a person, who did not seek such additional reliefs as indicated under Clauses (a) and (b) of sub-section (1) of Section 22 of the Act. It does not create a bar for a person who is not suing for specific performance. In the case before the Madras High Court, a person who did not sue for specific performance but merely sued for recovery of money sought to invoke proviso to sub-section (2) of Section 22 of the Act to include a prayer for specific performance. It was a case of putting a cart before the horse and hence, Section 22 of the Act did not apply to such a case. Therefore, the said judgment is of no avail to the respondent herein.

11. It is a different case if according to the respondent, the appellant is not entitled to the refund of money in the teeth of the terms of the contract itself. But, that is a question that should be decided by the Court only after trial. A plaint cannot be thrown out on the ground as though Section 22 of the Act creates a bar for seeking a relief of refund of money alone.

12. Therefore, the appeal deserves to be allowed. Accordingly, it is allowed and the judgment and decree of the trial Court are set aside. The matter is remanded back to the trial Court for disposal on merits. There will be no order as to costs.

13. It is made clear that we have not expressed any opinion about the entitlement of the appellant to a decree for refund of money. We have confined our discussion only to the question whether the

plaint could have been rejected on the basis of Section 22 of the Act or not at all.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

November 13, 2018
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