

**THE HON'BLE DR JUSTICE SHAMEEM AKTHER**

**SECOND APPEAL No. 962 OF 2000**

**JUDGMENT:**

1. The Second Appeal is filed against the judgment and decree dated 07.04.1999 in Appeal Suit No.12 of 1993 on the file of the Additional District Judge, Srikakulam whereby the appeal preferred against the judgment and decree dated 31.12.1992 in Original Suit No.257 of 1988 on the file of the Principal District Munsif, Srikakulam decreeing the suit filed for specific performance of agreement dated 28.10.1984, was allowed.

2. The appellants herein are the plaintiffs, and the respondent herein is defendant, in the suit. For better appreciation of facts, the parties are hereinafter referred to, as they are arrayed in the trial court.

3. Late first Plaintiff filed the suit for specific performance of agreement stating that he entered into an agreement with owners of plaint schedule property viz. Gorle people, in the month of September, 1984 to purchase their site admeasuring Ac.0.02 cents for total price of Rs.5,000/-; that when the stipulated period of one month, as agreed between them orally, was going to complete, the owner insisted the first plaintiff to pay the agreed sale price and obtain sale deed; as first plaintiff had no money, he approached the defendant to pay the sale price of Rs.5,000/- to the owners and obtain a

sale deed temporarily from them in respect of the schedule property to save the property being purchased by third parties and requested the defendant to re-convey the same in his name as and when he pays the sale price along with stamp duty and registration expenses to the defendant; that defendant agreed for the said proposal and executed an agreement to that effect in his own hand-writing on 28.10.1984 in favour of first plaintiff stipulating that the first plaintiff had to pay the said price of Rs.5,000/- and stamp duty, etc. to the defendant on or before June, 1986 and obtain a registered sale deed from him; thereafter, defendant paid sale consideration to original owners and obtained registered sale deed from them in his name on 02.02.1985; that from time to time, the first plaintiff paid Rs.2,000/- to defendant towards part satisfaction which was endorsed by the defendant in a small book being maintained by the first plaintiff, but the said book was misplaced; that inspite of several demands made by the first plaintiff to receive balance sale price and execute a sale deed, defendant used to postpone the same on one pretext or the other; thereafter the first plaintiff got issued registered legal notice on 08.08.1988, for which defendant gave a belated reply with false and frivolous allegations. Hence, the suit.

4. Defendant filed written statement denying claim of the plaintiff and stating that he independently purchased the

subject property from Gorla Bullibabu under registered sale deed dated 2.2.1985 and has been in possession and enjoyment of the schedule property; that he never executed agreement dated 28.10.1984 and it is forged one; first plaintiff never paid Rs.2,000/- at any time; first plaintiff never approached defendant to execute sale deed in respect of the subject property; there cannot be an agreement of sale in respect of a property for which the defendant is not the owner by 28.10.1984; that the relief sought is a speculative claim, and hence, it is prayed to dismiss the suit.

5. Basing on the above pleadings, the trial Court settled the following issues for trial.

- 1) Whether the plaintiff is entitled for specific performance of sale agreement dated 28.10.1984 ?
- 2) Whether the sale agreement dated 28.10.1984 is a rank forgery ?
- 3) To what relief ?

6. During trial, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and Ex.A1-unregistered agreement dated 28.10.1984; Ex.A2-office copy of lawyer's notice dated 08.08.1988; Ex.A3-postal acknowledgement and Ex.A4-reply notice dated 5.9.1988 were got marked, and on behalf of defendant, D.W.1 was examined and Ex.B1-registered sale deed dated 2.2.1985, was got marked.

7. The trial Court, upon appreciation of the evidence on record, vide judgment dated 31.12.1992, decreed the suit directing the defendant to execute sale deed in terms of Ex.A1 within a period of one month and directed the plaintiff to deposit the total sale consideration and expenses for stamp duty and registration into the court within 15 days of the judgment. Challenging the judgment and decree of the trial Court, the defendant preferred Appeal Suit No.12 of 1993 before the first appellate court. Vide the impugned judgment and decree, the first appellate court allowed the appeal with costs setting aside the judgment and decree of the trial court and dismissed the suit with costs. Challenging the same, the present Second Appeal has been preferred by the appellants, who are legal representatives of deceased first plaintiff, who died during pendency of the appeal.

8. The Second Appeal was admitted on the following substantial question of law.

“Whether the lower appellate court is justified in wrongly casting the burden on the plaintiff as regards proof of Ex.A1 without taking into consideration the fact that he discharged his initial burden by examining P.W.2 to prove Ex.A1 and when initial burden was discharged by plaintiff, it is the burden on the part of the defendant to send the disputed document Ex.A1 to an expert and whether the suit for specific performance could be dismissed only on the ground that the disputed document was not sent to an expert by the plaintiffs?”

9. Learned counsel for the appellants would contend that the findings of the first appellate court are perverse; that it did not appreciate the evidence of P.W.1 and the recitals in Ex.A1; that there is evidence of P.W.2, who is attester of Ex.A1; that the trial court compared signatures of the defendant with the disputed signatures and held that the disputed signatures are in the hand of the defendant and accordingly decreed the suit; that the first appellate court has not assigned adequate reasons for reversing the judgment and decree of the trial court, and ultimately, prayed to allow the Second Appeal.

10. On the other hand, learned counsel for the respondent/defendant would contend that there is no sale recitals in Ex.A1; that it is contra to the evidence of P.W.1; that the first appellate court, after appreciating all the facts and circumstances, rightly dismissed the suit filed by the plaintiffs for specific performance; that the findings of the first appellate court are based on record; that no substantial question of law arises for determination in the Second Appeal, and ultimately prayed to dismiss the Second Appeal.

11. There cannot be any dispute that, under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact or on a

question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse finding- are some of the questions, which involve substantial questions of law.

12. Ex.A1 is the crucial document dated 28.10.1984 to determine the entitlement of the plaintiffs to specific performance. In Ex.A1, there is no mention of sale consideration and clear terms and conditions of sale. It appears as if some assurance was given to the first plaintiff by the defendant under Ex.A1, but not agreement for specific performance of contract. Further, there is no evidence from the plaintiff with regard to clear cut sale of Ac.0.02 cents of land under Ex.A1. Admittedly, the defendant purchased the

subject property under Ex.B1-registered sale deed on 02.02.1985. Ex.A1-agreement of sale obtained by the first plaintiff from the defendant in respect of the same property prior to date of Ex.B1, under which the defendant acquired right over it. The defendant has no transferable title in respect of the schedule property as on the date of Ex.A1. Relief of specific performance is an equitable relief. When there are no clear terms and conditions of sale, a party is not entitled to a decree for specific performance. There is inconsistency in the evidence of P.W.2 and the recitals in Ex.A1 relied on by the plaintiffs. Though P.W.2 deposed about genuineness of Ex.A1, it is not a ground to decree the suit for specific performance. The first appellate court had elaborately dealt with the recitals under Ex.A1 and the evidence on record, and ultimately held that the plaintiffs are not entitled to specific performance relief. The findings are based on the evidence on record. There is no perversity.

13. As regards the appreciation of the evidence on record is concerned, the first appellate court dealt with all the aspects in right perspective, and neither any inadmissible evidence is admitted, nor any admissible evidence was not acted upon, by the first appellate court. While reversing the judgment and decree of the trial Court, the first appellate court gave elaborate reasons. The findings of the first appellate court are based on the evidence. None of the findings is shown to

be perverse. The findings are based on record and there is no infirmity. There are no grounds to take a different view. Under these circumstances, no question of law, much less substantial question of law, as contended by the appellant/defendant to deal with under Section 100 of the Code of Civil Procedure, 1908. The Second Appeal is devoid of merit and is liable to be dismissed.

14. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 07.04.1999 in Appeal Suit No.12 of 1993 on the file of the Additional District Judge, Srikakulam. There is no order as to costs of the Second Appeal.

Miscellaneous Petitions pending, if any, in the Second Appeal shall stand closed.

20.09.2018  
DRK

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(Dr.SA, J.)

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