

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

AS.No. 745 of 1999
And
Tr.AS.No.661 of 2006

COMMON JUDGMENT:

These two appeals arise out of the common judgment dated 25.09.1998 passed by the Senior Civil Judge, Siddipet in the suits OS.No.57 of 1991 and OS.No.73 of 1994.

OS.No.73 of 1994 was originally filed as OS.No.125 of 1991 on the file of the District Munsiff Court, Gajwel and was subsequently transferred to be heard by the Senior Civil Judge, Siddipet.

The brief facts of the suit in OS.No.57 of 1991 are as follows:

The defendant is the owner of the suit schedule property, which is a piece of land with a shed and power looms therein. As per the plaint, the plaintiff was a tenant for the said premises and there were *inter se* disputes between the plaintiff and the defendant. The plaintiff and defendant are closely related to each other. Hence, the dispute was referred to a council of elders, who ultimately came to a conclusion that the defendant should sell the property to the plaintiff for a total consideration of Rs.2,25,000/-. This agreement was signed by both the parties. As the defendant repudiated the agreement, the plaintiff filed the suit for specific performance seeking a decree directing the defendant

to execute a registered sale deed in favour of the plaintiff in respect of the suit schedule property pursuant to the agreement dated 28.08.1989 and for an injunction restraining the defendant from interfering with the plaintiff's possession of the property. The defendant resisted the suit strongly and contended that the signatures on the said document are not voluntary; that he signed the same under coercion and duress; that the value fixed as the sale consideration is inadequate; that the present suit is filed only as a counter blast for the eviction suit commenced by him etc. Based on these pleadings, the lower Court framed issues as follows:

1. Whether the plaintiff is entitled for specific performance of the agreement of sale dated 28.08.1989 from the defendant?
2. Whether the plaintiff is entitled for perpetual injunction as prayed for?
3. Whether the plaintiff is liable to pay mesne profits and compensation to the defendant and the defendant is entitled to adjust Rs.60,000/- received on 28.08.1990 towards arrears of rent and mesne profits?
4. Whether the plaintiff is liable to pay mesne profits at the rate of Rs. 1,000/- per month for the months of September 1989 and November 1989 and Rs.2,000/- per month from December onwards to the defendants?

The eviction suit OS.No.125 of 1991, which is renumbered as OS.No.73 of 1994 also makes the very same averments about the agreement and the plaintiff therein states that the lease was valid up to 30.11.1999 and

thereafter, the defendant was in unauthorized possession and therefore, the suit is filed for eviction. The defendant in this suit is the agreement holder/plaintiff in OS.No.73 of 1994. He resisted the case of eviction and filed a written statement, virtually reiterating what is stated in the plaint in OS.No.57 of 1991 and emphasizing that he is a valid agreement holder. His case is that he cannot be evicted from the premises.

Based on the pleadings, the lower Court framed the following issues in OS.No.73 of 1994:

1. Whether the plaintiff is entitled to recovery of possession of the suit schedule property and a sum of Rs.8,041/- towards arrears of lease amount from the defendant?
2. Whether the Court fee paid by the plaintiff is proper and sufficient?
3. Whether the defendant paid earnest money of Rs.60,000/- to the plaintiff on 26.08.1989 under an agreement of sale for purchase of suit schedule property?

Based on the pleadings and the issues, the parties went to trial. A common trial was conducted in both the matters. On behalf of the plaintiffs, PWs.1 to 3 were examined and Exs.A.1 to Ex.A.19 were marked. For the defendant, DWs.1 and 2 were examined and Exs.B.1 to Ex.B.11 were marked.

After hearing the parties, the lower Court passed the impugned order dismissing the suit for specific performance OS.No.57 of 1991 with costs and decreeing the suit of eviction OS.No.73 of 1994 in part. The defendant in the suit for

eviction was given two months time to vacate the premises. The relief of mesne profits etc., were not given. These orders are impugned now in (a) AS.No.745 of 1999, which is an appeal against the decree in the suit for specific performance OS.No.57 of 1991; (b) AS.No.661 of 2006, which is an appeal filed against the decree for eviction in OS.No.73 of 1994.

All the matters were heard together. Sri V.Venkataramana, learned senior counsel appeared for the appellants and Sri B.Nalin Kumar, learned counsel for the respondent. They submitted arguments in both the appeals.

The main suit, in which the evidence was recorded and the decree was passed in OS.No.57 of 1991, is a suit for specific performance. It does not require repetition, but for the sake of clarity, it is reiterated that in a suit for specific performance, a burden is cast upon the plaintiff to show that there is a valid agreement of sale and that he was always ready and willing to fulfill his part of the bargain. The plaintiff will have to necessarily plead and prove his continuous readiness and willingness. He will have to plead and prove that the defendant did not adhere to the terms of the contract and therefore, the suit for specific performance.

In this case, the agreement that is in question and on which the plaintiff relies is marked as Ex.A.1 and it is dated 28.08.1981. This agreement is in turn dependent upon Exs.A.2 and A.18. Ex.A.2 is a “mutual” letter executed by both the parties. In the list of documents filed with the

plaint, it is referred to as mutual letter, but in the description on the document itself it is described as “Ekarar Nama” or an agreement. In addition to this, there is Ex.A.18, which is “Faisal Nama” or a settlement deed. These three documents found the basis of the submissions of both the learned counsels; on the merits of the case.

Learned counsel for the appellant argued that Ex.A.18 is a result of deliberations by the village elders under which the elders ultimately came to the conclusion that the suit schedule property should be sold to the plaintiff by the defendant for a sum of Rs.2,25,000/- of which, Rs.1,25,000/- was payable on the date of the agreement and the balance within one year. This document not only bears the signatures of the plaintiff and the defendant, but also bears the signatures of the elders to whom this was referred to. Therefore, the learned counsel contends that this is a valid and enforceable agreement. His argument is that defendants set up a theory of coercion and undue influence, which is not proved. As per the learned counsel, the plaintiff states that the letters were signed under coercion and duress from the naxalites. Exs.B.8 to B.10 are the letters which are supposedly addressed by the naxalites. The learned senior counsel highlighted the fact that Ex.B.8 is dated 26.08.1996, Ex.B.9 is undated and Ex.B.10 is also undated. Therefore, the contention of the learned counsel is that Ex.B.8 is the only letter, which has a date and the rest are undated and it is not

clear if they were really addressed by the so-called naxalites. The learned counsel also pointed out that as per the oral evidence, the Police Station is located closely and the defendant did not bother to bring the so-called threat to the notice of the police also. The learned counsel for the appellant also argued that coercion and duress are matters of proof of pleading and proof. There should be clear pleading and proof of the same. He states that in the case on hand, the proof that is filed does not at all prove the case of any coercion being exercised on the defendant which compelled him to sign. In addition to this, the learned counsel for the appellant also pointed out that Exs.A.1 and A.2 belies the theory of coercion in the execution of Ex.A.18 dated 26.08.1989. Ex.A.1 is a receipt passed by the defendant dated 28.08.1989 under which he agrees that the property was agreed to be sold for Rs.2,25,000/- and further states that out of the said consideration, he was paid Rs.60,000/- on that day. Ex.A.2 is an agreement dated 28.08.1989, wherein the parties agreed to various issues in their pending disputes including the business conducted by them jointly. There is a reference to the settlement by the elders in respect of house bearing No.10-84 with power machines for the house in this document also.

Learned counsel also points out that in the oral evidence, on 24.06.1998, the witness DW.1 agrees as follows:

“It is true, I have executed Ex.A.1 on 28.08.1989. The amount of Rs.60,000/- mentioned in Ex.A.1 is paid to me by N.C.Rajaiah. I have mentioned in my plaint and also written statement filed in this suit that I have received Rs.60,000/- from the plaintiff towards rents and that amount is received by him under Ex.A.1.”

Therefore, it is the submission of the learned counsel that the clear admission about the execution of Ex.A.1 belies or falsifies the case of coercion and duress in the execution of Ex.A.19. This Court also agrees with the learned counsel for the appellant that the available evidence including Exs.A.1 and A.2 and the oral evidence of DW.1 make it clear that the document-Ex.A.18 was not executed under coercion or duress as pleaded by the defendant.

The learned counsel for the appellant submits that as Exs.A.1 and A.2 were voluntarily executed and as Ex.A.19 is held to be a valid document, his client is entitled to specific performance. He points out that his client had clearly averred that he is willing to pay the balance sale consideration and that therefore, the necessary ingredients for grant of a specific performance are fulfilled. The learned counsel relied upon **Zarina Siddiqui v. A.Ramalingam @ R.Amarnathan**¹, where the Hon'ble Supreme Court held that if the defendant in a suit makes out a false statement and also withholds the documents from the Court, they are not

¹ AIR 2015 SCC 580

entitled to request the Court to exercise discretion in their favour by refusing specific performance. It is the contention of the learned senior counsel that basing on this decision that as the false theory of coercion and duress set up by the defendant is disproved, they are not entitled to any discretion or pity and that the suit should be decreed in favour of his clients.

In reply to these submissions, the learned counsel for the respondent/land owner contended as follows:

(a) that Ex.A.1 is an “award” and that as it is not made a rule of the Court under the Arbitration Act, 1940, it cannot be relied upon. This argument was made in the passing; but was not actively pursued. This Court holds that Ex.A.18 is not an arbitration award in the strict sense of the term. Although there is a stray observation in the oral evidence, calling it at an award it does not have the characteristics of an award. There is no express reference of a dispute, let alone an award as known under the Arbitration Act, 1940. This submission of the learned counsel, is therefore, negated. (b) that the plaintiff did not aver and prove continuous readiness and willingness from the date of the agreement till the hearing.

It is the submission of the learned counsel that his client was coerced into signing Ex.A.18. Alternatively, he submits that even if Ex.A.18 is held to be validly executed, the crucial document dealing with the sale of the properties is

Ex.A.1. In Ex.A.1, the defendant and the plaintiff admit that the total sale consideration is Rs.2,25,000/- and that out of this Rs.60,000/- is paid. This document is dated 28.08.1989. It was decided by the parties that the balance would be paid on 01.09.1989 and the registration would be affected. Therefore, the learned counsel for the respondent contends that time was made the essence of the contract and the balance sale consideration was agreed to be paid within three (3) days and the registration was to be effected. It is his contention that the contents of Ex.A.1 are not in dispute and therefore, the plaintiff was under an obligation as required under law to show that he had fulfilled the terms of the agreement dated 28.08.1989. The learned counsel also pointed out that the plaintiff is seeking a relief on the basis of this document dated 28.08.1989 only as can be seen from his pleadings and prayer.

The learned counsel pointed out that even the lower Court rightly came to the conclusion that the readiness and willingness, which is an essential precondition for grant of a decree for specific performance, is not fulfilled in this case. The learned counsel strongly relied upon the judgment of the Hon'ble Supreme Court of India in ***Padmakumari and Others v. Dasayyan and Others***², wherein it clearly held that the pleadings in a suit for specific performance must be very strict in conformity with Form 47 in Appendix A to CPC,

² (2015) 8 SCC 695

which mandates that the plaintiff should state that the plaintiff has been still ready and willing specifically to perform the agreement on his part of which the defendant has a notice.

A perusal of the plaint in this case reveals that readiness and willingness is not correctly and properly pleaded in this case. Replying upon the judgment of the Hon'ble Supreme Court this Court also holds that the plaintiff has not complied with the mandatory legal requirements as specified in Section 16-C of Specific Relief Act and Form 47 in Appendix A to CPC.

In addition, the learned counsel also pointed out that it has been held time and again by the Hon'ble Supreme Court of India that there should be continuous readiness and willingness by the plaintiff right from the date of execution of the document till the date of the decree. The plaintiff's conduct before filing of the suit and subsequent to the filing of the suit along with the circumstances will have to be examined by the Court. The amount of consideration, which has to be paid, must be proved to be available. This availability of the cash or the resources which are lined up have been interpreted to be proof of "readiness". On the other hand "willingness" is the conduct of the party in seeking specific performance without delay etc. The judgments of the Hon'ble Supreme Court in the case in ***N.P.Tirugnanam v.***

Dr.R.Jagan Mohan Rao and others³ and the case reported in ***His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar***⁴ are both relevant in this context.

If the evidence in this case is analyzed against the backdrop of the settled law on the subject, as per the counsel for respondent, it becomes clear that the plaintiff did not prove that he had the necessary financial resources to pay the balance sale consideration within the agreed date 01.09.1989. A reading of his entire evidence does not show that the balance sale consideration was mobilized or arrangements were made to get the balance sale consideration. Neither the readiness in the form of availability of the funds or arrangements of funds, nor the willingness to seek specific performance is spelt out in this case, as per the learned counsel. He also points out that it was his client, who gave the first notice on 30.09.1989-Ex.A.6. It is also the case of the learned counsel for the respondent based upon cross-examination of PW.1 on 16.02.1998 that the present suit for specific performance was filed only after the summons in the suit for eviction was served. PW.1 admits the same in his cross-examination on 16.02.1998. The suit for eviction was filed in August, 1991 and the present suit for specific performance was filed in December, 1991. Therefore, after a review of the entire evidence on record and after hearing the submissions of the learned counsels on the three important

³ 1995 (5) SCC 115

⁴ 1996 (4) SCC 526

documents; the conduct of the parties in the light of the settled law, this Court concurs with the contention of the learned counsel for the respondent and the views of the lower Court that the plaintiff did not plead or prove that he was “ready” and “willing” to get the sale deed for the suit schedule property executed in his favour.

Therefore, this Court is of the opinion that the order of the lower Court is correct as far as rejecting the suit for specific performance in OS.No.57 of 1991 is correct. There are no grounds made out to interfere with the same.

The next part of the controversy relates to the suit for eviction. The contentions as mentioned earlier in this suit are on similar lines.

The suit for eviction commences with the notice dated 30.09.1989 (Ex.A.6), which was issued requesting the defendant to vacate and handover premises. There is no real dispute about the ownership of the property by the plaintiff in this suit. It is an admitted fact that the last extension of lease was granted up to 30.11.1989 and not thereafter. Therefore, the plaintiff submits that the presence of the plaintiff in OS.No.57 of 1991 thereafter in the premises is not valid. It is an admitted fact that the plaintiff is a tenant in the premises. The defendant has intimated the plaintiff to vacate the premises. The defendant’s entire case rested on the agreement, which he could not specifically enforce. The receipt of the notice asking him to vacate is not in dispute

also. As a consequence to this, the defendant is bound to vacate and deliver the premises as rightly held by the lower Court. The lower Court also held that Rs.60,000/-, which is paid under Ex.A.1-receipt can be adjusted against the rent arrears in the interest of justice and equity.

This Court also concurs with the findings of the lower Court in the suit for eviction and confirms all the findings of the lower Court in OS.No.57 of 1991 and consequently, AS.No.745 of 1999 is dismissed.

This Court confirms all the findings of the Court below in OS.No.73 of 1994. Tr.AS.No.661 of 2006 is also dismissed. A direction is given to the defendant in the suit OS.No.73 of 1994 to vacate and deliver vacant possession within two months from the date of receipt of a copy of this order. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 01.02.2018
KLP