

HON'BLE SRI JUSTICE S.V.BHATT

S.A. No.1555 OF 2018

JUDGMENT:

Heard Mr.G.V.S. Mehar Kumar for appellant and Mr.P.Prabhakar Rao for 1st respondent.

The 1st defendant in O.S. No.168 of 2009 in the Court of Additional Senior Civil Judge, Narsaraopet is the appellant. The 1st respondent filed O.S. No.168 of 2009 for specific performance of agreement of sale dated 30.03.2009 said to have been executed by the 1st defendant.

The Second Appeal is directed against the decree and judgment in A.S. No.21 of 2012 in the Court of XIII Additional District Judge, Narsaraopet, confirming the decree and judgment in O.S. No.168 of 2009. The case of the parties has been adverted to in detail by the judgments under appeal. It is not the case of appellant either that the Courts below have committed an error in stating a case not pleaded by the parties and/or omitted to state a fact which has bearing in deciding the issues between the parties. Therefore, this Court refers to the averments as may be necessary for disposing of the Second Appeal.

The parties are referred as plaintiff and defendants.

The case of plaintiff is that the plaintiff belonged to one Javangula Kotaiah son of Yellamanda. On 06.12.1985, Javangula Kotaiah, original owner, executed registered gift deed document No.5786/1985 in favour of 1st defendant. On 30.03.2009, the 1st defendant executed the suit agreement of sale in favour of

plaintiff and the important terms and conditions of the said agreement are stated as the total sale consideration is Rs.2,25,000/- and the 1st defendant received Rs.1,00,000/- as earnest money and the balance sale consideration of Rs.1,25,000/- would be paid within two months from the date of agreement of sale and the 1st defendant would execute regular sale deed in favour of plaintiff. The 1st defendant agreed to get the sale deed executed by his legal heirs as well. The default on the part of plaintiff is agreed to be compensated by receiving 18% per annum on the balance sale consideration by the 1st defendant. The plaintiff claimed to be ready and willing to perform his part of obligation within 20 days from 30.03.2009. On 13.04.2009, legal notice was issued and the legal notice was returned in collusion with the postal authorities. The plaintiff issued yet another notice on 25.04.2009 to 1st defendant and on 30.04.2009, the 1st defendant issued reply notice. The 1st defendant has taken the plea that the suit agreement is not binding on defendants 2 to 4. The 1st defendant further claimed that the suit schedule is a joint property. The plaintiff by referring to the refusal to execute the sale deed through reply notice dated 30.04.2009, filed the present suit for specific performance directing the 1st defendant to execute the sale deed. The 1st defendant denied execution of suit agreement dated 30.03.2009 and also receipt of Rs.1,00,000/- as earnest money. The 1st defendant further contended that defendants 2 to 4 desired that the suit schedule property is settled on them and there was no occasion to execute the suit agreement. According to 1st defendant, defendants 2 to 4

are not under obligation to execute the sale deed as they are strangers to the agreement.

The trial Court framed the following issues for consideration:

1. Whether the agreement of sale dated 30.03.2009 is true, correct and duly executed by the defendant in favour of the plaintiff?
2. Whether the plaintiff is entitled for specific performance of the contract basing on the agreement of sale dt.30.3.09?
3. To what relief?

The trial Court considered both oral and documentary evidence. While considering issues 1 and 2, by referring to Ex.A2-gift deed executed in favour of 1st defendant, the trial Court held that the suit schedule property is self-acquired property of the 1st defendant. There is no plea of fabrication, however, the evidence of DW.1 contradicts the plea taken in the written statement. The oral evidence of PWs 1 to 4 would go to show that the suit agreement was executed. The trial Court independently considered the oral evidence of PWs 1 to 4, DWs 1 & 2 and documentary evidence Exs.A1 to A8 and held that plaintiff has established execution of Ex.A.1-sale agreement by 1st defendant and that the plaintiff was ready and willing to perform his obligation under the suit agreement. The 1st defendant in spite of receipt of notice evaded to perform his obligation under the agreement of sale. Hence, the trial Court answered issues 1 and 2 in favour of plaintiff and against the 1st defendant. Through issue No.3, the trial Court decreed the suit and granted two months time from

17.02.2012 to plaintiff to deposit balance sale consideration of Rs.1,25,000/-.

The 1st defendant alone filed appeal. Through judgment and decree, the appellate Court having regard to the grounds raised before the appellate Court considered it appropriate to frame the following point:

Whether there are grounds to interfere with the judgment of the Court below made in O.S No.168/09 dated 17.02.2012 on the file of Additional Senior Civil Judge's Court, Narsaraopet? and held that no ground is made out warranting interference by the appellate Court. Hence, the Second Appeal.

Mr.Mehar Kumar contends that the appellate Court along with the point framed in paragraph No.11, ought to have framed the other points which have bearing on the execution of suit agreement viz., whether the plaintiff is ready and willing to perform his part of agreement or not and whether the trial Court considered oral and documentary evidence in the right perspective or not. According to him, the judgment under appeal is liable to be set aside and there are sufficient grounds for admission of the Second Appeal.

On the other hand, Mr.Prabhakar Rao contends that the point framed by the appellate Court though refers to examining whether the decree and judgment in O.S No.168 of 2009 on the file of Additional Senior Civil Judge, Narsaraopet is tenable or not by itself is not a ground warranting either admission of Second Appeal and/or interference by this Court under Section 100 of the Civil

Procedure Code. The learned counsel further contends that the substance of consideration of the judgment under appeal is that the appellate Court has considered each one of the contentions raised by both the parties on execution of suit agreement, receipt of consideration and the dilatory tactics resorted to by 1st defendant. The findings recorded are based on evidence and all questions raised in the Second Appeal substantially for re-appreciation of oral evidence are not within the grounds available under Section 100 of Civil Procedure Code. He relies on the following findings in the judgment of the appellate Court.

“ The attestors of Ex.A1 agreement of sale were examined as PWs 2 to 4. They filed their examination in chief in the form of sworn affidavit supporting the claim of the plaintiff in so far as the execution of Ex.A1 agreement of sale by the first defendant in favour of the plaintiff dated 30.3.2009 including the payment of Rs.1,00,000/- as advance etc. Even during the cross examination of PWs 2 to 4, the defence could not elicit any material which would prove their evidence as unbelievable. The evidence of PWs 2 to 4 is corroborating with the evidence of PW1 in so far as the execution of Ex.A1 agreement of sale by the first defendant in favour of the plaintiff including the payment of Rs.1,00,000/- (Rupees one lakh only) as advance. The evidence of PWs 1 to 4 coupled with the contents of Ex.A1 agreement of sale would prove that the first defendant being the absolute owner of the schedule property agreed to sell the same to the plaintiff for a sum of Rs.2,25,000/- (Rupees two lakh twenty five thousand only), received an advance amount of Rs.1,00,000/- (Rupees one lakh only) from the plaintiff and executed Ex.A1 agreement of sale, on 30.3.2009.

It is the evidence of PW1 within 20 days for the date of Ex.A1, he was ready and willing to pay the balance of sale consideration and to obtain regular sale deed in

terms of Ex.A1 from the first defendant, but the first defendant avoided to receive the balance amount and to execute the sale deed. Admittedly, the suit agreement of sale is dated 30.3.2009. In Ex.A1 the time fixed for payment of balance and to obtain sale deed by the plaintiff is two months. Within 14 days of the suit agreement of sale, the plaintiff got issued a legal notice to the first defendant calling upon him to receive the balance of sale consideration and execute sale deed as evidenced by Ex.A3 legal notice. Understandably, as the said notice was not served on the first defendant, the plaintiff got issued another legal notice on 25-4-2009 with the same demand to receive the balance sale consideration and execute sale deed as evidenced by Ex.A5. Thus, it is clear from the above, the plaintiff expressed his ready and willingness to perform his part of contract within 14 days from the date of agreement of sale, but it is the first defendant who avoided to perform his part of contract.

Absolutely there is no truth in the contention of the first defendant that his daughters/D2 to D4 got filed the suit through the plaintiff. The reason for my observation in this regard is that the first defendant as DW.1, during the cross examination by the counsel for the plaintiff, has categorically stated that he does not know whether his daughters were added as parties to the suit and further he does not know whether D2 to D4 filed any suit against the plaintiff; and that his daughters did not issue any notice to him prior to filing the suit demanding him to partition the schedule property and that he did not receive notice issued by his daughters and that there are visiting terms between him and his daughters etc. it appears, the first defendant himself invented the story as if his daughters pressurizing to settle the property in their favour, understandably to avoid his part of contract in terms of Ex.A1. As a matter of fact, the daughters of the first defendant namely D2 to D4 are nothing to do with the suit schedule property, the reason being it is his self acquired property got by him from his father, Kotaiah through the original of Ex.A1 gift deed dated 6.12.1985.

At the cost of repetition, I may once again say that the first defendant being the absolute owner of the schedule property got by him through his father under the original of Ex.A2 regd. gift deed dated 6-12-1985, offered to sell the same to the plaintiff for a sum of Rs.2,25,000/- (Rupees two lakh twenty five thousand only), received Rs.1,00,000/- (Rupees one lakh only) as advance on 30.03.2009, executed Ex.A1 agreement of sale in his favour and thereafter avoided to perform his part of contract though the plaintiff is ready and willing to perform his part of contract. The learned trial court having discussed the evidence in proper perspective has rightly decreed the suit directing the first defendant to execute the regular sale deed after receiving the balance of sale consideration in terms of Ex.A1, which does not call for any interference by this court. Absolutely, there are no grounds what so ever to interfere with the well reasoned judgment and decree of the trial Court. The point is, accordingly, answered in favour of the plaintiff and against the first defendant.”

and prays for dismissing the Second Appeal.

The substantial questions framed for consideration of this Court are as follows:

- a) Whether the courts below are justified in decreeing the suit that the appellant did not plea that the suit agreement is forgery but that can be raised at any stage of proceedings without pleading?
- b) Whether the courts below are justified in decreeing the suit the respondent is not proved his ready and willingness to perform his part of contract as per Section 20 of the Specific Relief Act?
- c) Whether the lower appellate court is justified in confirming the findings of the trial court without giving valid and cogent reasons?

I have heard the learned counsel appearing for the parties and also perused the pleadings and the judgments of the Courts below. May be that the appellate Court has confirmed the decree and judgment of the trial Court in O.S No.168 of 2009 and thereby the Courts below have rendered concurrent findings of fact. The 1st appellate Court when is in agreement with the findings recorded by the trial Court, the appellate Court is not required to state in extenso the reasons which weigh with the appellate Court in confirming the judgment of the trial Court. In the case on hand, the appellate Court has independently considered the evidence having regard to the pleas raised by the 1st defendant and recorded independent findings on execution, receipt of Rs.1,00,000/- towards earnest money; that the plaintiff is ready and willing to perform his part of contract and the 1st defendant was not performing his obligation under the agreement of sale. The questions which are excerpted above, in the considered view of this Court, are not substantial questions of law. These questions, if once again considered by this Court, such consideration is nothing but re-appreciation of oral evidence on which concurrent findings of fact are recorded by the Courts below. It is not the case either that the oral evidence which has bearing is excluded from consideration and/or there is perversity in the consideration of oral evidence. This Court, in exercise of its jurisdiction under Section 100 of the Civil Procedure Code, if admits the Second Appeal on the questions referred to above, will be re-appreciating the oral and documentary evidence.

For the above reasons, this Court is of the view that no ground is made out for admitting the Second Appeal. Second Appeal fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:06.12.2018
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