

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

SECOND APPEAL No.1304 OF 2017

JUDGMENT:

Heard learned counsel for the appellant and the learned counsel for the respondents.

This Second Appeal is preferred against the concurrent Judgment and Decree, dated 30.07.2014, passed in O.S.No.141 of 2002 by the Principal Junior Civil Judge, Guduru, as confirmed by the VII Additional District Judge, Guduru, in A.S.No.102 of 2014, by Judgment dated 17.01.2017.

The appellant herein is the plaintiff in the suit. The suit was filed for specific performance of the Agreement of Sale dated 11.02.1992. It is the case of the plaintiff that the first defendant executed an Agreement of Sale on 11.02.1992 for consideration of Rs.80,000/- in favour of the plaintiff. The first defendant undertook to execute a regular sale deed either in the name of the plaintiff or his nominee and he was inducted into possession. The plaintiff issued a notice on 31.08.2000 calling upon the first defendant to fix a date for registration of the sale deed and in spite of the receipt of the notice, the first defendant failed to give reply. The plaintiff is always ready and willing to perform his part of contract. The plaintiff came to know that the first defendant executed a sale deed in favour of the second defendant pertaining to item No.2 of the Agreement of Sale. Having knowledge about the Agreement of Sale between the plaintiff and the first defendant, the second defendant is not the bonafide purchaser. Though the sale consideration was fixed for an extent of Acs.3.00 cents, on measuring it came to Acs.2.71 cents and therefore, the plaintiff is demanding the first defendant to return the consideration paid for Acs.0.29 cents.

The first defendant filed a written statement and the second defendant adopted the same. The first defendant denied the allegations made in the plaint and stated that he was indebted to several persons including the plaintiff to a tune of Rs.20,000/-. When the plaintiff demanded the first

defendant to repay the money, he expressed his inability and filed I.P.No.19 of 2001 on the file of the Court of the Senior Civil Judge, Gudur. Ex.A.1, Agreement of Sale, dated 11.02.1992 was a created and forged document.

Based on the above pleadings, the following issues were framed by the trial Court.

1. Whether the suit agreement of sale dated 11.02.1992 is valid and executed by the first defendant and binding on him as prayed by the plaintiff?
2. Whether the defendants are liable to pay a sum of Rs.7,750/- for deficiency of the Acs.0.29 cents as prayed for?
3. Whether the plaintiff is entitled for receipt of original sale deed, dated 12.04.2001 executed by the first defendant in favour of the second defendant?
4. Whether the plaintiff is entitled for specific performance of agreement of sale against defendants 1 and 2 as prayed for?
5. To what relief?

Before the trial Court, P.Ws.1 and 2 were examined on behalf of the plaintiff and D.W.1 was examined on behalf of the defendants. Exs.A.1 to A.9 were marked on behalf of the plaintiff and no documents were marked on behalf of the defendants.

The trial Court held that the plaintiff failed to prove execution of Ex.A.1. The trial Court also held that Ex.A.1 is a forged one. The trial Court answered all the issues against the plaintiff and in favour of the defendants. When the Appeal was preferred before the lower appellate Court, the lower appellate Court concurred with the findings recorded by the trial Court with regard to the issues framed by it. The observations of the lower appellate Court are as follows.

15. Regarding other aspects, P.W.1 stated that he does not know about the scribe and attestor is Poli Reddy and P.W.1 not explained for non-examination of another attestor Poli Reddy and further stated that 1st defendant gave instructions to scribe regarding survey numbers and extent and other numbers, but whereas P.W.2 stated in his evidence that agreement was scribed as 1st defendant agreed to sell his property. Ex.A.1 was scribed by one Advocate's Clerk at the instance of P.W.1 and 1st defendant to advocate clerk, who scribed that Ex.A.1. Ex.A.1 was scribed as the 1st

defendant agreed to sell his property an extent of Acs.2.71 cents to P.W.1 and got executed Ex.A.1 and that Ex.A.1 prepared on conquest paper i.e., judgment paper. But, whereas P.W.1 stated that 1st defendant himself instructed to scribe and dictated the survey numbers and extent of property covered under Ex.A.1. Consideration under Ex.A.1 was paid by him to 1st defendant. It shows that regarding scribe and giving instructions also, the testimony of P.W.1 is also inconsistency with P.W.2. On the other hand, P.W.2 categorically stated in his evidence that one advocate's clerk was the scribe of Ex.A.1. But P.Ws.1 and 2 not able to say the name of the advocate's clerk. On the other hand, P.W.1 also failed to examine the scribe of Ex.A.1.

16. When the plaintiff taken a specific plea for relief of specific performance, the burden is heavily on the plaintiff to prove, but the plaintiff failed to examine the attesor Poli Reddy and the scribe. Admittedly, plaintiff, defendant and Poli Reddy are inter related to each other, one Duvvuru Raghava Reddy was the common ancestor for plaintiff and 1st defendant and also P.W.2.

17. 1st defendant taken a plea that Ex.A.1 is a fabricated and forged document. When defendant taken a specific plea about Ex.A.1, burden is heavily on the plaintiff, but he failed to examine the scribe and another attesor Poli Reddy and he examined P.W.2, who is cousin of P.W.1., and failed to examine the independent witness Poli Reddy and scribe. The plaintiff pleaded that Ex.A.1 was executed at Court Center of Gudur, but not stated specific place where Ex.A.1 prepared. Exs.A.2 to A.8 are no way helpful to plaintiff/appellant contention.

18. In view of the above foregoing reasons, it clearly made out that regarding execution of Ex.A.1, the testimony of P.W.1 is inconsistency with the recital of Ex.A.1. Further shows that plaintiff miserably failed to prove Ex.A.1 agreement of sale. Hence, he is not entitled for relief of specific performance of the contract basing on Ex.A.1, as it is an equitable relief.

In view of the said concurrent findings of facts recorded by both the Courts below, this Court does not find any question of law, much less a substantial question of law, for admitting the Second Appeal.

The Second Appeal is accordingly dismissed at the admission stage. Consequently, miscellaneous petitions, if any, pending in the Second Appeal shall stand closed.

A.RAMALINGESWARA RAO, J