

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.1352 OF 2017

JUDGMENT:

This Second Appeal is filed by the unsuccessful plaintiff, under Section 100 of C.P.C., assailing the judgment and decree dated 17.03.2017 passed in A.S.No.16 of 2011 on the file of the Court of V Additional District Judge, Medak at Sangareddy, wherein and whereby the judgment and decree dated 07.02.2011 passed in O.S.No.26 of 2006 on the file of the Court of the Senior Civil Judge, Sangareddy, dismissing the suit filed by the plaintiff for specific performance, was confirmed.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the second appeal, in nutshell, are as follows:

It is the case of the plaintiff that on 18.03.2004 the first defendant borrowed an amount of Rs.50,000/- from the plaintiff agreeing to repay the same within two months and executed a mortgage receipt. As per the terms and conditions of the agreement, the first defendant has to repay the amount within two months, failing which, the plaintiff is entitled to obtain a regular sale deed from her. For one reason or other, the first defendant did not repay the amount. Having no other alternative, the plaintiff filed a suit for specific performance.

4. The first defendant filed written statement denying all the averments made in the plaint *inter alia* contending that she

borrowed an amount of Rs.50,000/- from the plaintiff on 18.03.2004 and executed a receipt. The first defendant issued a cheque bearing No.133682 for an amount of Rs.53,000/- in favour of the plaintiff drawn on Andhra Bank Branch, Srinagar Colony. The plaintiff was at liberty to withdraw the said amount after expiry of the period. The plaintiff with a *mala fide* intention did not present the cheque for collection. On 17.05.2004 the first defendant got issued a notice to the plaintiff calling upon him to present the cheque bearing No.133682. After receipt of the legal notice, the plaintiff has presented the cheque and withdrawn the amount covered by it on 18.10.2004. The plaintiff made alterations in the receipt and filed the suit for unlawful gain.

5. The second defendant filed written statement denying all the averments made in the plaint *inter alia* contending that he purchased the suit schedule property on 10.05.2004 from the first defendant. The second defendant is a *bona fide* purchaser. This defendant filed O.S.No.417 of 2005 on the file of the Court of the Principal Junior Civil Judge, Sangareddy, against the plaintiff and obtained interim injunction. Hence, the suit is liable to be dismissed.

6. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled for the relief of specific performance of contract of sale dated 18.03.2004?
2. To what relief?

7. Before the trial Court, on behalf of the plaintiff, PWs.1 and 2 were examined and Exs.A.1 to A.3 were marked. To demolish the

case of the plaintiff, the defendant examined himself as D.W.1 and got marked Exs.B.1 and B.2.

8. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff is not entitled for the relief of specific performance basing on Ex.A.1-receipt and consequently, dismissed the suit.

9. Feeling aggrieved by the judgment and decree of the trial Court dated 07.02.2011 passed in O.S.No.26 of 2006, the plaintiff preferred A.S.No.16 of 2011 on the file of the Court of V Additional District Judge, Medak at Sangareddy. The first appellate Court, after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that the plaintiff has not approached the Court with clean hands; therefore he is not entitled for the relief of specific performance and consequently, dismissed the appeal. Hence, the unsuccessful plaintiff preferred the present **second** appeal.

10. Heard the learned counsel for the appellant-plaintiff and learned counsel for respondent No.2-defendant No.2.

11. The predominant contention of the learned counsel for the appellant-plaintiff is that the Courts below have not properly considered the recitals of Ex.A.1 and dismissed the suit on untenable grounds.

12. *Per contra*, learned counsel for respondent No.2-defendant No.2 submitted that Ex.A.1 is not an agreement of sale; therefore, the suit for specific performance is not maintainable. He further submitted that there are material alterations on Ex.A.1 and the

same was considered by the Courts below in right perspective, hence, it is not a fit case to allow the appeal.

13. The question of law urged by the learned counsel for the appellant is as follows:

“Whether the findings recorded by the Courts below are perverse?”

14. It is not in dispute that the first defendant is the owner of the suit schedule property. The first defendant borrowed an amount of Rs.50,000/- from the plaintiff and executed a receipt dated 18.03.2004-Ex.A.1. As per the terms and conditions of Ex.A.1, the first defendant has to repay the amount within two months, failing which, the plaintiff is entitled to obtain a regular sale deed in respect of suit schedule property. The trial Court gave a finding that Ex.A.1 is only a money transaction, whereas the first appellate Court gave a finding that Ex.A.1 is a conditional mortgage deed. It is not the case of the plaintiff that Ex.A.1 is the agreement of sale. It is needless to say that an agreement of sale is the foundation for filing of the suit for specific performance. It is not the case of both parties that Ex.A.1 is the agreement of sale. Section 20 of Specific Relief Act confers a discretionary power on the Courts either to grant or reject the relief of specific performance. It is a settled principle of law that the Court has to exercise its discretionary power basing on sound principles of law. A person, who approaches the Court, seeking equitable relief has to come to the Court with clean hands. The first defendant has taken a specific plea in the written statement that on 18.03.2004 she handed over cheque bearing No.133682 for an amount of

Rs.53,000/- in favour of the plaintiff. The material available on record clinchingly establishes that the plaintiff encashed the cheque on 18.10.2004. The suit was filed in the year 2006. There is no mention in the plaint that he has presented the cheque and received an amount of Rs.53,000/-. The material available on record clinchingly establishes that the first defendant repaid the amount borrowed by her under Ex.A.1 as on the date of filing of the suit. The first defendant did not owe any amount to the plaintiff. If that is so, the plaintiff is not entitled to file a suit basing on Ex.A.1. Both the Courts made an observation that there are some corrections on Ex.A.1. It appears that the plaintiff made certain corrections on Ex.A.1 and filed the present suit with an ulterior motive. The facts placed before the Court clinchingly establishes that the plaintiff has not approached the Court with clean hands. Therefore, he is not entitled for any relief. A perusal of the record reveals that the Courts below exercised the discretionary power judiciously basing on sound principles of law. This Court shall not lightly interfere with the discretionary power exercised by the Courts below unless there is an error manifest on the record. The findings recorded by the Courts below are based on evidence much less legally admissible evidence. I am fully endorsing with the findings recorded by the Courts below.

15. In **Municipal Committee, Hoshiarpur v. Punjab SEB**¹, while dealing with the scope of Section 100 of C.P.C., the Hon'ble apex Court held at paragraph No.16 as follows:

"16. ... A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court

¹ (2010) 13 SCC 216

cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC.”

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of the considered view that there is no question of law much less substantial question of law is involved in this appeal. Hence, the appeal is liable to be dismissed.

17. In the result, the Second Appeal is dismissed at the admission stage. There shall be no order as to costs.

18. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

Date: 06.11.2018
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T. SUNIL CHOWDARY, J

