

HON'BLE SRI JUSTICE S.V. BHATT

SECOND APPEAL No.1763 OF 2018

JUDGMENT:

Heard the learned counsel for the appellant.

The plaintiff in O.S.No.257 of 2007, on the file of the Principal Junior Civil Judge, Gurazala, is the appellant.

The second appeal is directed against the confirming judgment dated 27.11.2018 in A.S. No.66 of 2014, on the file of the X-Additional District Judge, Gurazala.

The parties are referred to as arrayed in the suit.

It is the case of plaintiff that on 29.03.2005, Komarabathuni Theresamma, Komarabathuni Johnson and the defendant offered to sell the suit schedule property for a total consideration of Rs.27,000/-. Initially, the plaintiff paid an amount of Rs.12,000/- to them. On the same day, the defendant and two others referred to above executed agreement of sale in favour of plaintiff. The plaintiff agreed to pay the balance sale consideration to defendant, who shall execute registered sale deed in favour of plaintiff. On 09.12.2005, the plaintiff paid the balance sale consideration of Rs.15,000/- to defendant, who endorsed on the reverse side of agreement of sale. The defendant delivered possession of the suit schedule property and the plaintiff has been in peaceful possession and enjoyment of the property. The name of plaintiff has been entered in panchayat record and she has been paying the tax regularly. The plaintiff requested the defendant and

two others several times to execute the registered sale deed, but they have not come forward. Subsequently, Komarabathuni Theresamma and Komarabathuni Johnson died. The plaintiff requested the defendant, who the legal heir of the deceased, to execute registered sale deed in her favour but in vain. On 12.06.2007, the plaintiff got issued legal notice to defendant demanding her to execute the registered sale deed.

The defendant filed written statement contending that the suit schedule property belongs to her father-in-law Komarabathuni Ratnam, who died intestate, leaving behind him, his wife Theresamma and three sons viz., John, Johnson, Prasad and three daughters. The husband of defendant i.e., John also died intestate, leaving behind him the defendant, son and daughter. They all partitioned the properties, including the suit schedule property on 30.04.2000. The suit schedule property fell to the share of defendant's children and they are enjoying the same. The plaintiff, being a neighbour to the suit schedule property, is trying to grab the same by creating fictitious documents by forging her signatures. The notice dated 12.06.2007 is not for executing the registered sale deed in favour of plaintiff. The plaintiff has not issued legal notice for executing the registered sale deed before the suit is filed.

On the strength of the above pleadings, the trial Court framed as many as four issues which are extracted in the judgment of the trial Court.

P.Ws.1 & 2 were examined and Exs.A-1 to A-14 were marked on behalf of the plaintiff and D.Ws.1 to 4 were examined and no documents were marked on behalf of the defendant.

On consideration of the evidence available on record, the trial Court, on issue No.1, held that the defendant is the rightful/competent person to register the suit schedule property in favour of plaintiff and answered the issue in favour of plaintiff. On issue No.2, the trial Court held that the plaintiff failed to prove that she was ready and willing to perform her part of contract and the question of granting decree for specific performance does not arise. On issue No.3, the trial Court held that the plaintiff failed to prove her possession and enjoyment over the suit schedule property as on the date of filing the suit and the plaintiff is not entitled for the relief of permanent injunction. Ultimately, the trial Court dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.66 of 2014.

The appellate Court in the present case has re-appraised the evidence on record and considered all the contentions raised by both parties and by a reasoned judgment dismissed the appeal and confirmed the judgment of the trial Court holding that the trial Court has properly appreciated the evidence on record put forth by both parties which does not warrant interference. Hence, the present second appeal by the plaintiff.

After the executant died, the suit is laid against the legal heir of the executant. The concurrent findings of fact recorded by the Courts below on questions of fact do not call for interference in a

second appeal. In the circumstances, it is held that there are no valid or sufficient grounds to interfere with the concurrent findings recorded by the Courts below. The impugned judgments of the Courts below, dismissing the suit do not, therefore, call for any interference. The discretion is rightly exercised in refusing to grant specific performance decree.

The second appeal fails and is, accordingly, dismissed. There shall no order as to costs.

Pending miscellaneous petitions, if any, stand closed.

26th December, 2018
Lrkm



S.V.BHATT, J