

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**SECOND APPEAL No. 1714 OF 2018**

**JUDGMENT:**

The appellant herein is defendant No.2 in O.S.No.154 of 2007 on the file of the Senior Civil Judge, Khammam. Respondent No.4-plaintiff herein filed the above said suit against respondent Nos.1 to 3-defendants 3 to 5 and the appellant, seeking enforcement of the agreement of sale dated 06.03.2007 with respect to the suit schedule property.

For the sake of convenience, the parties herein are referred to as arrayed in the suit.

In the above said suit, the plaintiff stated that defendant No.1 is the owner of the suit schedule property and she executed an agreement of sale dated 06.03.2007 in his favour after receiving the advance amount of Rs.50,000/-; that in the said agreement, defendant No.1 agreed to measure the suit schedule property before execution of the sale deed, but she did not turn up; that she got issued a legal notice dated 25.04.2007 to him stating that she sold the suit schedule property to defendant No.2 and that with a view to cheat him, defendant No.1 created a nominal and sham document in favour of defendant No.2.

Defendant No.1 filed a written statement admitting the execution of agreement of sale deed dated 06.03.2007 in favour of the plaintiff, but denied all the material contents of the plaint. It is stated that as the plaintiff expressed his inability to pay the balance

sale consideration, she repaid the amount to him and that when she demanded the plaintiff to return the agreement of sale, he did not return the same.

Defendant No.2 filed a separate written statement stating that defendant No.1 sold the suit schedule property in his favour through registered sale deed dated 09.04.2007 and that the plaintiff in collusion with defendant No.1 created the agreement of sale dated 06.03.2007.

Taking into consideration the pleadings of both the parties, the trial Court framed the following issues for its consideration:

- (1) Whether the plaintiff is entitled for specific performance of agreement of sale?
- (2) Whether the plaintiff has no cause of action to file the suit?

On behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A.1 to A.4 were marked. On behalf of the defendants, D.Ws.1 to 6 were examined and Exs.B.1 to B.11 were marked. Ex.C.1 is the handwriting expert's report.

During the pendency of the suit, defendant No.1 died and his legal representatives, defendant Nos.3 to 5, were brought on record. Defendant Nos.3 to 5 and the appellant herein filed separate appeal suits i.e. A.S.Nos.30 and 47 of 2018 respectively.

The trial Court after going through the evidence on record i.e. Exs.A.1 to A.4, B.1 to B.11 and Ex.C.1, disbelieved the plea taken

by defendant No.2 in the written statement that there was an agreement of sale dated 01.04.2006 executed in his favour, as the same was not produced before the Court and also the fact that advance amount of Rs.50,000/- received pursuant to the agreement of sale dated 06.03.2007 was refunded on 26.03.2007 and observed that there were no *bona fides* on the part of defendant No.1 in executing the sale deed in favour of defendant No.2 on 09.04.2007 and thereby, decreed the suit holding that the agreement of sale dated 01.04.2006 was brought into existence only to defeat the rights of the plaintiff and the sale deed dated 09.04.2007 was executed only for that purpose. Aggrieved by the same, defendant No.2 filed A.S.No.47 of 2018 in the Family Court-cum-VI Additional District Judge, Khammam.

Before the lower appellate Court, an attempt was made to bring on record the agreement of sale dated 01.04.2006. Though the said document appeared to have been filed, no effort appeared to have been made for marking the said document and thus, the lower appellate Court ignored the same.

The lower appellate Court had taken note of the fact that the alleged agreement of sale dated 01.04.2006 was executed on a stamp paper of 1996, which goes to show that the said document was created. It had also taken into consideration the fact that though the said document was in existence as on the date of the filing of the written statement, it could have been brought before the trial Court itself. Thus, the lower appellate Court on finding that there

was collusion between defendant Nos.1 and 2 to defeat the rights of the plaintiff, improbabilised the existence of agreement of sale dated 01.04.2006, and thus, confirmed the finding of the trial Court that defendant No.2 is not a *bona fide* purchaser.

There is no dispute that both the Courts below categorically found that defendant Nos.1 and 2 in collusion with each other, brought into existence the agreement of sale dated 01.04.2006, and thereafter to defeat the rights of the plaintiff, defendant No.1 executed the registered sale deed dated 09.04.2007 in favour of defendant No.2. The said claim was disproved by the plaintiff. The expert's opinion stands unchallenged and there was no evidence brought before the trial Court that the expert's opinion was either biased or unreliable. The trial Court had also taken into consideration the fact that the stamp paper of the agreement of sale dated 01.04.2006 was of the year 1996 and the entire transaction happened on 06.03.2007, on which date, defendant No.1 executed the agreement of sale, as per which, the plaintiff had time to get the sale deed executed up to 30.04.2007 and even before the said date, on 09.04.2007 itself, the sale deed was executed by defendant No.1 and further, on receipt of notice-Ex.A.2, dated 24.04.2007, a reply notice came to be issued on 25.04.2007 by defendant No.1 and the suit came to be filed on 30.04.2007, thereby, taking into consideration the said aspects, the trial Court had recorded a categorical finding that the agreement of sale said to have been executed on 01.04.2006 was sham and nominal as it was brought into existence for the purpose of defeating the rights of the plaintiff

and as the plaintiff was ready and willing in all respects to perform his part of contract pursuant to the agreement of sale, dated 06.03.2007, and decreed the suit. The lower appellate Court confirmed the same.

There is nothing before this Court to come to a different conclusion, as in the case of enforcement of an agreement of sale under the provisions of the Specific Relief Act, what is required to be considered by the trial Court is whether the plaintiff is ready and willing to perform the contract all through, which aspect was considered by the trial Court and gave a categorical finding to that effect, and on the other hand, defendant Nos.1 and 2 had taken a false plea before the trial Court and gone to the extent of bringing the document into existence, which was not genuine.

In those circumstances, this Court does not find any question of law, much less, a substantial question of law for adjudication in the present Second Appeal.

The Second Appeal is accordingly dismissed.

Miscellaneous petitions, if any, pending shall also stand dismissed. There shall be no order as to costs.

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**CHALLA KODANDA RAM, J**

Dt:17.07.2019

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