

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

APPEAL SUIT NO.638 OF 2018

JUDGMENT:

This appeal suit is filed assailing the judgment and decree dated 10.11.2017 in O.S.No.172 of 2012 on the file of the III Additional District Judge at Karimnagar.

2. The plaintiffs have filed the Original Suit in O.S.No.172 of 2012 for specific performance of agreement of sale dated 19.02.2009. The defendant resisted the suit by filing written statement but failed to cross-examine PWs.1 and 2 and also failed to adduce any evidence on his behalf. Accordingly, the trial Court, after giving ample opportunity to the defendant to prove his case, as the defendant remained absent without representation, having heard learned counsel for the plaintiff, answered both the issues in favour of the plaintiff holding that the plaintiff is entitled for specific performance of agreement of sale dated 19.02.2009. As such the defendant was directed accordingly to execute and register the sale deed at the expense of the plaintiffs within one month from the date of

decree and in the event the defendant fails to obey the decree, the plaintiffs are at liberty to approach the Court for taking steps under law for execution of the same.

3. Feeling aggrieved by the said judgment and decree dated 10.11.2017 in O.S.No.172 of 2012, this appeal suit is filed.

Pleadings of the plaint and written statement :

4. The 1st plaintiff was the owner and possessor of the agricultural dry land admeasuring Ac.0-3½ guntas in Sy.No.284/A and second plaintiff was the owner and possessor of agricultural dry land admeasuring Ac.0-16¼ guntas in Sy.No.284/A forming as a compact block at Nagunur Village, which is described as plaint schedule property. The plaintiffs have proposed to sell the same in favour of defendant for the consideration of Rs.10,19,750/- and the defendant agreed to purchase the same. However, the defendant intended to ascertain the actual land available at the spot and it was mutually agreed between the parties to postpone the payment of consideration till the measurement of the land is completed. However, plaintiffs have executed a registered sale deed in favour of

defendant in respect of suit schedule property on 16.02.2009 incorporating a nominal consideration of Rs.63,000/-. The defendant in turn has executed an agreement of sale dated 19.02.2009 in favour of the plaintiffs agreeing to pay the sale consideration of Rs.10,19,750/- after taking measurements. The defendant has also agreed that if he fails to pay the sale consideration after measurement of the suit land, he would re-convey the land in favour of the plaintiffs. In April, 2009 the plaintiffs have got measured the suit land and informed the defendant stating that the extent of the land as mentioned in the registered sale deed is correct and demanded for payment of balance sale consideration. Again in July, 2009 plaintiffs have got measured the suit land and found it to be correct and requested the defendant for payment of sale consideration or to execute a registered re-conveyance deed at the expenses of plaintiffs. Finally, the plaintiffs got issued legal notice dated 04.09.2012 demanding the defendant either to pay the sale consideration or to re-convey the suit land. The defendant has managed to return the said legal notice. Since the sale deed dated

16.02.2009 is without sale consideration, no right, title or interest is passed in favour of the defendant and the defendant has failed to implement the terms and conditions of the agreement dated 19.02.2009, the plaintiffs have filed the suit.

5. The defendant resisted the suit alleging that he has purchased the suit schedule property by paying an amount of Rs.10,19,750/- and the plaintiffs have executed registered sale deed on 16.02.2009 for valuable consideration and the possession was also delivered. While so, on 19.02.2009 i.e. three days after execution of sale deed, the first plaintiff approached the defendant stating that half gunta of the land was found in excess to the land sold by them and asked the defendant for payment of value of half gunta. Accordingly, the document dated 19.02.2009 was executed mentioning that the defendant purchased Ac.0-19³/₄ gutnas from the plaintiffs and agreed to pay Rs.19,750/- after getting the land measured. The plaintiffs kept the original with them and gave photocopy of the same to the defendant. On the basis of registered sale deed dated 16.02.2009 mutation was effected but the

plaintiff never got measured the land nor they demanded for Rs.19,750/-. After lapse of three years, suddenly on 26.09.2012 the defendant has received a notice through the Court Process Server and verified the document dated 19.02.2009, which was tampered by the plaintiffs to suit their convenience and started claiming Rs.10,19,750/- by inserting the said amount in the place of Rs.19,750/- and also inserting the extent of land in place of Ac.0-19 guntas. Accordingly, the defendant has filed a criminal case vide Crime No.176 of 2012 for the offences under Sections 420, 468 and 471 of Indian Penal Code (for short 'IPC') and the case is pending before the Additional Judicial First Class Magistrate at Karimnagar.

Issues:

6. Basing on the pleadings, the following issues were settled before the trial Court.

1. Whether the plaintiffs are entitled for specific performance of agreement of sale dated 19.02.2009?

2. To what relief?

Evidence and findings of the trial Court:

7. During trial, as stated supra, on behalf of plaintiffs, the first plaintiff himself got examined as PW1, an independent witness is examined as PW2 and in all Exs.A1 to A5 documents are marked. The defendant failed to cross-examine these witnesses and also failed to adduce any evidence in support of his claim. Accordingly, the trial Court, after hearing learned counsel for the plaintiffs and upon appreciation of oral and documentary evidence adduced on behalf of the plaintiffs decreed the suit directing the defendant to execute registered sale deed in favour of the plaintiffs in respect of the suit land within one month from the date of judgment.

8. Feeling aggrieved by the said judgment and decree, the defendant has filed this appeal.

9. Heard learned counsel for the appellant/defendant and respondents/plaintiffs. The submissions made on either side have received due consideration of this Court.

10. In the light of rival contentions and evidence available on record, the following point would arise for consideration:

Point for consideration:

Whether judgment impugned is sustainable or the Original Suit is liable to be remitted to the trial Court by setting aside the judgment and decree impugned?

For the sake of convenience the parties to this appeal are hereinafter referred as plaintiff and defendant as they were arrayed in the Original Suit before the trial Court.

Point :

11. The admitted case of the plaintiffs is that they have executed the original of Ex.A2 registered sale deed document No.573 of 2009 in favour of the defendant. It is also an undisputed fact that after three days to the execution of same on 19.02.2009 a simple agreement was also executed. However, it is the contention of the plaintiffs that a nominal sale deed without consideration was executed and the parties have entered into Ex.A1 agreement for survey of the suit land and accordingly,

survey was conducted measurements, as mentioned in Ex.A2, were found on ground and the said fact was also informed to the defendant with a request either to pay the sale consideration as mentioned in Ex.A1 i.e. Rs.10,19,750/- or to re-convey the suit property in favour of plaintiffs. As per Ex.A3, legal notice was also sent to the defendant and it was returned unserved under Ex.A5. However, the evidence of PWs.1 and 2 is not tested with cross-examination and the plaintiffs have not adduced any reliable evidence to show that after Ex.A1 the suit land surveyed and found that the extent of the land as mentioned in Ex.A1 was available on the ground.

12. Learned counsel for the appellant/defendant strenuously contends that no opportunity was given to the defendant to cross-examine PWs.1 and 2 or to adduce his own evidence in support of the defence set up by the defendant in his written statement. In-fact the agreement dated 19.02.2009 is a forged document, the extent of the land and the amount mentioned therein were changed without the consent of the defendant to suit the convenience of the plaintiffs. There was no demand of any

kind from the plaintiffs either for execution of registered sale deed or for payment of consideration of Rs.10,19,750/- and in-fact, a regular sale deed was executed on 16.02.2009 itself, nothing remained in that transaction except the fact that plaintiff No.1 has agitated alleging that more extent of land was conveyed and requested for survey. He would further contend that ordinarily a litigation is based on adjudication on merits of the contentions of the parties and it should not be terminated by default of either of the parties and as far as possible adjudication be done on merits, prayed to remit the matter for fresh disposal in accordance with law by setting aside the impugned judgment. Learned senior counsel relied upon the following judgments :

- (1) **Aziz Ahmed Khan (Appellants) Vs. I.A. Patel (Respondent)¹.**
- (2) **Gurudas Biswas (Appellant) Vs.Charu Panna Seal and others (Respondents)².**
- (3) **Robin Thapa Vs. Rohit Dora³.**
- (4) **Ritesh Tewari and another Vs.State of Uttar Pradesh and others⁴.**

¹ AIR 1974 AP 1 (Full Bench of AP High Court)

² AIR 1977 Calcutta 110

³ AIR 2019 Supreme Court 3225

⁴ (2010) 10 Supreme Court Cases 677

13. Per contra learned counsel for the plaintiffs would submit that reasonable opportunity was given to the defendants either for cross-examination of PWs.1 and 2 or for adducing his own evidence but the defendant did not chose to contest the matter, there is no such forgery in the agreement dated 19.02.2009, it was a document executed by the defendant consciously, subsequently, the plaintiffs have also demanded for payment of sale consideration of Rs.10,19,750/- as mentioned in the said document dated 19.02.2009 but the defendant has avoided and as a result, the plaintiffs were compelled to issue legal notice dated 04.09.2012 and the defendant also avoided to receive the same, as such, the present suit is filed. The defendant, deliberately to protract the litigation, failed to cross-examine PWs.1 and 2 and also failed to adduce evidence. He would further submit that the principles laid in the decisions relied upon by the learned counsel for the defendant are not applicable to the facts of the case on hand and prayed for dismissal of the appeal.

14. Be it stated that along with the grounds of appeal the docket proceedings right from 26.04.2017 to

03.11.2017 are extracted in support of the defendant's case to show that a reasonable opportunity was not given to the defendant to resist the plaintiffs' claim. As per the proceedings dated 26.04.2017 chief affidavit of PW1 was already filed but the defendant remained absent. Exs.A1 to A5 were marked on that day. Again, the matter was adjourned to 07.06.2017 and 14.06.2017. On 07.06.2017 since PW1 was present, defendants remained absent and as such, PW1's cross-examination was recorded as 'nil'. On 28.06.2017 evidence affidavit of PW2 was filed and thereafter, on 02.08.2017 since there was no representation on behalf of defendant, cross-examination of PW2 was recorded as 'nil'. Thereafter, on 22.08.2017 plaintiffs' evidence was reported 'closed', defendant was absent and the suit was adjourned to 29.08.2017, on that day defendant's evidence was also closed. Finally, arguments of the plaintiffs were heard on 03.11.2017 and the judgment was pronounced on 10.11.2017.

15. In the case of **Aziz Ahmed Khan** (first supra) a Full Bench of this Court while dealing with Order XX, Rule 4 of CPC held that the Courts should apply their mind to

the facts of the case and the points in issue and give a reasoned judgment thereafter duly evaluating the evidence adduced and after considering the contentions of the parties. Accordingly, since the judgment impugned was not in conformity with Order XX, Rule 4(2) of CPC, it was set aside.

16. In the case of **Gurudas** (2nd supra) the Apex Court has held that even to pass an ex-parte decree in a suit for ejectment, the Court cannot relieve itself of the necessity of complying with Order XX, Rule 4 of CPC whether the suit is contested or not.

17. In the case of **Robin Thapa** (3rd supra) the Hon'ble Supreme Court has held that ordinarily, litigation is based on adjudication on merits of the contentions of the parties and the litigant should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

18. In the case of **Ritesh Tewari** (4th supra) the Apex Court dealt with the powers of the trial Court under Section 165 of Evidence Act.

19. Learned counsel for the appellant would further submit that the learned judge of the trial Court has not even looked into Ex.A1 and passed the impugned judgment and decree and it is a fit case to be remitted back to the trial Court for fresh consideration.

20. On overall consideration of the facts and circumstances of the case and oral and documentary evidence adduced on behalf of the plaintiff, it is crystal clear that the provisions of Order XX, Rule 4 of CPC are not complied with in the judgment impugned. The defendant is disputing the recitals in Ex.A1 but there is no discussion about this document in the entire judgment. The payment of sale consideration, as mentioned in Ex.A2 is also disputed by the plaintiffs stating that the property was sold for an amount of Rs.10,19,750/- but a nominal sale deed was executed by mentioning only Rs.63,000/- as sale consideration. May be it is mentioned as per the book

value. All these facts have to be established and elicited in the evidence of the plaintiffs and the defendant has to be given an opportunity to adduce evidence in support of his case. Therefore, while relying on the principles laid in the above decisions, I am of the considered opinion that it is a fit case to set aside the judgment and decree impugned and to remit the matter to the trial Court for fresh disposal in accordance with law. It is needless to mention that at the time of recording evidence of PWs.1 and 2 in chief-examination i.e. filing of their evidence affidavit in lieu of chief-examination, exhibiting the documents Exs.A1 to A5, the defendant was not set ex-parte and as such their evidence shall remain part of the record even after remittance.

21. In the result, this appeal suit is allowed, judgment and decree dated 10.11.2017 in O.S.No.172 of 2012 on the file of the learned III Additional District Judge at Karimnagar is hereby set aside and the Original Suit in O.S.No.172 of 2012 is remitted to the trial Court for fresh disposal in accordance with law affording an opportunity to the defendant to cross-examine PWs.1 and 2 and to the

plaintiffs to adduce further evidence, if any, and after closure of plaintiffs' evidence to give opportunity to the defendant to adduce his evidence, if any, thereafter upon hearing on both sides, to dispose of the suit on merits. Both the parties to the suit shall co-operate for expeditious disposal of the Original Suit since it is an old suit relating to the year 2012.

Further, both the parties to the suit shall appear before the trial Court i.e. learned III Additional District Judge, Karimnagar on 24.12.2022 for receiving directions of the trial Court as to further the proceedings, as indicated above.

However, in the circumstances of the case, there shall be no order as to the costs. Miscellaneous applications, if any pending, shall stand closed.

A.VENKATESWHARA REDDY, J

Dated :02-12-2022

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