

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

SECOND APPEAL No.13 of 2015

JUDGMENT :

This Second Appeal is arising out of the judgment and decree dated 30.10.2014 in A.S.No.40 of 2013 on the file of Additional District Judge & Sessions Judge, Vikarabad, Ranga Reddy District which is arising out of the judgment and decree dated 24.06.2010, passed in O.S.No.20 of 2006 on the file of Senior Civil Judge, Vikarabad.

2. For the sake of convenience, the parties are referred to as arrayed before the trial Court. The appellants are the defendants.

3. Initially, the suit is filed by the plaintiff No.1 and during the pendency of the suit, as the plaintiff died, the legal representatives of the plaintiff were brought on record as plaintiff Nos.2 to 9 who are the wife and sons of the 1st plaintiff. The brief averments of the plaint are that the 1st defendant is the owner and possessor of the agricultural lands in Sy.Nos.228, 229, 231 and 242 totally admeasuring Ac.10-08 gts comprising one piece of land situated at Agganoor Village, Yalal Mandal, R.R.District. On 14.06.2000, the

defendant Nos.1 and 2 in order to meet their immediate family necessities and to discharge their debts, offered to sell the suit land to the plaintiff for a sale consideration of Rs.2,50,000/- and they had entered into the agreement of sale receiving the earnest money deposit of Rs.50,000/-. As per the agreement of sale, the balance sale consideration has to be paid on different dates and pursuant to it, plaintiff No.1 paid an amount of Rs.1,72,000/- on different dates from 24.06.2000 to 06.06.2003 and the said transactions are to be completed by October, 2000. It is the specific contention of the plaintiff's that the defendants entered into an agreement of sale, suppressing the charge in favour of PACS, Chennaram vide registered mortgage deed dated 21.03.1996, which was noticed by the plaintiff and he requested the defendants to execute registered sale deed. In spite of receiving the balance sale consideration on different dates, the defendants failed to redeem the mortgage and did not execute registered sale deed in favour of the plaintiff. The plaintiff approached the defendants several times, lastly on 01.01.2006 and 15.01.2006, but the defendants postponed execution of registered sale deed due to increase of prices of land and therefore, the plaintiff was

constrained to file the suit for specific performance against defendants.

4. On the other hand, the 1st defendant filed detailed written statement which was adopted by the 2nd defendant denying all the averments made in the plaint. It is the specific contention of the 1st defendant that he is in the habit of obtaining hand loan from the plaintiff to meet his family necessities and when the defendant No.1 approached the plaintiff for hand loan of Rs.2,50,000/-, the plaintiff has obtained signatures of defendant No.1 on blank stamp papers and also on the receipt. But the plaintiff misused them and filed a false suit against the defendants under the guise of agreement of sale by fabricating the documents and prayed to dismiss the suit.

5. Basing on the above pleadings, the trial has framed the following issues:-

- “1. Whether the plaintiff entered into an agreement of sale to purchase the suit land on 14.06.2000 and the defendants executed an agreement of sale?
2. Whether the plaintiff paid Rs.1,72,000/- to the defendant on various dates and defendants received the same?

3. Whether the agreement of sale is brought into existence by the plaintiff by utilizing the blank signed papers, as claimed by the defendants?
4. Whether the suit is filed within time?
5. Whether the plaintiff is entitled to seek the relief of specific performance of agreement of sale as prayed for?
6. To what relief?"

6. On behalf of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A-1 to A-12 were got marked and on behalf of the defendants, D.W1 was examined and Exs.B-1 to B-4 were got marked.

7. On considering the oral and documentary evidence, the trial Court has decreed the suit directing the plaintiff to pay the balance sale consideration of Rs.28,000/- to the defendants, within one month from the date of judgment and on such receipt, the defendants are directed to execute registered sale deed within two months conveying peaceful and vacant possession of suit property in favour of the plaintiff, in pursuance of agreement of sale dated 14.06.20000, failing which, the plaintiff may approach for its execution.

8. Being aggrieved by the same, the defendants have preferred an appeal before the Additional District Judge, Vikarabad. On hearing the appellants, the appellate Court has framed the following points for consideration:-

- “1. Whether the decree and judgment in
O.S.No.20/2006 on the file of Senior Civil
Judge, Vikarabad be set aside?
2. To what relief?”

9. The appellate Court after considering the rival contentions and material on record have dismissed the appeal, with a finding that the appellants failed to support their contention that Ex.A-1 to A-10 are executed by them towards hand loan of Rs.2,50,000/- obtained by the appellant No.1 from respondent No.1 and further, the respondents have established that Exs.A-1 to A-10 pertain to sale transactions, entered between respondent No.1 and appellants herein and that they have also paid part sale consideration of Rs.1,72,000/- out of Rs.2,50,000/-. The fact is that the appellants who failed to comply with the conditions under Ex.A-1 were corroborated with the evidence of appellants themselves, that the suit property was mortgaged with PACS. It was the finding of the 1st appellate Court

that the respondents are entitled for the relief of specific performance i.e., execution of registered sale deed by the appellants in favour of respondent Nos.2 to 9 who are the legal heirs of the 1st respondent and thereby confirmed the judgment and decree in O.S.No.20 of 2006 on the file of Senior Civil Judge, Vikarabad.

10. Being aggrieved by the same, the present Second Appeal is filed raising the following substantial questions of law:-

- “i). Whether the failure of the First Appellate Court in not exercising the powers conferred on it U/s.96 r/w. Order 41 Rule 31 of CPC by which the First Appellate Court which is the final court of fact has to deal with all the issues and the issues and the independent consideration of the evidence led by the parties before the recording its reasons?
- ii) Whether the perversity of findings recorded by the courts below which are initiated by non-consideration of relevant evidence and thereby constitute the substantial question of law?
- iii). Whether the omission of the court below in not considering the relevant piece of evidence of the cross-examination of PW.1 in admitting that the payment covered under Ex.A-2 to A-10 does not pertaining to Ex.A-1 which if considered could have enabled the courts below in discarding Ex.A-

2 to A-10 from consideration entailing the dismissal of the suit on the ground of limitation?”

11. The Second Appeal is of the year, 2015 and it underwent numerous adjournments and is still coming up for admission.

12. Heard the learned counsel for the appellants. Perused the record.

13. On perusal of the substantial questions of law raised in the memorandum of grounds, it is evident that they all relate to the fact findings/factual aspects of both the Courts below and they are not of law.

14. Order 41 Rule 31 reads as follows:-

“Contents, date and signature of judgment:-The judgment of the Appellate Court shall be in writing and shall state:-

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

15. On perusal of the judgment of the appellate Court, it is evident that the appellate Court has strictly followed Order 41 Rule 31 of CPC. Further, there is no misreading of the evidence or perversity of findings recorded by the Courts below. In the absence of contra evidence, there is no necessity for the Courts below to discard the documentary evidence i.e., Ex.A-1 to A-10.

16. It is pertinent to mention that there is limited scope under Section 100 of CPC while dealing with the appeals by the High Courts. In a Second Appeal, if the High Court is satisfied that the case involves a substantial question of law, only then, this Court can interfere with the orders of the Courts below. On perusal of the entire material on record, this Court is of the considered view that the orders of the Courts below are not perverse and there is no misreading of evidence, and therefore in the absence of substantial question of law, it is not proper to interfere with the concurrent fact findings of the Courts below. Therefore, the Second Appeal deserves to be dismissed.

17. In the result, the Second Appeal is dismissed at the stage of admission confirming the judgment and decree dated 30.10.2014 in

A.S.No.40 of 2013 on the file of Additional District Judge & Sessions Judge, Vikarabad, Ranga Reddy District. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 21.11.2022
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