

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

SECOND APPEAL No.377 of 2015

JUDGMENT :

This Second Appeal is arising out of the judgment dated 06.02.2014 in A.S.No.288 of 2007 on the file of V Additional District Judge (Fast Track Court), R.R. District at L.B.Nagar, confirming the judgment and decree dated 15.12.2006, passed in O.S.No.695 of 2001 on the file of V Additional Senior Civil Judge (Fast Track Court), R.R. District.

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

3. Heard learned Counsel for both the parties. Perused the record.

4. The appellant is the plaintiff No.1. The plaintiffs filed the suit for specific performance of contract. The brief averments of the plaint are that defendants 1 to 3 are the joint pattadars, owners and possessors of the suit land bearing Sy.Nos.76/15 and 76/16, admeasuring Four acres, situated at Chengicherla village of

Ghatkesar Mandal, R.R. District and that the plaintiffs intended to purchase the land for the purpose of making them into plots and for selling the same to the prospective buyers. The plaintiffs came to know the defendants' offer to sell the said land, approached them and after due negotiations, the defendants agreed to sell the land @ Rs.3,35,000/- per acre and entered into agreement of sale for a total consideration of Rs.13,40,000/- and gave an advance of Rs.2,00,000/- and further agreed to pay the balance consideration in three equal instalments of Rs.3,80,000/- each, payable on or before 30.01.1998, 30.06.1998 and 30.12.1998 and the defendant agreed to execute the registered sale deed in the name of plaintiffs and their nominees. It is the further case of the plaintiffs that with the consent of the defendants, the plaintiffs paid total sale consideration on various dates till 29.06.2000 and when the plaintiffs demanded for execution of regular sale deeds, the defendants avoided, for which, they are constrained to file the suit for specific performance and prayed to decree the suit.

5. On the other hand, in the written statement, the defendants admitted the execution of agreement of sale and contended that the

sale consideration had to be paid in three equal instalments within a period of 18 months i.e. on or before 30.12.1998, but the plaintiffs did not pay the same within the stipulated time and cannot seek relief of specific performance. It is further contended in the written statement that the defendants are illiterates and have no knowledge of the English language, but signed on the agreement of sale with a fond belief that the sale transaction will be completed within a period of 18 months, however, the plaintiffs failed to pay the amount and without the consent of defendants 1 and 2, called defendant No.3 and obtained his signatures on the receipts by pretending that they paid the remaining balance consideration, and therefore, prayed to dismiss the suit as it is devoid of merits.

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

“1. Whether the plaintiffs are entitled for specific performance of contract of sale dated 30.07.1997 ?

2. To what relief ?

7. During the course of trial, on behalf of the plaintiffs, PWs.1 and 2 were examined and Exs.A-1 to A-21 were marked. On

behalf of defendants, DWs.1 to 3 were examined and Exs.B-1 and B-2 were marked.

8. Upon considering the oral and documentary evidence on record, the trial Court has dismissed the suit with a specific finding that the plaintiffs could not pay the sale consideration to the defendants, even subsequent to the expiry of the stipulated period under the agreement of sale, and when the plaintiffs stated that they cannot pay the balance sale consideration, the defendants being the absolute owners, resorted to dispose of their property to meet their necessities and requirements and the plaintiffs committed default and brought an end to the agreement of sale, and therefore, the plaintiffs seeking the relief for specific performance of agreement of sale cannot be entertained.

9. Being aggrieved by the same, the unsuccessful plaintiffs preferred an appeal vide A.S.No.288 of 2007 on the file of V Additional District Judge, R.R. District.

10. The first appellate Court, after hearing the rival contentions of the parties and considering the material on record, has framed the following points for consideration:

- “1. Whether the plaintiffs expressed their ready and willingness to perform their part of contract ?
2. Whether the time is essence of the contract ?
3. Whether the plaintiffs are entitled for specific performance of contract of agreement of sale dt.30.07.1997 ?
4. Whether there are any grounds to interfere with the findings, decree and judgment of the lower Court ??

11. On considering the contentions of the parties and material on record, the first appellate Court has dismissed the appeal confirming the judgment of the trial Court.

12. Being aggrieved, this second appeal is filed by plaintiff No.1 raising the following substantial questions of law along with the grounds of appeal:

- “(a) Whether the time is the essence of contract of sale of immovable property ?
- (b) Whether the Courts below are correct in interpreting Sec.16(c) of the Specific Relief Act, 1963 and holding the plaintiff responsible for the delay and non-suiting him ?”

13. On perusal of the record, it is evident that as per Ex.A-1/ agreement of sale dated 30.07.1997, time is not at all the essence of the contract, as there is no specific incorporation in the agreement of sale. But the agreement of sale discloses that the total sale consideration is Rs.13,40,000/-, and the plaintiffs agreed to purchase the suit schedule property as per the following terms and conditions:

1. That the vendor has this day received a sum of Rs.2,00,000/- (Rupees Two Lakhs only) from the vendee herein as advance and earnest money, the receipt of which sum, the vendor hereby admits and acknowledges.
2. That the vendor hereby agreed to receive the balance sale consideration of Rs.11,40,000/- (Rupees Eleven Lakhs and Forty Thousand only) in respect of the Schedule mentioned property from the vendee in Three (3) instalments i.e. in the following manner:-
 - (i) First instalment on Dated 30th January, 1998, Rs.3,80,000/- (Rupees Three Lakhs and Eighty Thousand Only) paid by the vendees to the vendors.
 - (ii) Second instalment on Dated 30th June, 1998 Rs.3,80,000/- (Rupees Three Lakhs and Eighty thousand only) paid by the vendees to the vendors.
 - (iii) Third instalment on Dated 30th December, 1998 (Rupees Three Lakhs

and Eighty thousand only) paid by the vendees to the vendors.”

14. As per the recitals of Ex.A-1, there is no specific clause as to the time for executing the contract, but as far as payment of balance sale consideration is concerned, the last payment i.e. the 3rd instalment shall be made by the plaintiffs to the defendants by 30.12.1998, which is the specific time limit as per Ex.A-1. It is admitted by both the parties that the plaintiffs have not paid the balance sale consideration by 30.12.1998. Therefore, the substantial question of law which was raised by the appellant as to “time is not the essence of the contract of the immovable property” cannot be considered. The suit for specific performance of contract can be enforced in case if the payment stipulated in the agreement or the balance sale consideration was paid by the plaintiffs by or before 30.12.1998. It is the clear admission of the plaintiffs that they paid the balance sale consideration on various dates to the defendants and have completed payments by 29.06.2000 i.e. subsequent to the time stipulated (30.12.1998) as per the agreement of sale dated 30.07.1997. Further, it is the specific contention of the defendants that they were illiterates and the plaintiff obtained

the signatures of the 3rd defendant on the receipts, without the consent of defendants 1 and 2 stating that he paid the remaining balance sale consideration, but only paid Rs.1,00,000/-. It is the specific finding of both the Courts that without execution of the regular sale deed by the defendants, in favour of the plaintiffs, the plaintiffs have sold the properties to the third parties. Admittedly, both the Courts below have given concurrent findings that the plaintiffs are not entitled for the relief of specific performance.

15. Section 16 of Specific Relief Act envisages as follows:

“16. **Personal bars to relief.**—Specific performance of a contract cannot be enforced in favour of a person—

(a) who has obtained substituted performance of contract under section 20; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the

performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
- (ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction.”

16. Thus, Section 16 (c) of the Specific Relief Act clearly specifies that the relief of specific performance of contract cannot be granted in favour of the person, who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than the terms of the performance of which have been prevented or waived by the defendant. The explanation also reveal that where a contract involves payment of money, it is not essential for the plaintiffs to actually tender to the defendant or to deposit in the Court any money except when so directed by the Court and as per Clause (ii) of Section 16-C. It is for the plaintiff to prove and

aver the performance or readiness or willingness to perform the contract according to its true construction, which means that the plaintiff has to prove that he was ready and willing to perform his part of the contract. In the present case, the plaintiff had to pay the balance sale consideration on or before 30.12.1998, but he did not pay to the defendants within the stipulated time and further, there is no specific plea before the Court as to when he demanded the defendants to execute regular sale deed in his favour. Ex.A-14 is the office copy of the legal notice dated 14.02.2001, which clearly disclose that the plaintiffs have failed to pay the balance sale consideration within the stipulated time. Further, the notice also disclose that the plaintiffs requested the defendants to register GPAs for the unsold plots bearing Nos.4, 5, 7 to 10, 24, 25 to 29, 32, 35, 36, 37, 42, 45, 49, 50, 51, 63, 64 and 70 as per layout and further, the plaintiffs were ready to pay the balance sale consideration of Rs.2,90,000/-, which means, as on 14.02.2001, the plaintiffs have not paid the balance sale consideration.

17. This Second Appeal is of the year 2015 and it underwent numerous adjournments and is still at the admission stage. 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, this Court is not inclined to interfere with the concurrent fact findings of the Courts below. Therefore, the Second Appeal deserves to be dismissed.

18. In the result, the Second Appeal is dismissed at the stage of admission, confirming the judgment dated 06.02.2014 in A.S.No.288 of 2007 on the file of V Additional District Judge (Fast Track Court), R.R. District at L.B.Nagar. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 19.10.2022
ajr