

THE HON'BLE SRI JUSTICE M.LAXMAN
SECOND APPEAL No.42 of 2017

JUDGMENT:

1. Heard both the learned counsel on merits as well as existing substantial question of law. This Court framed following substantial question of law.

Whether the findings of both the Courts in declining the grant of injunction on the basis of suppression of agreement of sale by the plaintiff, when such agreement is in written form which is also not produced by the defendants but the oral evidence was let in by defendant contrary to the Sections 91 & 92 of Indian Evidence Act and contrary to Registration and Other Related Laws (Amendment) Act 2001, i.e., Act 48 of 2001, suffers from any perversity.

2. Learned counsel reported no further arguments on the above substantial question of law. Therefore, this Court has taken up the appeal for disposal.

3. The present Second Appeal has been filed challenging the judgment and decree dated 15.10.2016 in A.S.No.73 of 2014, on the file of the learned Principal District Judge, Khammam.

4. Initially, the plaintiff/appellant herein has preferred a suit in O.S.No.695 of 2008, on the file of the learned Principal Junior Civil Judge, Khammam, for perpetual injunction in respect of

the suit scheduled property and the same was dismissed on 05.08.2014. Aggrieved by the same, the plaintiff/appellant herein has preferred the first appeal in A.S.No.73 of 2014, on the file of the learned Principal District Judge at Khammam and the same was dismissed on 15.10.2016. Hence, the present Second Appeal, at the instance of the plaintiffs.

5. The appellant herein is the plaintiff and the defendants herein are the defendants in the suit. For the sake of convenience, the parties hereinafter referred to as they are arrayed in the suit.

6. The sum of substance of the case of the plaintiff is that he is the absolute owner and possessor of the land admeasuring to an extent of Acre 2 – 21 ½ Guntas, form part of survey No.15/A, situated at Khanapuram Haveli, Khammam Urban Mandal, Khammam District (herein after referred to as suit schedule property).

7. The plaintiff has purchased the suit land from one Sunkara Ramulu under registered sale deed document No.444/1996. Ever since such a purchase, the plaintiff has been in possession of suit property. The defendant No.3 is his brother, other defendants are active assistants of his brother and they

tried to interfere with the possession of the plaintiff. Hence, the present suit.

8. The case of the defendants is that they admitted the ownership and initial possession of plaintiff. They claimed that the plaintiff and the defendant No.3 have executed an agreement of sale dated 16.09.2004 in favour of the defendants Nos.1 & 2 to convey suit schedule property owned by the plaintiff and defendant No.3. An extent of Acre 8 - 01 ½ Guntas, form part of survey Nos.14/E, 14/EE and 15/A, situated at Khanapuram Village, owned by the defendant No.3. On the date of agreement, an amount of Rs.52,87,500/- was paid as an advance amount and the same was acknowledged. In pursuance of such agreement, the plaintiff and the defendant No.3 have handed over the original sale deeds to the defendants Nos.1 & 2. Further, as per the agreement, the land conveyed requires measurement by the plaintiff and his brother. Subsequently also, the balance sale consideration has to be paid on or before 30.09.2005. Thereafter, the defendant No.3 received a sum of Rs.92,87,500/- towards balance consideration on his own behalf as well as on behalf of plaintiff. After such a payment, the defendant Nos.1 & 2 developed layout over the entire extent of land and converted the land into

205 house plots by laying the roads. Out of the said plots, 90 plots were already sold out. The plaintiff as well as the defendant No.3 having received such consideration did not come forward to execute the documents. Thus, defendants Nos.1 & 2 issued a legal notice. In turn, the plaintiff and defendant No.3 sent reply notice. Subsequently, the defendants issued rejoinder and cancelled the agreement. The plaintiff has not come to the Court with clean hands and hence, prayed to dismiss the suit.

9. The plaintiff also filed rejoinder admitting the execution of agreement of sale but denied the receipt of consideration and delivery of any possession.

10. On the basis of the above pleadings, the trial Court has framed the following issues:

1. Whether the plaintiff is entitled for perpetual injunction as prayed for ?

2. To what relief ?

11. The plaintiff, to support his case, examined PW1 and relied upon Exs.A1 to A4. The defendants, to support their case, examined DW1 to DW3 and relied upon Exs.B1 to B6.

12. Both the Courts below, based on the oral evidence of the defendants and taking into consideration of suppression of execution of agreement of sale in the original plaint, have denied the relief claimed by the plaintiff. Hence, the present second appeal.

13. Heard the learned counsel on either side.

14. This is a suit for simplicitor. Originally, the plaintiff did not mention the execution of agreement of sale in between the plaintiff and the defendants. Subsequent to the written statement, he filed rejoinder admitting the execution of agreement, however, denied the receipt of any sale consideration. The evidence of the plaintiff shows that he is in possession of property and the agreement of sale was executed without receipt of any consideration. To prove his possession, he relied upon Ex.A1/sale deed, Ex.A2/Pahani, Ex.A3/Original Pattadar Pass-Book and Ex.A4/Original Title Deed.

15. The defendants have not produced the agreement of sale, which was entered in between the parties and rendered into written form. However, they let in an oral evidence with regard to terms of contract by examining DW.1 to DW.3. The Courts below have placed reliance on such oral evidence let in

by the defendants with regard to the terms of contract and accepted the delivery of possession and denied the injunction.

16. In this regard, both the Courts have not taken into consideration the bar contained under Section 91 & 92 of Indian Evidence Act. It is not the case of the defendants that the oral evidence let in by them falls under any of the expectation created under the said two Sections. It is also not their case that the oral evidence was let in to bring the secondary evidence. This claim cannot be sustained for simple reason that the original sale agreement was in possession of defendants but it could not be let in as evidence, since they failed to pay stamp duty. By virtue of bar created under Sections 91 and 92 of the Indian Evidence Act, the Courts below should not have given much importance to the oral evidence relating to the terms of contract, which is a foundation for both the Courts to deny the injunction.

17. The defendant Nos. 1 & 2 claimed that the possession was delivered in pursuance of an agreement of sale. The evidence of DW1 shows that the possession was delivered on the next date of agreement of sale. DW3 evidence shows that the possession was delivered simultaneously with the execution

of agreement. This was noticed by the trial Court and Appellate Court in their judgments but placed reliance on the oral terms of contract without there being agreement of sale produced before the Court. The oral evidence with regard to possession was accepted by the Court below without looking into amendment to the Registration Act as well as the Transfer of Property Act. Amendment was brought in Registration Act by Act 48 of 2021 of Registration and other related law (Amendment) Act, 2001. In pursuance of such an amendment, Section 17(1)(A) was added to the Registration Act. Similarly, there was also amendment to the Section 49 of the Registration Act. Simultaneously, by same Act the amendment was made to Section 53 of Specific Relief Act. By such an amendment, the protection, which was offered to the persons, who took possession under executory contract, was taken away, if the contract of agreement is unregistered. This was not noticed by the both the Court below. Both the Courts below erred in recognizing of possession under agreement and denying the injunction without noticing the amendment brought by the Act 48 of 2021, in this regard.

18. There is no doubt that the plaintiff in the original pleadings has not referred to existence of agreement in the

original plaint. Subsequently, rejoinder was filed giving details of transaction which was taken on record. Therefore, the original pleadings must be read along with the pleading brought in by way of rejoinder. Original suppression has been rectified. Omission to mention the existence of agreement of sale in the original plaint becomes no significance.

19. The evidence of defendants also shows that on the date of agreement, an amount of Rs.52,00,000/- and odd was paid. In the agreement, there is no indication how much each executent received the consideration. Natural inference is the amount shall be apportioned in proportion to the land agreed to sell by them. The defendant Nos. 1 and 2 says that such balance consideration was received by defendant No.3 on his own behalf and on behalf of plaintiff. This is a genesis of dispute. The defendant No.3 claimed that the amount paid at the time of agreement was totally paid to plaintiff but there is no evidence with this regard defendant denies such claims. These are all germane to the present litigation. Defendants Nos.1 & 2 till date have not sought for any specific performance of such an agreement.

20. In the above circumstances, this Court feels that the protection has to be given to the plaintiff by granting relief asked for. The findings of both the Courts below suffer from perversity.

21. In the result, the appeal is allowed and the judgment and decree dated 15.10.2016 in A.S.No.73 of 2014, on the file of the learned Principal District Judge, Khammam, is set aside. No costs. Consequently, miscellaneous petitions, if any, shall stand closed.

JUSTICE M.LAXMAN

31.10.2022
Dua/Gms

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