

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

APPEAL SUIT No.1430 of 2018

JUDGMENT:

The unsuccessful defendant No.5 has filed this appeal suit assailing the judgment and decree dated 02.06.2016 in O.S.No.598 of 2007 on the file of the Special Sessions Judge for Trial of Cases under SC&ST (Prevention of Atrocities) Act-cum-VII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar.

2. The plaintiff in O.S.No.598 of 2007 has filed Original Suit for cancellation of Agreement of Sale-cum-General Power of Attorney document bearing No.4484 of 2004 dated 18.03.2004 and Sale Deed document bearing No.11489 of 2004 dated 23.07.2004 both registered before the Sub-Registrar, Medchal, Ranga Reddy District. The trial Court, on careful appreciation of material available on record, decreed the suit of the plaintiff by cancelling Agreement of Sale-cum-General Power of Attorney document bearing No.4484 of 2004 dated 18.03.2004 and the Sale Deed document bearing No.11489 of 2004 dated 23.07.2004, on the file of Sub-

Registrar, Medchal, Ranga Reddy District. Feeling aggrieved by the said judgment and decree the defendant No.5 has filed this appeal suit.

Pleadings in the plaint and written statement before the trial Court:

3. The plaintiff was the owner and possessor of the land admeasuring 23,595 Sq.Yards in Sy.No.190/part, situated at Jeedimetla Village, Quthbullapur Mandal, Ranga Reddy District having purchased the same through a registered Sale Deed document No.322 of 1977 dated 25.11.1977. The plaintiff has agreed to sell 2,600 Sq.Yards out of the said land at Rs.430/- per Sq.Yard for a total consideration of Rs.11,18,000/- to the defendant No.1, who paid an amount of Rs.2,18,000/- towards advance and promised to pay the balance sale consideration and issued Cheque bearing No.002364, dated 05.05.2004 for the balance sale consideration of Rs.9,00,000/-, drawn on State Bank of Hyderabad, Gunfoundary Branch, Hyderabad. The sale transaction is subject to realization of the said post dated cheque. Believing the version of defendant No.1 plaintiff has executed Agreement of Sale-cum-GPA document dated

18.03.2004 in favour of 1st defendant but defendant No.1 has failed to issue cheque or demand draft or cash towards the balance sale consideration of Rs.9,00,000/-. The 1st defendant has fraudulently executed Sale Deed document No.11489 of 2004 dated 23.07.2004 in favour of defendant Nos.2 to 5 for a sale consideration of Rs.11,70,000/- whereas defendant No.1 has deceived the plaintiff by playing fraud and without paying the balance sale consideration in favour of plaintiff, executed Sale Deed in favour of defendant Nos.2 to 5, accordingly, the plaintiff has got issued legal notice dated 14.05.2007 calling upon the defendants to cancel the Sale Deed and render vacant possession of the land. The defendants, inspite of receipt of legal notice, failed to pay the balance sale consideration or to handover the vacant possession of the suit schedule property. Hence, the suit is filed for cancellation of Agreement of Sale-cum-GPA document bearing No.4484 of 2004 dated 18.03.2004, executed in favour of defendant No.1 and consequent Sale Deed bearing No.11489 of 2004 dated 23.07.2004, executed by defendant No.1 in favour of defendant Nos.2 to 5, registered before Sub-Registrar, Medchal, Ranga Reddy District.

4. Defendant Nos.2 to 4 remained absent and they were set ex-parte. Defendant Nos.1 and 5 have filed separate written statements.

5. Main averments of the written statement filed by defendant No.1 are that the suit filed by the plaintiff is not maintainable, plaintiff is not entitled for cancellation of Agreement of Sale-cum-General Power of Attorney document bearing No.4484 of 2004 dated 18.03.2004 and the Sale Deed document bearing No.11489 of 2004 dated 23.07.2004 and that the suit is liable to be dismissed. The plaintiff has offered to sell 2,600 Sq.Yards of land out of 23,595 Sq.Yards in Sy.No.190/Part at Jeedimetla at the rate of Rs.430/- per Sq.Yard, which comes to Rs.11,18,000/- and received an amount of Rs.2,18,000/- from the defendant No.1 towards advance amount, also obtained post dated Cheque bearing No.002364, dated 05.05.2004 for an amount of Rs.9,00,000/- balance sale consideration and after receipt of the said cheque only the plaintiff has executed AGPA in favour of defendant No.1. It is utterly false to allege that fraudulently the defendant No.1 has executed Sale Deed document bearing

No.11489 of 2004 dated 23.07.2004 in favour of defendant Nos.2 to 5 for a consideration of Rs.11,70,000/- without paying the balance sale consideration to the plaintiff. In-fact, defendant No.1 has paid the balance sale consideration of Rs.9,00,000/- to the plaintiff on 19.04.2004 itself. However plaintiff has failed to return the post dated cheque dated 05.05.2004 and made all false allegations against the defendant No.1. It is also averred in the written statement of defendant No.1 about filing of O.S.No.240 of 2004 on the file of the Junior Civil Judge, Medchal for injunction and the written statement filed in that suit and about the criminal case registered before the police, Pet-Basheerabad, Hyderabad.

6. The main averments of the written statement filed by defendant No.5 are that the suit filed by the plaintiff is not maintainable, the pleadings in the plaint do not establish necessary ingredients of fraud, which are required for cancellation of the documents. There is collusion between the plaintiff and defendant No.1. The issuance of cheque dated 05.05.2004 could be seen from the recitals of the AGPA dated 18.03.2004. The plaintiff, instead of taking steps for recovery

of amount by presentation of cheque, unnecessarily filed the present suit by withholding the cheque as such, there is a fraud between the plaintiff and the 1st defendant and the suit is not maintainable. Defendant No.5, after verification of the AGPA dated 18.03.2004, has purchased the suit schedule property along with defendant Nos.2 to 4 and he never anticipated the present stand adopted by the plaintiff, otherwise, he would have obtained the Sale Deed directly from the plaintiff itself on 23.07.2004. Even otherwise, if there is any legal remedy for recovery of amount, it is for the plaintiff to initiate such steps instead of seeking for cancellation of the AGPA and the Sale Deed executed in favour of defendant Nos.2 to 5. There is no cause of action for filing the suit. All false allegations are made in the plaint. He is not aware of issuance of legal notice dated 14.05.2007 calling upon the defendants to handover the possession of suit schedule property. Accordingly, prayed for dismissal of the suit with costs.

Issues:

7. The above pleadings gave raise to following issues:

1. Whether the plaintiff is entitled for cancelling the agreement of sale cum GPA document No.4484 of 2004 dated 18.03.2004?
2. Whether the plaintiff is entitled to cancelling the sale deed document No.11489 of 2004 dated 23.07.2004?
3. Whether there is any collusion in between plaintiff and defendants?
4. Whether the suit is barred by limitation?
5. Whether the plaintiff is entitled for the decree as prayed for?
6. To what relief?

Evidence and findings of the trial Court:

8. During trial, on behalf of plaintiff, PWs.1 to 3 are examined and Exs.A1 to A5 documents are marked. On behalf of defendants, defendant No.5 himself got examined as DW1 but no documentary evidence is adduced in his evidence. No other defendants including defendant No.1 is examined. Accordingly, defendants' evidence was reported 'closed'.

9. The trial Court on careful appreciation of the material available on record, answered all the issues in favour of the plaintiff and the suit was decreed by cancelling the Agreement of Sale-cum-General Power of Attorney document bearing No.4484 of 2004 dated 18.03.2004 and consequent Sale Deed document bearing No.11489 of 2004 dated 23.07.2004, on the file of Sub-Registrar, Medchal, Ranga Reddy District. Feeling aggrieved by the said judgment and decree, defendant No.5 has preferred this appeal suit.

10. Heard learned counsel for the appellant/defendant No.5. In spite of granting ample opportunity, none appeared on behalf of respondent/plaintiff and other defendants. Accordingly, after hearing the arguments of the appellant/defendant No.5 the appeal suit is reserved for judgment. The submissions made by learned counsel for the appellant/defendant No.5 have received due consideration of this Court.

11. In the light of the submissions made and the evidence available on record, the following points would arise for consideration.

- (i) Whether the plaintiff is entitled for cancellation of Agreement of Sale-cum-General Power of Attorney document bearing No.4484 of 2004 dated 18.03.2004 and also for cancellation of Sale Deed document bearing No.11489 of 2004 dated 23.07.2004?
- (ii) Whether the impugned judgment and decree is sustainable?

Point Nos.(i) and (ii):

The parties hereinafter referred as plaintiff and defendants, as arrayed in the Original Suit.

For the sake of brevity and convenience, point Nos.(i) and (ii) are answered together as under:

12. Undisputedly plaintiff was the owner and possessor of the land admeasuring 23,595 Sq.Yards in Sy.No.190/part, situated at Jeedimetla Village, Quthbullapur Mandal, Ranga Reddy District and he has entered into an Agreement of Sale-cum-General Power of Attorney document bearing No.4484 of 2004 dated 18.03.2004 with the defendant No.1 in respect of

2,600 Sq.Yards out of the said land admeasuring 23,595 Sq.Yards, agreed to sell the same at the rate of Rs.430/- per Sq.Yard for a total consideration of Rs.11,18,000/- and that defendant No.1 has paid an amount of Rs.2,18,000/- as advance and AGPA document No.4484 of 2004 was executed.

13. It is the specific case of plaintiff that defendant No.1 has issued cheque dated 05.05.2004 for balance sale consideration of Rs.9,00,000/- but he has failed to pay the said amount and the AGPA was only executed conditionally subject to realization of the said amount of Rs.9,00,000/-. However, the 1st defendant without paying the balance sale consideration of Rs.9,00,000/- fraudulently executed sale deed in favour of defendant Nos.2 to 5 and he has come to know about it after execution of the Sale Deed document No.11489 of 2004 dated 23.07.2004 and accordingly, got issued a legal notice but there was no proper response, hence, the suit.

14. The specific case of contesting defendant No.1 is that he has issued cheque for Rs.9,00,000/- towards balance sale consideration, however, he has paid the said amount of Rs.9,00,000/- on 19.04.2004 itself but the plaintiff has failed

to return the cheque and misused the same and filed the present suit.

15. On behalf of plaintiff three witnesses were examined, among them plaintiff is PW1, PW2 is the Bank Officer and whereas PW3 is an independent witness.

16. Plaintiff, as PW1, has filed his evidence affidavit in lieu of chief-examination reiterating the plaint averments. In his evidence Exs.A1 to A5 documents are marked. Ex.A1 is certified copy of Agreement of Sale-cum-General Power of Attorney document bearing No.4484 of 2004 dated 18.03.2004. There is no dispute about plaintiff executing the said document in favour of defendant No.1. Ex.A2 is certified copy of Sale Deed document bearing No.11489 of 2009 dated 23.07.2004 executed by defendant No.1 in favour of defendant Nos.2 to 5. Execution of this document is also not in dispute. Ex.A3 is the office copy of the legal notice dated 14.05.2007. Ex.A4 is the postal acknowledgment card. The defendant has disputed receipt of the said legal notice wherein they were called upon to handover the vacant possession of suit schedule property. Ex.A5 is the statement of account.

17. Be it stated that the cross-examination of PW1 on behalf of defendant Nos.1 and 4 was recorded as 'nil'. PW1 is only cross-examined on behalf of defendant No.5. It is stated in the cross-examination of PW1 that Ex.A1 was executed after knowing the contents and defendant No.1 paid Rs.2,18,000/- prior to execution of Ex.A1. He has not issued any notice to the 1st defendant for not paying the amount of the cheque though the time mentioned is elapsed, the 1st defendant has sold the suit schedule property to the defendant Nos.2 to 5 and he is not aware of contents of Ex.A2, denied all other suggestions given to him with reference to limitation or receipt of consideration. It is pertinent to mention that not even a single suggestion was given to PW1 that he has received the balance sale consideration of Rs.9,00,000/- either from defendant No.1 or from defendant No.5. Though defendant No.1 has specifically pleaded in his written statement that on 19.04.2004 he has paid the said amount of Rs.9,00,000/- to the plaintiff but the plaintiff has not returned the cheque dated 05.05.2004, no such suggestion was given to PW1.

18. PW2 is the Deputy Manager, State Bank of Hyderabad, Gunfoundary Branch. This witness is examined only to show that from 01.01.2004 to 31.12.2004 at no point of time there was sufficient amount in the account of defendant No.1 and that as on 07.05.2005 there was only an amount of Rs.25,062/- available in the account of defendant No.1 and Ex.A5 statement of account is marked. This witness is not cross-examined on behalf of any of the defendants including the contesting defendant No.5 and his evidence in chief-examination remained uncontroverted.

19. PW3/Mohd.Faizal is an independent witness. He supported the evidence of PW1 and the case of plaintiff on all material aspects. This witness is also not cross-examined on behalf of defendant No.1. Whereas, in the cross-examination on behalf of defendant No.5 this witness has stated that he cannot say the date of execution of the sale deed but it was in the month of March, he does not know the contents of Ex.A1, in his presence defendant No.1 has not given any cheque to the plaintiff and denied all other suggestions given to him. Thus, the entire oral evidence of PW3 in chief-examination almost

remained consistent in the cross-examination on behalf of defendant No.5.

20. Defendant No.5 himself got examined as DW1, filed his evidence affidavit in lieu of chief-examination. In cross-examination it is stated by this witness that he has purchased the property from defendant No.1 after verifying the documents including Ex.A1 and in clause 3 of Ex.A1 there is a mention that only if the cheque is encashed the document is valid and that he does not know whether instead of cheque plaintiff has received cash or not. The witness has explained that he has received legal notice. He has also admitted the relationship with other defendants stating that defendant Nos.2 and 3 are his partners and defendant No.4 is his wife. DW1 further stated that he used to meet defendant No.3 frequently and defendant No.3 informed him about the legal notice, received by him, but he does not know whether any reply notice was issued by defendant No.3 or not. DW1 also admitted that plaintiff has filed a criminal case against him and other defendants in Crime No.1108 of 2011 for the offences of cheating and criminal breach of trust and it was closed due to

civil nature. DW1 denied the suggestion that since the document/Ex.A2 is invalid, they have intentionally not issued reply to the legal notice/Ex.A3 and that Ex.A1 is only a conditional Sale Deed cum GPA and the said condition was not complied with.

21. Let me now examine the recitals of Ex.A1 Agreement of Sale-cum-General Power of Attorney document bearing No.4484 of 2004 dated 18.03.2004. It is a registered document, executed by plaintiff in favour of defendant No.1 appointing him as his General Power of Attorney holder. As per clause 1 of Ex.A1, plaintiff has agreed to sell schedule property to the defendant No.1 at the rate of Rs.430/- per Sq.Yard for a total sale consideration of Rs.11,18,000/-. As per clause 2, the defendant No.1 has paid a sum of Rs.2,18,000/- towards advance and plaintiff has agreed the receipt of the said amount. As per clause 3 of Ex.A1, defendant No.1 has issued Cheque bearing No.002364 dated 05.05.2004 for balance sale consideration of Rs.9,00,000/-, drawn on State Bank of Hyderabad, Gunfoundary Branch. It is specifically mentioned in this clause that the above sale

transaction is subject to realization of the above referred cheque. Coming to clause 11 of Ex.A1, it is mentioned in clear terms that only after receiving the entire sale consideration the first party (plaintiff) shall execute a registered sale deed and if he fails to execute the same, the second party (defendant No.1) is entitled to seek performance. Thus, a conjoint reading of clause Nos.1 to 3 and 11 of Ex.A1 makes it crystal clear that the document executed under Ex.A1 is only Agreement of Sale-cum-GPA and on the date of execution, an amount of Rs.2,18,000/- was paid and acknowledged by plaintiff, further, the defendant No.1 has handed over/issued a post dated Cheque bearing No.002364 dated 05.05.2004 for Rs.9,00,000/- in favour of the plaintiff and the said transaction is only subject to realization of the cheque. Further, upon receipt of the entire sale consideration, the plaintiff has to execute a regular Sale Deed.

22. From the recitals of Ex.A1 the intention of the parties is made clear and it was never treated as out and out sale deed, it was only executed as Agreement of Sale – cum – GPA with a condition that defendant No.1 has to pay the

balance sale consideration in respect of which the cheque for Rs.9,00,000/- was issued. As stated above, defendant No.1 having pleaded that he has paid the said amount of Rs.9,00,000/- on 19.04.2004, failed to establish the same nor there is any evidence adduced on behalf of defendant No.5 to that effect and nothing is elicited in the entire cross-examination of PWs.1 to 3 to that effect.

23. Be it stated that the 1st defendant having pleaded so in his written statement, did not venture to enter into the witness box to speak the contents of written statement filed by him on oath, nor he has examined any witnesses on his behalf in support of the plea taken by him in the written statement. This by itself is sufficient to draw an adverse inference against defendant No.1 under Section 114(g) of the Indian Evidence Act holding that the defence set up by defendant No.1 is not correct (**Vidyadhar Vs.Manikrao and another**¹).

24. Thus, the burden is heavy on the defendants to prove that Ex.A1 is an out and out sale deed and that defendant No.1 has acquired a saleable interest in the suit

¹ AIR 1999 SC 1441

schedule property under Ex.A1 and as absolute owner he has executed the sale deed in favour of defendant Nos.2 to 5. Defendant No.5 alone entered into the witness box and PWs.1 to 3 were only cross-examined on his behalf and there was no cross-examination on behalf of other defendants. On a careful evaluation of oral and documentary evidence discussed above, nothing is elicited to show that an amount of Rs.9,00,000/- was paid by the defendant No.1 to the plaintiff as stated in his written statement. Absolutely there is no evidence on record to show that on 19.04.2004 defendant No.1 has paid Rs.9,00,000/- to the plaintiff and the plaintiff has dodged to return the said Cheque dated 05.05.2004.

25. Learned counsel for the appellant/defendant No.5 strenuously contends that the suit in the present form is not maintainable, sale deed executed by defendant No.1 in favour of defendant Nos.2 to 5 cannot be cancelled for non-payment of part of sale consideration, the vendor has other remedies in law for recovery of balance sale consideration and relied on the principles laid by the Apex Court in **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through legal**

representatives and others². Perused the principles laid by the Apex Court in the above decision. It is true there cannot be any dispute that for unpaid sale price the vendor has other remedies in law for recovery of balance sale consideration and the sale deed cannot be cancelled for non-payment of full sale consideration. But in the instant case there is no out and out sale deed, Ex.A1 is only Agreement of Sale cum GPA document. On a conjoint reading of clause Nos.1 to 3 and 11 makes it crystal clear that the said document was only executed subject to realization of the cheque dated 05.05.2004 for Rs.9,00,000/- and that the parties have intended for execution of a separate sale deed on payment of the balance sale consideration of Rs.9,00,000/- and there is no evidence much less any reliable, cogent and convincing evidence to show that defendant No.1 has paid balance sale consideration of Rs.9,00,000/- either on 19.04.2004 as pleaded by him or that the said cheque dated 05.05.2004 was realized or that there were sufficient funds in the account of defendant No.1 at any point of time subsequent to issuance of the said cheque.

² (2020) 7 SCC 366

26. It is not the case of defendant No.5 that he has verified with the plaintiff and he has orally acknowledged receipt of Rs.9,00,000/- balance sale price from defendant No.1 or that he has paid the said amount of Rs.9,00,000/- to the plaintiff directly. It is also evident from the evidence of defendant No.5 as DW1 that the sale deed Ex.A2 was obtained by these defendant Nos.2 to 5, among them defendant Nos.2 and 3 are the partners of defendant No.5 and defendant No.4 is the wife of defendant No.1. Thus, the alleged transaction in the given facts and circumstances of the case appears to be fraudulently made and without a valid title the 1st defendant has executed sale deed under Ex.A2 in favour of defendant Nos.2 to 5, who are the wife (defendant No.4) of defendant No.1 and partners (defendant No.2 and 3) of defendant No.5. Though the defendant No.5 pleaded that defendant Nos.2 to 5 are bonafide purchasers, on verification of title of defendant No.1, the evidence is otherwise. As DW1 the defendant No.5 is silent as to payment of balance price either by him or by defendant No.1 or execution of regular sale deed by plaintiff in favour of defendant No.1 as mentioned in Ex.A4. As such, the fraud played by defendant No.1 on the plaintiff is made out

with the oral and documentary evidence adduced on behalf of the plaintiff. The principles laid in the above decision are not applicable and the facts of the case on hand are distinguishable from the facts in the reported decision.

27. Therefore, for all the reasons stated above point Nos.(i) and (ii) are answered against the appellant/defendant No.5 and in favour of the plaintiff/respondent. I do not find any infirmity or irregularity in appreciation of oral and documentary evidence available on record by the trial Court. The judgment and decree impugned does not warrant any interference by this Court and it is sustained.

28. In the result, the appeal suit is dismissed confirming the impugned judgment and decree dated 02.06.2016 in O.S.No.598 of 2007 on the file of the Special Sessions Judge for Trial of Cases under SC&ST (Prevention of Atrocities) Act-cum-VII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar in its entirety.

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 : 20-01-2023
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