

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

SECOND APPEAL No.795 of 2003

JUDGMENT :

This appeal is arising out of the judgment dated 07.07.2003 in A.S.No.7 of 2000 on the file of III Additional District Judge, Warangal, confirming the judgment and decree of the trial Court dated 31.12.1999, passed in O.S.No.416 of 1992 on the file Principal Senior Civil Judge, Warangal.

2. For the sake of convenience, the parties are referred to as arrayed before the trial Court.
3. Heard learned counsel for the appellant as well as the counsel for the respondent and perused the record.
4. The plaintiff is the appellant. Initially, the suit was filed by the plaintiff against the defendant for specific performance of sale agreement dated 11.04.1991, directing the defendant to register the suit house in the name of the plaintiff by duly receiving the balance of sale consideration or alternatively through due procedure of the Court in the name of the plaintiff in case the defendant refuses to register the same and for permanent injunction against the defendant

from interfering with the peaceful possession and enjoyment of the plaintiff over the suit house and for costs of the suit.

5. The brief averments of the plaint are that the defendant agreed to sell the suit schedule house for Rs.90,000/- and took advance of Rs.20,000/- and executed Ex.A-1, agreement of sale on 11.04.1991. On the same day, expressing some urgent necessity, defendant received an amount of Rs.20,000/- and passed a separate receipt. Immediately, the next day, i.e., on 12.04.1991, the plaintiff came to know that the defendant already received an amount of Rs.20,000/- from one Prabhakar Reddy and Ramachander Reddy and agreed to sell the house. When plaintiff asked said Prabhakar Reddy and Ramachander Reddy about the said issue, they agreed to give up their transaction in his favour provided that the defendant returns the amount of Rs.20,000/- to them. Thereafter, at the request of the defendant, the plaintiff paid Rs.20,000/- to Prabhakar Reddy and Ramachander Reddy, who in turn passed a receipt in favour of the defendant and the same was handed over to the plaintiff. On the same day, the defendant requested for Rs.10,000/- but the plaintiff paid only Rs.2,000/- for which the defendant passed a receipt. Thus,

in all the plaintiff paid Rs.62,000/- and after execution of agreement of sale, the defendant delivered possession of the suit house and since then, the plaintiff is in possession and enjoyment of said house. Later, telephone connection was obtained to the suit house in the name of his brother and the plaintiff has also received some letters sent by her younger sister to the said address.

6. It is the further case of the plaintiff that inspite of several demands to receive the balance sale consideration of Rs.28,000/- and for execution of registered sale deed, the defendant failed to do so and he tried to sell the property to the third parties, for which the plaintiff got published notices in 'Warangal Vani' and 'Udayam' dailies (newspapers) on 28.11.1991 and 02.12.1991 respectively cautioning the general public. Thereafter, the plaintiff also got issued a legal notice through her counsel on 13.01.1991. The defendant instead of giving reply to the said notice, issued a notice demanding the plaintiff to furnish copies of sale agreement and receipts. When the plaintiff along with her father approached the defendant, the defendant placed a condition that unless the plaintiff clears off the debt to the bank, he will not register the sale deed, for

which the plaintiff again issued a legal notice. Though the defendant received the said notice, he did not choose to give reply. Apprehending the danger to her possession over the suit schedule property, the plaintiff was constrained to file the suit.

7. On the other hand, the defendant filed the written statement admitting execution of agreement of sale dated 11.04.1991 and stated that he sought the help of Real Estate broker Ramachander Reddy and entered into an agreement of sale with Prabhakar Reddy for Rs.10,000/- and received Rs.20,000/-, but Prabhakar Reddy failed to perform his part of contract. Later, Ramachander Reddy approached the father of the plaintiff on 11.04.1991 and agreed to pay Rs.20,000/- to Prabhakar Reddy separately apart from sale consideration of Rs.90,000/- and then the defendant executed Ex.A-1 due to confidence in Ramachander Reddy without receiving Rs.20,000/-. On 12.04.1991, the father of the plaintiff paid Rs.2000/-. On 11.04.1991, he received Rs.20,000/- as per the agreement to which the defendant passed a receipt for Rs.22,000/- in favour of the plaintiff by mentioning earlier payment of Rs.20,000/-. It is further contended that the father of the plaintiff wrote a letter to

him on 22.12.1991 stating that the plaintiff has paid only Rs.15,000/-. Since the plaintiff illegally trespassed into the house, the defendant claimed for recovery of possession and damages of Rs.500/- per month. Immediately, after receipt of the notice dated 13.12.1991 issued by the plaintiff, the defendant got issued a reply notice dated 02.01.1992 asking the plaintiff to furnish copies of sale agreement and receipts which are received by the counsel for the plaintiff under postal acknowledgment and prayed to dismiss the suit with exemplary costs.

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

“1. Whether the agreement of sale dated 11.04.1991 is not supported by consideration and not binding on the defendant as calling by the defendant?

2. To what relief?”

9. On behalf of the plaintiff, P.Ws.1 and 2 were examined and got marked Exs.A-1 to A-12. On behalf of the defendants, D.Ws.1 and 2 were examined and got marked Exs.B-1 to B-9.

10. The trial Court after considering the entire oral and documentary evidence on record, dismissed the suit and directed the defendant to pay Rs.22,000/- to the plaintiff.

11. Being aggrieved by the same, the plaintiff has preferred an appeal vide A.S.No.7 of 2000 before the III Additional District Judge, Warangal.

12. On hearing the appellant, the trial Court has framed the following point for consideration:-

“Whether the reasons and findings in the lower court order are erroneous and are liable to be set aside. Further, the appellate Court has come to a conclusion that the appeal is a continuation of the proceedings. The issues are recasted and discussed as follows:

- “i) Whether the agreement of sale dated 11.04.1991 is not supported by consideration and not binding on the defendant as alleged by the defendant?
- ii) Whether the plaintiff is entitled for the relief of permanent injunction?
- iii) To what relief?”

13. Considering the oral and documentary evidence on record, the appellate Court has come to a conclusion that Ex.A-1, agreement of sale dated 11.4.1991 is supported by consideration of Rs.20,000/- and further payment of Rs.2,000/- on 12.04.1991 only and not for Rs.62,000/- as alleged in the plaint. Hence, the agreement is said to have fallen through and not binding on the defendant. Accordingly, dismissed the appeal confirming the judgment and decree of the trial Court in O.S.No.416 of 1992 dated 31.12.1999 directing the plaintiff to deliver the possession of the suit schedule property to the defendant within one month from the date of decree of appeal and the interim order passed in I.A.No.520/2002 dated 19.10.2002 stands vacated.

14. Being aggrieved by the decree and the judgment of the appellate Court, the plaintiff filed the present Second Appeal raising the following substantial questions of law:-

- “a) Whether a suit for specific performance can be dismissed attributing un-cleaning hands to the plaintiff when the agreement of sale is admitted and part performance of the sale is also admitted and dispute is only with regard to the

amount actually paid under Ex.A-1 Agreement of Sale?

- b) When the defendant-vendor has admitted the agreement of sale, delivery of possession and payment of part consideration amount out of the total consideration amount of Rs.90,000/-, can the courts adduce specific performance since the version of the plaintiff as well as the defendant about the quantum of the part consideration paid is disbelieved and whether an equity, court would not have jurisdiction to grant specific performance subject to the condition of the payment of the balance consideration amount as arrived at by the court?
- c) Whether the finding of the appellate court that oral evidence cannot be looked into the civil cases and only documentary evidence can be the basis of the judgment in a civil suit is a valid proposition of law?
- d) In Ex.A.3 receipt of Rs.20,000/- (original) is produced and marked by the plaintiff, can the courts below ignore the same in the face of the evidence of the defendant that at his instructions, the plaintiff has discharged the

liability of the defendant in favour of Prabhakar Reddy, who was having a prior agreement of sale in his favour?

- e) When there is a recital in Ex.A.1 of receipt of Rs.20,000/- on the date of the agreement and when there is a Ex.A.2 receipt on the same date, for another sum of Rs.20,000/-, can the courts record a finding that it is only one payment of Rs.20,000/- reflected in Ex.A1 and A.2?
- f) Whether the findings of the courts below are not perverse and do not amount to a total misleading of the evidence on record?
- g) When the plaintiff has issued suit notice and the defendant has asked the plaintiff to furnish him the agreement of sale and the receipt copies, cannot the court draw an inference that the defendant is trying to avoid performance of Ex.A.1 and whether dispute on the quantum of part consideration amount will out way the sinister conduct of the defendant who has not taken care to admit the agreement of sale and called upon the plaintiff to furnish him a copy of Ex.A.1 to A.4?"

15. The Second Appeal is of the year, 2003 and it is coming up for hearing since long time. On 12.11.2022, counsel for the appellant was heard and there was no representation on behalf of the respondent. Therefore, the matter was posted for hearing on 05.12.2022 incorporating a default clause stating that in the absence of representation of respondent, the arguments of the respondent will be treated as heard and the matter was posted to 14.12.2022. Even on 14.12.2022, there was no representation for respondent. Having no other option, this Court has treated the arguments of the respondent as heard and the matter was reserved for judgment.

16. It is the specific contention of the learned senior counsel Sri Vedula Venkata Ramana appearing for the appellant that the consideration mentioned in Ex.A-1 is Rs.90,000/- and during the time of execution of Ex.A-1, an amount of Rs.20,000/- has been paid and on the same day, an amount of Rs.20,000/- has been paid vide receipt under Ex.A-2. Further under Ex.A-3, an amount of Rs.20,000/- has been paid and finally an amount of Rs.2,000/- was paid vide receipt under Ex.A-4 and the total amount which has been received by the defendant is Rs.62,000/-. But both the Courts below

have dismissed the suit as well as the appeal of the plaintiff with a perverse finding. It is further contended by the senior counsel that though Ex.A-5, legal notice was sent, the defendant inspite of receiving the same, has failed to issue any reply and that the plaintiff was ready and willing to perform his part of contract, but the defendant evaded the execution of registration of sale and therefore, prayed to set aside the orders of the lower Court as well as the 1st appellate Court.

17. Learned counsel for the appellant further relied on the judgment of the Apex Court reported in ***Zarina Siddiqui vs. A.Ramalingam***¹, wherein their lordships have held as follows:-

“34. The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misled the Court then such discretion should not be exercised by refusing to grant specific performance.

¹ (2015) 1 SCC 705

35. In the instant case, as noticed above, although defendant no.2 held a registered power of attorney on behalf of defendant no.1 to sell and dispose of the property, but the defendants not only made a false statement on affidavit that the power of attorney had authorized the second defendant only to look after and manage the property but also withheld the said power of attorney from the Court in order to misguide the Court from truth of the facts. Further, by registered agreement the defendants agreed to sell the suit premises after receiving advance consideration but they denied the existence of the agreement in their pleading. Such conduct of the defendants in our opinion, disentitle them to ask the Court for exercising discretion in their favour by refusing to grant a decree for specific performance. Further, if a party to a *lis* does not disclose all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of the process of law.”

18. As per the pleadings of the written statement, the defendant himself has admitted about execution of agreement of sale on 11.4.1991 and also about payment of amount of Rs.2,000/- for which a receipt was passed in favour of the plaintiff on 12.04.1991.

He further admitted that after receiving legal notice of the plaintiff, he issued a notice dated 21.12.1992 asking the plaintiff to furnish copies of sale agreement and receipts.

19. It is pertinent to note that Ex.A-5 is the legal notice issued by the plaintiff to the respondent which is nothing but reiteration of the pleadings in the plaint and Ex.A-7 is the further legal notice issued by the plaintiff. On perusal of Ex.A-1, it is evident that one Prabhakar Reddy is the witness to the agreement of sale dated 29.11.1988 and the defendant has signed on Ex.A-1. The signatures which appear on Ex.A-1 and A-2 are one and the same.

20. As per Section 103 of the Indian Evidence Act, whoever ascertains a particular fact, it is for them to prove. It is the specific contention of the defendant that he has only received Rs.22,000/- and not received any amount from the plaintiff for another Rs.40,000/- covered under Exs.A-2 and A-3.

21. Admittedly, Ex.A-3 was signed by Prabhakar Reddy who alleged to have received the amount and at the instance of the defendant, the said amount was paid to Prabhakar Reddy. But no effort was made by the defendant to prove that the signature on

Ex.A-2 do not belong to him and he has not received the said amount. There is no hard and fast rule to acknowledge the agreement of sale and that the receipt cannot be taken for the amount which has paid on the same day to the party. It was the specific finding of the Court below that the “plaintiff has stated as if she paid Rs.62,000/- while in fact, she paid only Rs.22,000/- by way of part-payments towards Ex.A-1, agreement of sale dated 11.04.1991 and that she came to the Court with unclean hands and therefore, she is not entitled for relief of specific performance. Therefore, the benefit of Section 53-A of Transfer of Property Act is not applicable to the plaintiff as she is not ready and willing to do her part of contract”. But Ex.A-5, notice issued by the plaintiff discloses that she was willing to perform her part of contract and also about payment made by her. If at all the defendant had any grievance with regard to Ex.A-5, he ought to have given reply denying the averments of Ex.A-5, notice.

22. The trial Court has come to a conclusion that letter filed by the defendant said to have been written by Ramachandra Reddy under Ex.B2 dated 22.12.1991 disclose that Ramachandra Reddy

received Rs.15,000/- only, which cannot be considered in view of Exs.A-1 to A-4 and that too Ex.B-2, which was written subsequent to the issuance of Ex.A-5, notice. Exs.A-5 and A-7 are the notices which are received by the defendant under Exs.A-6 and A-8, who in turn has sent reply notices through his counsel under Exs.B-5 and B-7 requesting the counsel for the plaintiff for supply of copies of Exs.A-1 to A-4. Admittedly, Ex.A-1 is agreement of sale dated 11.04.1991, Ex.A-2 is the receipt for Rs.20,000/- dated 11.01.1991, Ex.A-3 is the receipt for Rs.20,000/- executed by Prabhakar Reddy, Ex.B-5 is the notice subsequent to legal notice of the plaintiff, Ex.A-5 dated 13.12.1991, wherein the defendant counsel requested the counsel for the plaintiff to furnish copies of Exs.A-1 to A-4 which were supplied by the counsel for the plaintiff as per the evidence of P.W.1. Though the plaint is silent about sending xerox copies of Exs.A-1 to A-4, P.W.1 in cross-examination specifically admitted that those copies were sent by her counsel and the same were received and acknowledged by the counsel for defendant. Ex.B-9 is the reply notice to Ex.B-7 i.e., with regard to supply of copies of Ex.A-1 to A-4. But it is strange to receive reminder notice stating that no copies were served and that a suit is filed for specific

performance before the Principal Senior Civil Judge, Warangal vide O.S.No.416 of 1992 and the Court was pleased to grant injunction in their favour vide I.A.No.520 of 2002.

23. In fact, the documents which are filed by the plaintiff clearly disclose that the plaintiff had paid an amount of Rs.62,000/- and she is ready and willing to perform her part of contract by paying balance sale consideration. Both the Courts below have erred in coming to a conclusion that the plaintiff is not ready and willing to execute her part of contract, wherein Ex.B-5 clearly discloses that the plaintiff is ready and willing to perform her part of contract and she is ready to pay balance sale consideration of Rs.28,000/- and sought for the relief of execution of registered sale deeds.

24. As substantial question of law is involved, this Second Appeal deserves to be dealt with question of law including the documentary evidence which was not considered by the Courts below. The trial Court has not considered Ex.A-3, receipt of Rs.20,000/-, which was issued by the defendant and the same cannot be ignored.

25. As per Section 103 of the Indian Evidence Act, whoever ascertains a particular fact, it is for them to prove. The defendant contended that he has received an amount of Rs.22,000/- vide Exs.A-1 and A-3 and not vide Ex.A-4. It is for the defendant to prove that he has not received an amount of Rs.62,000/-and only received Rs.22,000/-, though Exs.A-2 and A-3 disclose that an amount of Rs.40,000/- was received by the defendant as well as Prabhakar Reddy.

26. It is quite evident from the judgment of the appellate Court that amount which ought to have been received by the defendant has to be acknowledged only on Ex.A-1 and there is no need for issuing receipt under Ex.A-2. Admittedly, there is no hard and fast rule laid down by law to endorse only on Ex.A-1, even a receipt can be issued for acknowledging the receipt of the amount. Moreover, it is the finding of the 1st appellate Court that Ex.A-1 was written in English language and Ex.A-2 was written in Telugu language. It is not at all necessary for the Courts to look into in which language the contents were written. Admittedly, the amount mentioned in Ex.A-1 is separate, from the amount mentioned in Ex.A-2 though they are

executed on the same day. There is no specific mention about Ex.A-2 in Ex.A-1. So, the Courts ought to have looked into Ex.A-2 independently and as a separate amount. Therefore, it is for the defendant to prove that he has not received the amount under Ex.A-2 apart from Ex.A-1. Both the Courts have committed an error in not considering Ex.A-2 and A-3 under which, the amount is said to have been paid to Prabhakar Reddy. The contents of the receipt disclose that defendant mentioned that he has received back Rs.20,000/- under Ex.A-2 dated 12.04.1991. The literal words used are 'tirigi muttinadi' which means that it was returned back to the defendant. Therefore, this Court has no hesitation to come to a conclusion that the amount to a tune of Rs.62,000/- has been paid by the plaintiff which was received by the defendant. Further, Ex.A-5 discloses that the plaintiff was ready and willing to pay balance sale consideration and therefore, she deserves the relief of specific performance as per the agreement, Ex.A-1.

27. P.W.2 is the father of the plaintiff. His evidence discloses that P.W.1 has purchased the old house bearing No.1-155 and corresponding new No.4-97 situated at Gopalapuram, Hanmakonda

near Kakatiya University from the defendant for Rs.90,000/- on 11.04.1991 and he was present at the time of said transaction i.e., execution of the document. His evidence further discloses that plaintiff paid Rs.20,000/- at the time of execution of Ex.A-1 and on the same evening, the defendant approached and requested for another Rs.20,000/- with a contention that he entered into agreement with one Prabhakar Reddy in respect of said house and he has to return the amount, received from Prabhakar Reddy and therefore, the plaintiff has paid an amount of Rs.20,000/- to the defendant obtaining a receipt. Further, on the next day, they have paid Rs.2,000/- to the defendant and Rs.20,000/- to Ramachandra Reddy for returning the said amount to Prabhakar Reddy for which Ramachandra Reddy passed a receipt for Rs.20,000/- and the defendant passed a receipt for Rs.22,000/- including the amount paid to Ramachandra Reddy. It is the specific evidence of P.W.2 that Ex.A-1 contains signature of Ramachandra Reddy but cannot identify the signatures of others.

28. In the evidence of D.W2, Prabhakar Reddy clearly discloses that he purchased the house of the defendant for Rs.80,000/- and

paid an advance of Rs.20,000/- to his brother-in-law and Ramachandra Reddy acted as mediator. He further testified that though an agreement was written on a white paper, it was later cancelled. He further deposed that when he demanded for repayment of advance, his brother-in-law stated that he will sell the said house to another person and see that his advance will be paid. Accordingly, his brother-in-law arranged another purchaser for Rs.1,10,000/-, out of which he received Rs.20,000/-. He received an amount of Rs.15,000/- through his brother-in-law and later Ramachandra Reddy died in the year, 1995. In the cross-examination, it is deposed by D.W1 that he attested Ex.A-1, after reading over the contents of Ex.A-1. In Ex.A-1, it was written that the sale price was fixed at Rs.90,000/- and Rs.20,000/- was paid on that date and amount of Rs.70,000/- is to be paid. Ex.A-3 is in the hand writing of his brother-in-law and it is also signed by him.

29. Therefore, from the evidence of D.W.2, it can be construed that Ex.A-3 is in the handwriting of Ramachander Reddy, who is no more and the amount was also received by the defendant from the plaintiff.

30. In view of the above facts and circumstances of the case, the judgments of Courts below are liable to be set aside, the Second Appeal is allowed by setting aside the judgment and decree in A.S.No.7 of 2000 as well as the judgment in O.S.No.416 of 1992, on the file of Principal Senior Civil Judge, Warangal. Further, the defendant is directed to execute registered sale deed in favour of the plaintiff by receiving balance sale consideration or alternatively the lower Court is directed to register suit house in the name of the appellant in case, the respondent refuses to register the same within three months from the date of receipt of a copy of this order.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date:03.01.2023
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