

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE THIRTY FIRST DAY OF MAY
TWO THOUSAND AND TEN

PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

CITY CIVIL COURT APPEAL No.272 of 2001

BETWEEN

G. Pochaiah

... APPELLANT

AND

N. Pradeep

...RESPONDENT

Counsel for the Appellant: MR. K.K. CHAKRAVARTHY

Counsel for the Respondent: MR. K. SURESH REDDY

The Court made the following order:

JUDGMENT:

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This appeal is by the defendant in O.S.No.2032 of 1997 questioning the decree of specific performance granted by the VII Senior Civil Judge, City Civil Court, Hyderabad by judgment and decree dated 24.01.2001 in favour of the respondent herein.

2. It is to be noted that the original appellant/defendant is said to be absconding from 25.02.2002 and his whereabouts being not known, his wife and children were impleaded as per the orders of this Court in CCCAMP.No.197 of 2005 dated 13.06.2006. Even at the time of hearing of the appeal there is no trace of the original appellant and as such, the appeal is being prosecuted by his wife and children, who are brought on record as appellants 2 to 5.

3. The original defendant was the admitted owner of the premises bearing No.TRT 4, Jawaharnagar, Chikkadpally, Hyderabad. The said defendant was working as Deputy Operator in Biological Evans Limited and retired long back. The Labour Department, under their housing scheme to allot houses to industrial workers in the year 1975 allotted the aforesaid house to the defendant under hire purchase scheme. The defendant, admittedly, has paid all the installments leaving about Rs.50,000/- due. In between the suit house and the adjacent house TRT No.3, allotted to another industrial worker, there exists open space to the extent of about 180 sq. yards out of which in 80 sq. yards the defendant had constructed small huts and let out to tenants to get some rental income for his livelihood. The defendant had wife, two daughters and two sons and except this house he had no other property. The defendant himself was running a small Pan shop in the suit house and the open land in front of it.

5. The respondent/plaintiff allege that the defendant offered to lease the vacant site in front of the said house on certain terms and conditions and handed over the possession of the vacant site by vacating the existing tenants of the defendant and thereafter, the plaintiff has raised constructions and running his business in the said newly constructed portion. While the plaintiff was already lessee of the vacant land in front of the suit house, the defendant being unable to pay the arrears to the Labour Department and get clearance for registration of the house in his name, offered to sell the suit house to the plaintiff for Rs.1,50,000/-. The plaintiff alleges that he paid the

entire amount of Rs.1,50,000/- on 15.12.1995 and obtained an agreement of sale – Ex.A1 as well as receipt – Ex.A2 from the defendant. It is alleged in the plaint that from out of the said amount, the arrears of Rs.48,785.15 ps. was paid to the Labour Department and clearance from the Department was obtained for registration of the house. However, instead of executing a registered sale deed in favour of the plaintiff, the defendant tried to alienate the suit house to third parties for higher consideration, whereupon the plaintiff issue suit notice dated 14.09.1997, office copy of which is marked as Ex.A3. The said notice was, however, returned unserved and the returned cover is marked as Ex.A4. The payment to the Labour Department is evidenced by receipt – Ex.A5 and the property tax paid for the suit house is marked as Ex.A6. The plaintiff, thus, filed the present suit for specific performance alleging that he was always ready to obtain the sale deed by paying the necessary stamp duty and registration fee and as the defendant has committed breach of contract the plaintiff is entitled to enforce the suit agreement.

6. The defendant filed a written statement denying that he ever executed any agreement of sale, as alleged. He stated that the defendant only wanted to let out the open land in front of the Eastern portion of the schedule property because of poverty and to earn some rental income and agreed to evict the existing tenants and lease out the property to the plaintiff. In view of the above oral agreement of lease in the year 1995, the plaintiff approached the defendant and prepared one agreement and asked the defendant to sign the same. The defendant states that he received Rs.50,000/- at the time of the said agreement and on 11.12.1995 received another sum of Rs.50,000/- from the plaintiff to clear installments to the Labour Department. Thereafter, the plaintiff took up constructions and started running a hotel in the said open place for which the defendant as well as the neighbours raised objections. Though the plaintiff had promised to pay Rs.1,500/- as rent for the open space, he never paid any rent. The running of hotel by the plaintiff caused lot

of nuisance from the smoke emanating from the kitchen and noise causing problems to the defendant and his family, who are residing in the suit house. Though several complaints were made, no steps were taken by the plaintiff and ultimately, the defendant had to ask the plaintiff to vacate the hotel.

7. The defendant, further, submits that Rs.50,000/-, which was advanced by the plaintiff for payment to Labour Department carried interest at 3% but the defendant could not pay, as no rents were paid by the plaintiff. The defendant, therefore, states that taking advantage of his illiteracy and his innocence, the document styled as agreement of sale was prepared and this frivolous suit for specific performance filed, while, as a fact, only agreement of lease was executed and not an agreement of sale. The copy of the agreement is filed by the defendant along with the written statement. However, the said document being a copy, it is apparently not marked and does not form part of the record.

8. It is, thus, evident that the defendant never admitted execution of any agreement of sale nor receipt of Rs.1,50,000/-, as mentioned therein but has admitted that an agreement of lease was entered into and the defendant has received an aggregate of Rs.1,00,000/- out of which Rs.50,000/- was repayable with 3% interest but no amount was repaid. It is also stated by the defendant that it is the only the property of the defendant and with his family of wife, two sons and two daughters, he has no other source of income except the rents from the open land on which the constructions are made. Hence, there is no question of agreeing to the sell the suit house of the plaintiff.

9. Based on the above pleadings, the trial Court framed the following issues:

1. Whether the suit agreement is an agreement of lease or agreement of sale?
2. Whether the defendant received Rs.1,00,000/- under the suit agreement?

3. Whether the plaintiff is entitled for specific performance?
4. Whether the plaintiff is entitled for permanent injunction?
5. To what relief?

10. The plaintiff examined himself as P.W.1 and one of the attestors of the agreement and the receipt as P.W.2. The real estate broker, who mediated the transaction on behalf of the plaintiff, was examined as P.W.3. The documents filed on behalf of the plaintiff are marked as Exs.A1 to A7, which are already discussed in the paragraphs above. While no documents are marked on behalf of the defendant, D.W.1 is the defendant himself and D.W.2 is his son.

11. On consideration of oral and documentary evidence, the trial Court found that the suit agreement – Ex.A1 clearly show that it is an agreement of sale and not an agreement of lease and consequently, the first issue was answered in favour of the plaintiff. On second issue, the trial Court found that the defendant had received Rs.1,50,000/- and answered that issue in favour of the plaintiff.

On issue No.3, the Court below found that the agreement of lease, which the defendant had pleaded, cannot be taken into consideration as no such agreement is produced by the defendant. Moreover, the evidence of the defendant did not refer to various aspects pleaded by him in the written statement and since the signatures and thumb impressions of the defendant are admitted by him in the later cross-examination, Ex.A1 was proved by evidence of P.Ws.2 and 3, the plaintiff was held entitled to specific performance and the suit was decreed accordingly.

12. In this appeal, Mr. K.K. Chakravarthy, learned counsel for the appellants and Mr. K. Suresh Reddy, learned counsel for the respondent, have made elaborate submissions and have placed copies of oral as well relevant documentary evidence before the Court. While various submission are made by the learned counsel on either side including stress being laid by

the counsel for the appellants on the circumstances under which the plaintiff obtained Ex.A1 document, learned counsel for the respondent/plaintiff has laid stress on the cross-examination of the defendant to show that the defendant in his anxiety to deny the signatures on Ex.A1, the defendant has chosen to deny the signatures on the written statement and the vakalath as well and later, in the further cross-examination has admitted his signatures. Learned counsel for the respondent also laid stress on the admitted payment of Rs.1,00,000/- by the plaintiff to the defendant and that the plaintiff also paid about Rs.50,000/- to the Labour Department under Ex.A5 receipt and the entire consideration having been already paid to the defendant, the judgment and decree of the Court below deserves to be confirmed.

13. While hearing this appeal I requested both the learned counsel to supply the English translation of Exs.A1 and A2, as the original is in Telugu. As the translation given by the learned counsel were not tallying with each other, I had directed the Registry to get Exs.A1 and A2 duly translated through translation and printing department and the translated copies of the said two documents were placed on record and both the learned counsel were given opportunity to examine the same and make their submissions.

14. For the sake of convenience, the translated copies of Exs.A1 and A2, as furnished by the Registry, are extracted hereunder:

Ex.A-1

AGREEMENT OF SALE

"I, Mr. G. Pochaiah, S/o. G. Sattiah, T.R.T. 4, Jawaharnagar, Chikkadpally, Hyderabad, do hereby affirm this Sale Deed to Sri. N. Pradeep, S/o. N. Krishna Murthy, D.No.1-4-485, Musheerabad, Hyderabad, that I finally decided to sell the T.R.T. Ground Floor, house and front yard open place, which is allotted to me by Labour Department through sale agreement to Mr. N. Pradeep. I have taken Rs.1,50,000/- from Mr. Pradeep for this purpose. The agreement was made that Mr. Pradeep should construct the house with his own expenses. Apart from this I obtained Rs.50,000/- from Mr. N. Pradeep as loan on T.R.T.4 on dated 11.12.1995. I paid the said amount to the Labour Department. I made an agreement of Rs.50,000/- that I have pay 3% amount of interest on the said

amount.

If I would not repay the said amount, I am liable for any action from my side.

According to this agreement I am handling over the possession to Mr. N. Pradeep, who is a tenant in front yard of open place.

The portion in First Floor belongs to Mr. Chimparaiah. Mr. Chimparaiah has also stated at the time of construction that he doesn't have any objection. This Agreement is being executed to Mr. N. Pradeep without any objection from myself or my wife and my two sons. I will vacate my house and give possession within two months.

Date: 15.12.1995

Witnesses:

Sd/-xxxx, __

Sd/-xx, G. POCHAIAH

1. G. Srinivas S/o. G. Sattaiah, T.R.T.4,
Jawaharnagar, Chikkadpally,
Hyderabad.

Sd/-xx,

2. P. Sudarshan Sd/-xxxx,

N. Pradeep

Sd/-xx,

Purchaser

3.B. Viswanath S/o. N. Krishna Murthy,
H.No.1-4-485, Musheerabad,
Hyderabad.

Ex.A-2

RECEIPT

"I, G. Pochaiah, S/o. G. Sattiah, T.R.T. 4, Jawaharnagar, Chikkadpally, Hyderabad, received Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) from Sri. N. Pradeep, S/o. N. Krishna Murthy, D.No.1-4-785, Musheerabad, Hyderabad through Agreement of Sale. I have given this receipt to N. Pradeep for Rs.1,50,000/- on T.R.T.4 portion and open place of front yard, which is allotted to me from Labour Department.

Sd/-xx,

Affixed on 2 Revenue Stamps of Rs/1-

G. POCHAIAH

S/o. G. Sattaiah, T.R.T.4,

Jawaharnagar, Chikkadpally,

Hyderabad.

Date: 15.12.1995

Witnesses:

Sd/-xx,

1. (P. Sudershan)

Sd/-xx,
2. (B. Viswanath)

15. Before dealing with the rival contentions and findings of the trial Court, it would be noticed from the documents Exs.A1 and A2 extracted, as above, that Ex.A1 agreement of sale does not mention the total consideration for the suit house. What all is mentioned shows that the defendant had agreed to sell the suit house and the front open space to the plaintiff and defendant had taken Rs.1,50,000/- from the plaintiff for that purpose. A reading of the said documents including original Telugu version (which were read out by the learned counsel on either side) does not show what is the total consideration for which the said agreement of sale was made. Since the plaintiff's case is that the total consideration under Ex.A1 is Rs.1,50,000/- and the same having been entirely paid by him, it is for the plaintiff to establish from Ex.A1 that Rs.1,50,000/- is the total consideration agreed upon between the parties. A concluded contract and for that matter, an agreement of sale must contain all essential terms and conditions of the contract. The sale consideration being one of the essential ingredients of a contract of sale must be clearly and categorically mentioned in the document. Mere pleadings of the plaintiff, therefore, are not sufficient, if the agreement of sale – Ex.A1 does not contain the total consideration agreed upon between the parties. The very basis of a suit for specific performance being the agreement of sale between the parties, the Court below ought to have examined Ex.A1, as to whether it contains all the essential ingredients of the contract. Neither of the parties, particularly, the defendant has not pointed out the aforesaid aspect and consequently, there is neither any issue nor any evidence with regard to the said aspect on behalf of both the parties. In a suit for specific performance, the Court must also address on the aspects of conduct of the plaintiff, who approached the Court as well as his continuous readiness and willingness to perform the contract and the fulfillment of all other essential ingredients entitling him to the specific relief must be pleaded and proved. I am, therefore, unable to appreciate as to the

manner in which the Court below has proceeded to decree the suit without examining the basic suit document – Ex.A1 and without examining as to whether it fulfills and answers the description of a concluded contract between the parties. The rest of the findings of the Court below, even if accepted to be correct, would not result in a decree of specific performance if the agreement of sale – Ex.A1 is deficient with respect to vital ingredients of total consideration of the contract.

16. As mentioned above, since neither of the parties nor the Court below had examined the matter from the above point of view with reference to Ex.A1 and consequently, neither of the parties had adequate opportunity in that respect before the trial Court, I am of the view that a proper issue with reference to Ex.A1 is required to be framed and the trial Court is required to consider the suit with reference to the said issue also afresh. It would, therefore, be appropriate to frame the following issue to cover the said aspect.

“Whether Ex.A1 – agreement of sale is a concluded contract containing all essential terms and conditions of sale?”

17. Since the aforesaid issue goes to the root of the matter and the rest of the findings of the Court below depend on the answer to the aforesaid issue, I deem it appropriate to set aside the impugned judgment and remit the suit for fresh consideration to the Court below for reconsideration of the suit on all issues including the issue,

as framed above. Since this aspect has emerged during the hearing of the appeal, it would also be just and proper to permit the plaintiff as well as the defendant to lead such further evidence as they deem appropriate with reference to the issue, as framed above and on considering such evidence, as adduced, the trial Court shall reconsider all the issues and decide the suit afresh. Since the suit itself is being remitted for fresh consideration of the trial Court, I have refrained from giving any finding on any of the issues only with a view to ensure that either of the parties are not prejudiced by the opinion expressed by this Court on any of the other issues. All contentions of either

side are, therefore, kept open. The trial Court shall endeavour to determine the suit afresh preferably before the end of December 2010.

The appeal is accordingly allowed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

May 31st, 2010
DSK