

THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

SECOND APPEAL No. 161 of 2011.

JUDGEMENT

The unsuccessful 1st defendant in O.S.No. 396 of 2002 on the file of the XI Senior Civil Judge, City Civil Court, Hyderabad is the appellant herein. The suit was filed for specific performance of contract of sale said to have been executed by the second defendant as the General Power of Attorney of the 1st defendant. According to the plaintiff, the sale consideration was Rs. 1,50,000/- and on the date of agreement of sale i.e. on 6.10.1989 Rs. 40,000/- was paid and Rs. 60,000/- was paid on 13.10.1989 and the balance was agreed to be paid within one month thereafter. The plaintiff is said to have paid the entire amount and obtained receipts Exs:A.4 and A.5. There was a condition that the 1st defendant has to get the transfer of the property from the Housing Board and subsequently the Housing Board is said to have executed the sale deed Ex:A.8 and Ex:A.9 is the encumbrance certificate. The 2nd defendant who is said to have entered into the agreement of sale did not contest the suit. The 1st defendant alone filed written statement contending that he had loan transactions with the 2nd defendant and in that connection, the General Power of Attorney was given to the 2nd defendant under Ex:A.2 and his right to alienate the property is also disputed. The court below did not accept the contention and decreed the suit and as against that appeal A.S.No. 597 of 2006 was preferred and the lower Appellate Court also dismissed the appeal confirming the judgement and decree of the trial court.

The learned Counsel for the appellant contended that the G.P.A. holder has no authority to sell the property and the alienation made by him does not bind him and the G.P.A. was only towards loan transactions between the 1st and the 2nd defendant. The execution of GPA Ex:A.2 and the conditions therein which were noticed by the courts below are not seriously disputed. In order to show the nature of dealings between the

1st defendant and 2nd defendant, burden is evidently on the 1st defendant and the 1st defendant has also not gone into the witness box to establish any of his contentions. Therefore, the evidence on the side of the plaintiff supported by the documents Ex:A.1 to A.14 goes un-rebutted and the courts below gave concurrent findings of fact with regard to specific performance. In the circumstances, no substantial question of law arises for interfering in this second appeal. Accordingly, the second appeal is dismissed at the stage of admission. There shall be no order as to costs.

29.06.2012.
KRB.

N.R.L.NAGESWARA RAO, J

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