

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

SECOND APPEAL No.508 OF 2017

DATED: 30.06.2017

Between:

Smt T.Parvathi w/o T.Satyanarayana
and others.

...Appellants

And
Korada Apparao

... Respondent

COUNSEL FOR THE APPELLANTS: Sri P.S.P.Suresh Kumar
for Sri S.Bala Mohan Ranga



THE COURT MADE THE FOLLOWING:

JUDGMENT:

This Second Appeal arises out of Judgment and decree dated 09.05.2011 in A.S.No.34 of 2009 on the file of the Principal District Judge, Visakhapatnam, whereby he has confirmed Judgment and decree dated 12.12.2008 in O.S.No.1558 of 2007 on the file of the II Additional Junior Civil Judge, Visakhapatnam.

2. I have heard the learned counsel for the appellants and perused the record.

3. The appellants filed O.S.No.1558 of 2007 for specific performance of agreement of sale, dated 11.03.1991. It is their pleaded case that the respondent was a Member of OHP Employees Co-operative Housing Building Society, Visakhapatnam and he was allotted a house plot by the said society and that he induced appellants to pay the amount by way of instalments for the schedule mentioned property with an understanding that after payment of all instalments, he will convey the property to them. The respondent has handed over the suit schedule plot to the appellants and executed Ex.A.1-Agreement of sale, dated 11.03.1991 in their favour. As the respondent has failed to execute a regular sale deed, the appellants have filed the aforementioned suit. The respondent has denied the averments and also execution of Ex.A.1-agreement of sale, dated 11.03.1991. Based on the respective pleadings of the parties, the trial Court has framed the following issues for consideration:

“1. Whether the plaintiffs are entitled for decree of specific performance of contract directing the defendant to register the sale of the House Plot No.36 in OHP Employees Co-operative House

Building Society Ltd., of the Schedule property in favour of 1st plaintiff or her nominee with her expenses with costs or not?

2. Whether the suit is time barred as contended by defendant or not?

3. To what relief?"

4. On behalf of plaintiffs, appellant No.1 examined herself as P.W.1 and got marked Exs.A.1 to A.6. On behalf of the defendant, no evidence was adduced. On consideration of oral and documentary evidence, the trial Court has dismissed the suit, and its judgment was confirmed in the appeal filed by the appellants by the learned Principal District Judge, Visakhapatnam.

5. At the hearing, learned counsel for the appellants submitted that the Courts below have committed an error in rejecting the relief to the appellants, despite the fact that the respondent has produced no evidence to show that he has not executed the agreement of sale.

6. A perusal of the Judgment of the trial Court shows that the main ground on which the relief sought by the appellants was rejected was that Ex.A.1 is contrary to the recitals in Ex.A.2, as per which the suit schedule property cannot be sold for a period of 15 years; and that even if it is proposed to be sold, the same should be offered to the society for sale, but not for others. In other words, the trial Court has taken the view that Ex.A.1-agreement of sale is contrary to the recitals in Ex.A.2 sale deed and that the property cannot be sold to the appellants. This view of the trial Court has been confirmed in the appeal. Having carefully considered the reasons assigned by both the Courts below, I do not find any substantial question of law warranting interference of this Court in

exercise of its jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

7. For the aforementioned reasons, the Second Appeal is dismissed.

C.V.NAGARJUNA REDDY, J

JUNE 30, 2017
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