
(2001) 03 SC CK 0078

Supreme Court of India

Case No: Civil Appeal No. 6256 of 1995

Bommaka
Nagabhushana Reddy

APPELLANT

Vs

W. Srinivasa Rao

RESPONDENT

Date of Decision: March 28, 2001

Acts Referred:

- Code of Civil Procedure, 1908 - Section 100

Citation: (2001) 5 ALT 31 : (2001) 5 JT 487 : (2002) 9 SCC 664

Hon'ble Judges: V. N. Khare, J; S. N. Variava, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. It is not disputed that the respondent executed the agreement in his own hand writing for sale of the property in favour of appellant herein on 29.1.79. It is also not disputed that on 3.5.79 the respondent wrote a letter to the appellant requesting the appellant to send travelling expenses for going to Proddatur for registering the sale deed in favour of appellant. It is admitted that the appellant in compliance with the said letter sent a money order of Rs. 60/-, but the same was not acknowledged by the defendant - respondent. On 15.10.79, the appellant sent a notice to the defendant calling upon him to execute the sale deed in pursuance of the agreement for sale dated 29.1.79. This notice was followed by another notice dated 25.10.79. However, the defendant did not send any reply. Under such circumstances the plaintiff - appellant filed a suit for specific performance for the sale of the property. The plaint allegations were that the defendant - respondent was allotted a plot in the State Government Employees Co-operative House Building Society Colony in Kothapalli Village, that the defendant on 29.1.79 executed an agreement for sale in favour of the appellant that under the agreement the appellant was to pay respondent Rs. 200/- which amount was paid by the respondent to the Society and

further the appellant was to pay a sum of Rs. 1000/- due to the Society, that in accordance with the terms of the agreement the appellant paid these amounts, and, that on payment of the said amount and after the plot is transferred in the name of the respondent, the respondent had to execute the sale deed in favour of the appellant. The defendant - respondent filed a written statement wherein he took the plea that prior to the agreement dated 29.1.79, he has entered into an agreement with one Venkataramaniah, who is also Government employee for sale of the said property. The trial court relying upon the agreement for sale dated 29.1.1979, decreed the suit filed by the plaintiff-appellant. The appeal preferred against the said decree was dismissed. However, the High Court in second appeal filed by the defendant - respondent set aside the decree of the trial court and dismissed the suit.

2. Learned Counsel appearing for the appellant urged that the view taken by the High Court in dismissing the suit suffers from legal infirmity. He further argued that no substantial question of law arose in the second appeal and, therefore, the High Court was not justified in allowing the appeal preferred by the defendant - respondent u/s 100 of the Code of Civil Procedure. On the other hand, learned Counsel for the respondent has justified the view taken by the High Court. For allowing the appeal the High Court was of the view that the agreement dated 29.1.79 is not an agreement of sale, but a promise to transfer the suit site in favour of the plaintiff. This view of the High Court is totally erroneous. An agreement for sale of property and a promise to transfer a property convey the same meaning and effect in law. A promise to transfer a property is an agreement for sale of a property. The second ground on which the High Court has allowed the appeal was that the plaint allegations were contrary to the contents of the agreement for sale. We have looked into the agreement for sale as well as the allegations in the plaint extracted hereinbefore but we do not find any contradiction between the two. We are, therefore, of the opinion that view taken by the High Court suffers from serious legal infirmity.

3. For the aforesaid reasons this appeal deserves to be allowed. We, therefore, set aside the judgment under appeal. The appeal is allowed. The decree of the trial court is restored. There shall be no order as to costs.