(2012) 09 AP CK 0010

Andhra Pradesh High Court

Case No: Second Appeal No. 1532 of 2010

Yellapu Atchayyamma (Died), Yellapu Tulasidas and Yellapu Bhavan Sankarjee	APPELLANT
Vs	
Karri Ramu, Lanka Appala Patrudu and Yellapu Brahmaji Rao	RESPONDENT

Date of Decision: Sept. 28, 2012

Acts Referred:

- Specific Relief Act, 1963 - Section 16(c)

Citation: (2013) 2 ALD 59 : (2013) 2 ALT 788

Hon'ble Judges: N.R.L. Nageswara Rao, J

Bench: Single Bench

Advocate: Nimmagadda Satyanarayana, for the Appellant; K. Subrahmanyam for Respondents No. 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

N.R.L. Nageswara Rao

1. The defendants in O.S. No. 243 of 1998 on the file of the Court of IV Additional Senior Civil Judge, Visakhapatnam, are the appellants herein. The suit was filed for specific performance of contract of sale alleging that that the defendants have agreed to sell the property to an extent of 250 square yards at the rate of Rs. 2,000/- per square yard with old house and an agreement was entered on 18.06.1997. The defendants have received a sum of Rs. 50,000/- and the Urban Land Ceiling (ULC) certificate and other certificates have to be obtained by the end of August 1997 and regular sale deed is to be executed by the end of October 1997. According to the terms of the sale agreement, a sum of Rs. 50,000/- was paid on 27.08.1997. The defendants have failed to take necessary permissions and there was also a

deficiency in the measurements and the defendants have not cooperated and actual measurements of the extent of property came to only 224 square yards. As such the plaintiffs filed the suit for specific performance of contract after giving notice. The defendants contended that the extent of the property is more than 250 square yards and as per the agreement, the property was surveyed in the presence of the plaintiffs. The certificate of ULC authorities was received and the defendants demanded for payment of the balance of consideration, but the plaintiffs did not cooperate. The suit is, therefore, not maintainable and the plaintiffs have to pay the value of 270 square yards. Consequently, they pleaded for dismissal of the suit.

2. After considering the material evidence on record, the trial Court has decreed the suit for an extent of 224 square yards at the rate of Rs. 2,000/- per square yard and directed the plaintiffs to pay interest at 24% per annum on the'' balance of sale consideration from October 1997 till the date of deposit. Aggrieved by the judgment, the plaintiffs have carried in appeal to the District Judge, Visakhapatnam, in A.S. No. 335 of 2005 and after considering the material, the learned District Judge held that there is no liability to pay the interest at 24% per annum and consequently, allowed the appeal in part. Questioning the refusal of payment of interest at 24% per annum as granted by the trial Court, the Second Appeal is filed.

3. Following substantial questions of law have been framed.

(1) Whether in the facts and circumstances of the case, the findings of the Court below that the plaintiff is entitled to the relief of specific performance is legally sustainable, in view of fact that the plaintiff failed to pay the amount or deposit the amount to show his readiness and willingness to perform his part of contract as envisaged u/s 16(c) of Specific Relief Act?

(2) Whether in the facts and circumstances of the case, the finding of the appellate Court below that the plaintiff is not liable to pay interest on balance of sale consideration is legally sustainable in view of the fact that the agreement of sale has recital for payment of interest and that the plaintiff has enjoyed the said balance of sale consideration without paying or tendering the same to the defendant from the stipulated time till date?

(3) Whether in the facts and circumstances of the case, the plaintiff is entitled to the equitable relief of Specific performance of agreement of sale in view of the questionable conduct of the plaintiff in playing all possible dilatory tactics to protract time for payment of balance of sale consideration?

(4) Whether the appellate Courts below misread, misinterpreted and ignored the evidence on record and made perverse findings and comments?

4. There is no dispute about the fact that the relief for specific performance has become final and the appellants are not challenging the same. The only grievance of the appellants is that there was no readiness or willingness in payment of the

balance of consideration and in spite of the directions given by the Court, the plaintiffs are not depositing the amount and secondly, with the going up of the value of property, the plaintiffs are getting undue advantage for their own omissions and also for the disobedience of the orders of the Court.

5. Before considering the contention, it is to be noted that the suit was filed on 18.03.1998. The agreement of sale is said to be dated 18.06.1997. As can be seen from the judgment of the trial Court in para No. 8, the trial Court has directed the plaintiffs to deposit the sale price into the Court and for that, the plaintiff submitted a lodgment schedule on 09.08.2000 but failed to deposit said amount in the Court. In fact, the trial Court has also taken into consideration that as per the contract, if the sale deed is not executed before October 1997, the plaintiffs shall pay the balance amount with interest at 24% per annum till the date of registration and for if any reason, if the defendants failed to execute the sale deed, the amount shall be returned with 24% per annum interest. It is to be noted that though the contract is for sale of 250 square yards, the plaintiffs, on their own accord, claimed that the site was only 224 square yards after measurement and consequently, suit for specific performance of the part of the contract and not the original contract.

6. The judgment of the appellate Court was delivered on 26.12.2007 but as can be seen from the memo filed in the Court, a sum of Rs. 2,98,000/- was deposited on 04.02.2008 i.e., within a period of three months after the judgment of the first appellate Court.

7. Therefore, as matter stands, when the contract stipulates payment of interest for the failure to pay the consideration and evidently, in spite of the direction given by the Court in the year 2000, the plaintiffs have not deposited the said amounts. Since this Court is not going to consider the justification of equitable relief, the question is as to whether the plaintiffs are liable to pay the interest. Though in all cases, it is not necessary for the plaintiffs to deposit the balance of sale consideration, but when once the Court doubted the bona fides and directed the money to be deposited, it is for the plaintiffs to deposit the same. In case of such default, the plaintiffs cannot say that they were always ready and willing to perform the contract since law requires that the plaintiffs shall always be ready and willing to perform the contract till the disposal of the issues.

8. Added to that, it is the plaintiffs, who have raised several objections with regard to the identity and extent of the property. As per the agreement, the measurements are taken, which came to 270.22 square yards. The pleadings and the conduct of the plaintiffs clearly go to show that they are disputing the correctness of the boundaries and the extent. The ULC certificate was evidently obtained for an extent of 270 square yards. The trial Court in para No. 8 has specifically found that the conditions in the agreement, Ex.A1, were performed by obtaining the ULC certificate and by filing tax receipts, which reads as under.

Now coming to other points are concerned, in Ex.A1 there were conditions that the defendants must obtain ULC Certificate,- NIL - encumbrance Certificates up to date, house tax receipts and registration extracts of partition deed. It is a specific contention of the defendants that ULC Certificate was already obtained by them and same was filed into Court up to date. Tax receipts i.e., still date of filing of the suit was filed into Court. Electricity receipts were also filed into Court, Registration extract of partition deed also filed into Court. So, nothing more to be done by the defendants except obtaining - NIL - Encumbrance certificate date before the filing of the suit. Therefore, a specific performance can be ordered by the defendants to execute the sale deed in favour of the plaintiffs or their nominees. The plaintiffs are categorically mentioned that they always ready and willing to perform their part of contract, but as could be seen from the records, it is a direction from the Court that the plaintiffs are directed to deposit the remaining sale price into Court or in any Nationalised Bank. For that the plaintiffs submitted a lodgment schedule on 09.08.2000 for better reasons known to them, the plaintiffs not deposited any amount into Court for the balance of sale consideration. At this juncture, it is relevant to mention if for any reason, the sale deed is not executed before the end of October, 1997, the plaintiffs shall pay the balance amount with interest at 24% p.a. till date of registration and if for any reason, if defendants failed to execute sale deed, they shall return the advance amount with interest at 24% p.a. Here, in this case, the agreement of sale covered under Ex.A1 was entered in the year 1997 and till now no registration affected. It is known to everyone, the price of the land got enhanced sky limits, now if the defendants were asked to execute the sale deed with the balance of sale consideration only amounts to putting them into hardship. Therefore, the plaintiffs are directed to pay the balance of sale consideration for 224 square yards with subsequent interest at 24% p.a. from October, 1997 i.e., the contractual date of registration. Further, the plaintiffs are directed to deposit the above said sum within two months from the date of this Judgment and that the defendants shall execute the sale deed for 224 square yards by receiving the sale consideration along with interest at 24% p.a. Hence, I, answered this issue accordingly.

9. The material on record clearly goes to show that the defendants were ready and willing to perform the contract and in fact, there is no finding of the trial Court that there were latches on the part of the defendants. Merely because the boundary recitals were wrongly drawn, it does not mean that the plaintiffs can take their own time to pay the money. Evidently, the learned District Judge has proceeded on the premise that the latches are with the defendants. The learned District Judge was also not inclined to take into consideration the rise of the value of the lands as a ground for grant of interest.

10. Evidently, the learned Judge has not considered the contractual term for payment of interest at 24% per annum in case the money was not paid before October 1997 and also failed to notice the important fact that in spite of the

directions by the Court, the plaintiffs have not deposited the amount. It cannot be forgotten that the value of the property has gone up and by virtue of the decree of specific performance, the plaintiffs cannot get undue advantage.

11. It has been repeatedly held by the Courts earlier that though with regard to the sale of immovable properties though time is fixed by the parties as the essence of the contract, but it is not taken into consideration as a serious factor. This was the view when the economic situation was static and value of the immovable properties has not gone up beyond the reach of common man. But, time has changed and value of rupee is decreased and value of the immovable property has increased beyond expectations. A time has come where the conventional feeling with regard to the sale of the immovable property. Though time is fixed, it is not the essence of the contract has to be re-considered. In this connection, it is useful to refer to the judgment reported in Mrs. Saradamani Kandappan Vs. Mrs. S. Rajalakshmi and Others, After considering all the earlier decisions on the aspect, the Supreme Court felt need to revisit the view and it would be apt to extract paragraph Nos. 36 and 37, which are as under.

36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market values of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which make it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance.

A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.

12. In fact, in that case, when the refund of amount was ordered, interest was also granted. Apart from it, when the plaintiffs have preferred the appeal challenging the interest, they have also not deposited balance of sale consideration to show their bona fides. Therefore, from the premise of what has been stated above and also from the law as laid down by the Supreme Court, the plaintiffs cannot be permitted to take undue advantage and when the contract itself stipulates the payment of interest on failure of payment of money within the stipulated date i.e., before October 1997, the decree passed by the trial Court cannot be faulted and the judgment of the learned District Judge cannot be sustained and accordingly, the judgment of the District Judge is set aside and the judgment of the trial Court is restored. The plaintiffs are directed to pay interest at 24% per annum from October 1997 on the balance of sale consideration to the extent of 224 square yards till 31.01.2008 when the balance of Rs. 2,98,000/- was deposited.

13. Though the counsel for the respondents tried to plead that the rate of interest is excessive, I do not find any reason to reduce it since it was stipulated in the contract and comparative value of the rise in the properties entitles the defendants for the said amount. Accordingly, the points are answered and the Second Appeal is allowed with costs. Miscellaneous petitions, if any, pending shall stand closed.