

(2013) 06 AP CK 0029

Andhra Pradesh High Court

Case No: Second Appeal No: 687 of 1999

Tirumalasetty
Santhamma and
Others

APPELLANT

Vs

Yenuganti Venkaiah

RESPONDENT

Date of Decision: June 12, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Limitation Act, 1963 - Section 1, 10, 11, 12, 13
- Specific Relief Act, 1963 - Section 17, 17(1), 20, 9

Citation: (2013) 5 ALD 484 : (2013) 6 ALT 664 : (2014) 3 RCR(Civil) 531

Hon'ble Judges: Samudrala Govindarajulu, J

Bench: Single Bench

Advocate: M.S.N. Prasad, for the Appellant; Nimmagadda Satyanarayana, for the Respondent

Final Decision: Dismissed

Judgement

Samudrala Govindarajulu, J.

Unsuccessful legal representatives of the defendant in both the Courts below are the appellants herein. The plaintiff/respondent herein filed the suit for specific performance of Ex. A-1 contract for sale dated 12.07.1983 said to have been executed by the defendant in his favour for the plaint schedule site of Ac. 0-10 cents in S. No. 14 of Muppavaram village, Prakasam District, after allegedly receiving total consideration of Rs. 5,000/- thereunder from him at the rate of Rs. 500/- per cent. The defendant resisted the plaintiff's claim on the ground that Ex. A-1 is a rank forgery and that the suit site fell to the share of the defendant's son Raghavaiah in family partition which took place in the year 1977 and that the plaintiff is not entitled for relief of specific performance of Ex. A-1 agreement as prayed for. After trial, the trial Court decreed the suit; and on appeal by the defendant, the lower appellate

Court dismissed the appeal. Therefore, this appeal is filed by legal representatives of the deceased-defendant. At the time of admission of this second appeal, the then learned Judge of this Court did not identify substantial questions of law for determination in this second appeal. The then learned Judge simply admitted the second appeal without framing substantial questions of law. In any event, after hearing the appellants' counsel, the following ground Nos. 7(a), (b) and (d) of Memorandum of grounds of second appeal are identified herein:

(a) Is it not a bar u/s 17 of the Specific Relief Act to enforce the contract to sell the immovable property against a person who does not have any title to the said property.

(b) Whether an agreement to sell the immovable property be enforced under law which did not see the light of the day for a period of 6 years after its alleged execution in the light of settled propositions of law that the courts can refuse to order Specific Performance on account of delay and laches which defence has been taken by the Defendant as available u/s 9 of the Specific Relief Act.

(d) Is it a rule of law to grant specific performance of contract of sale for any party? when u/s 20 of Specific relief act say that the Jurisdiction to decree specific performance is discretionary and the court is not bound to grant such other reliefs because it is lawful to do so;

2. Ground No. 7(c) does not arise since one of the attestors to Ex. A-1 suit agreement was examined as P.W-2 to prove Ex. A-1 agreement. The other attestor is no other than the defendant's son Raghavaiah himself. On considering oral and documentary evidence of both the parties, the Courts below came to the conclusion that Ex. A-1 suit agreement is true and supported by consideration coupled with delivery of possession. In my opinion, the said findings of fact are not liable to be reagitated in this second appeal u/s 100 C.P.C.

3. Placing reliance on Abdul Raheem V. Karnataka Electricity Board (2007) 14 Supreme Court Cases 138 of the Supreme Court it is sought to be contended by the respondent's counsel that the question as to whether the plaintiff was ready and willing to perform his part of contract by itself may not give rise to a substantial question of law and that substantial question of law should be formulated relying on or on the basis of findings of fact arrived at by the Courts below. Ground No. 7(b) is not wholly on readiness and willingness to perform his part of the contract by the plaintiff. The said aspect is one of the essential pre-requirements of a plaintiff for obtaining relief of specific performance. In the case on hand, as per findings of both the Courts below, Ex. A-1 suit agreement is true, and under Ex. A-1 agreement the plaintiff paid total consideration of Rs. 5,00,007/- to the defendant, and the plaintiff obtained possession of the suit site under the possessory agreement Ex. A-1. Nothing more is left with the plaintiff to perform under the suit contract except obtaining registered sale deed from the defendant. It is only for the said purpose,

the plaintiff filed the present suit in the trial Court. On the other hand, the defendant who received the entire sale consideration and delivered possession of the suit site, is under an obligation to execute and register sale deed for the suit site in favour of the plaintiff in pursuance of Ex. A-1. In those circumstances, since nothing more is left with the plaintiff for performance, the concept of readiness and willingness on the part of the plaintiff to perform his part of the suit contract, does not arise at all.

4. It is contended by the appellants' counsel that the suit is barred by limitation and that the plaintiff is guilty of laches in approaching the Court for relief of specific performance. Article 54 of Schedule to the Limitation Act, 1963 prescribes period of limitation for a suit for specific performance; and time starts for such a suit from the date fixed for performance, or if no such date is fixed, when the plaintiff has notice that performance is refused. Admittedly, no date is fixed for performance of Ex. A-1 agreement, since no part of obligation is left with the plaintiff to be performed subsequent to Ex. A-1, and the only obligation left is with the defendant by way of execution and registration of sale deed in favour of the plaintiff. When no date is fixed for performance in the suit agreement, and when there is no written notice got issued by the plaintiff to the defendant for performance, it cannot be said that the suit is barred by limitation. Bar of limitation under the Limitation Act, 1963 has to be adjudged with reference to the time limit fixed for various types of suits or actions by the Parliament in the Schedule to the said enactment. It is only while interpreting and applying time limits prescribed in the Schedule, principles are laid down in former part of the enactment containing Sections 1 to 32.

5. The appellants placed a reliance on the following observation of single Judge of this Court in *S. Kanaka Durga Manikyamba V. Ramaprasada Surya Prakasa Rao* 2010 (2) ALD 480:

14. No attempt was made by the trial Court to satisfy itself as to whether the suit was filed within limitation at all. It is no doubt true that the lower Appellate Court addressed that question. However, its approach to that question is somewhat defective. Even according to the averments in the plaint, the vendor was dodging the issue relating to execution of the sale deed. That was obviously several years prior to the date of filing of the suit. The plaintiff was under obligation to explain as to how the suit was filed within limitation. Absence of plea and proof of the facts, that have the effect of postponing the starting point of limitation must, invariably result in dismissal of the suit, when it is filed more than a decade from the date of agreement. Hence, the suit filed by the plaintiffs was barred by limitation.

In the above pronouncement, though the learned Judge came to the final conclusion that the suit was barred by limitation, it was not stated with reference to which article of the Schedule to the Limitation Act, 1963 the said suit was barred by limitation. In the absence of contravening any of the time limits prescribed in the schedule, the question of bar of limitation does not arise. It appears that it was

intention of the learned Judge that the suit is bad for latches on the part of the plaintiff.

6. It has to be seen whether the plaintiff was guilty of any latches on his part in approaching the Court with the prayer for specific performance of Ex. A1 agreement. This is not a case where part of the sale consideration is yet to be paid by the plaintiff. This is not a case where some more activity is left out with the plaintiff for being performed in pursuance of the agreement. As pointed out earlier, the plaintiff did all the requirements of a contract for sale, except obtaining registered sale deed. Irrespective of question of time is or is not essence of the suit contract, the plaintiff completed all his obligations before approaching the Court. In those circumstances, the above pronouncement relied upon by the appellants' counsel has no application to facts of this case.

7. It is vehemently contended by the appellants' counsel that Section 17 of Specific Relief Act, 1963 disentitles the plaintiff from claiming relief of specific performance. Section 17(1) of the said Act reads as follows:

17. Contract to sell or let property by one who has no title, not specifically enforceable:-

(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor-

(a) who knowing himself not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

It is one of the contentions of the defendant that in family partition between himself and his two sons, the suit property fell to the share of his second son Raghavaiah. As pointed out earlier, the said Raghavaiah is one of the attestors to Ex. A1 agreement. It is nobody's case that at the time of Ex. A1, either Raghavaiah or the defendant raised any contention that the suit property belonged to Raghavaiah as it was allotted to his share in the family partition which took place in the year 1977. Sheet anchor of the defendant's contention is on Ex. B1 award obtained by the banker on the basis of mortgage deed executed by Raghavaiah in favour of the bank. The bank manager is examined as DW2. The appellants filed Ex. B2 registered continuing guarantee mortgage deed dated 28.08.1978 executed by Raghavaiah in his individual name in favour of the bank. Neither in Ex. B1 award nor in Ex. B2 registered mortgage deed, details as to how the property fell to the share of Raghavaiah are noted. Ex-B2 registered mortgage deed is 5 years prior to the date of Ex. A1. There is no dispute between the parties that suit site of Ac. 0.10 cents is

part of total extent of Ac. 0.46 cents in S. No. 14. The property that was mortgaged by Raghavaiah under Ex. B2 in favour of the bank consisted of not only entire Ac. 0.46 cents land in S. No. 14 but also 4 other items viz., Ac. 0.75 cents in S. No. 97, Ac. 0.81 cents in S. No. 57 B, Ac. 0.80 cents in S. No. 102/2A and Ac. 0.50 cents in S. No. 100. There is nothing in Ex. B2 to the effect that all the said lands fell to the share of Raghavaiah in the family partition of the year 1977. There is no reference to family partition in Ex. B2 mortgage deed much less of the year 1977. In the absence of any proof of partition, on the basis of Ex. B2 mortgage deed alone, the Courts below did not rightly come to the conclusion that there was partition between the defendant and his sons including Raghavaiah. As joint family properties Raghavaiah has right by birth in them and therefore there is every likelihood of Raghavaiah hypothecating all the landed properties of the family in favour of the bank. It is not as if there was any mutation of names of individual family members in village records in pursuance of the alleged oral partition of the year 1977. In those circumstances, this Court does not find that the Courts below erred in finding that there was no partition between the defendant and Raghavaiah. It is also pointed out that though Raghavaiah was attending the trial Court during trial on every date of adjournment, he did not take any steps either to get himself impleaded in the suit or in the appeal before the lower appellate Court or to give evidence in support of the above contention. I agree with finding of the Courts below that there was no partition of any joint family properties among the defendant and his two sons. The conclusion on the basis of Ex. B2 mortgage deed sought to be drawn by the appellants' counsel, is not liable to be drawn in the circumstances of the case. Therefore, on facts, the appellants are not entitled for application of Section 17 of the Specific Relief Act, 1963 herein.

8. Assuming for a moment for the sake of argument that there is partition among the defendant and his two sons as contended by the defendant, in my opinion, the position does not change with regard to the relief to be granted by the Court in this suit. The oldest principle laid down by Division Bench of this Court in *Abdul Hakeem Khan Vs. Abdul Mannan Khadri* AIR 1972 AP 178 is to the following effect:

10) The reason for the absence of or had defective title is obvious. It is settled law that if a person executes an agreement to sell property, the vendor is not entitled to put forward, in a suit for specific performance by the purchaser the defence that the vendor had no title. It is open to the purchaser to set up a defence that the vendor had no title or has defective title in a suit for specific performance by the vendor. But the vendor cannot set up defective in his own title as a defence in a suit for specific performance by the purchaser. In [Baluswami Aiyar Vs. Lakshmana Aiyar and Others](#),) it is observed: "Where a person sues for specific performance of an agreement to convey and simply impleads the party bound to carry out to the agreement there is no necessity to determine the question of the vendors title and the fact that the title which the purchaser may acquire might be defensible by a third party is no ground

for refusing specific performance if the purchaser is willing to take such title as the vendor has. But where a party seeking specific performance seeks to bind the interests of persons not parties to contort alleging grounds which under Hindu law would bind their interests and enable the vendor to give a good title as against them and makes them parties, it is difficult to see how the question as to the right of the contracting party to convey any interest except his own can be avoided and a decree passed, the effect of which will merely be to create a multiplicity of suits

The said decision was rendered by Division Bench of this Court basing on Full Bench decision of the Madras High Court. The principle is that it is not open to the vendor to plead lack of title for himself in a suit for specific performance and that at the same time it is open to the purchaser to plead so. On the other hand, the appellants' counsel placed reliance on latter Division Bench decision of this Court in [Toufiq Ali Mirza and Another Vs. Smt. Baderunnisa](#),)in support of his contention. This latter decision of Division Bench of this Court has no application to facts of this case having regard to factual context in which the said decision was rendered by the Division Bench. The said decision was rendered when the question was as to whether a decree for specific performance could be granted by the Court in a case where the plaintiff admits lack of title in the person from whom the properties are sought to be purchased. This position does not arise in the case on hand. The plaintiff is not admitting the defendant lacking title for the suit property sold to him under Ex. A1 agreement. In the latter decision, there was a specific averment in the plaint to the effect that the first defendant therein was not the owner but agreement holder from the owner who is the 2nd defendant therein. In those circumstances, the Division Bench of this Court rendered the above pronouncement. The said factual context has no application to this case. Thus, the appellants fail both on facts as well as in law u/s 17 of the Specific Relief Act, 1963.

9. It is true, u/s 20 of Specific Relief Act, 1963, granting of decree for specific performance is discretionary and the Court need not necessarily decree a suit for specific performance in case the plaintiff is otherwise entitled to it in law. In any event, the said discretion is judicial discretion which has to be exercised judicially and not arbitrarily. The plaintiff could not make out any serious circumstances which disentitle the relief of specific performance to the plaintiff in spite of he being entitled under law. Since the plaintiff has paid the entire sale consideration, obtained possession of the property on the date of Ex. A1 agreement itself and since there is no other obligation to be performed by the plaintiff, I find no reasons to non-suit the plaintiff for the relief of specific performance. The Courts below considered the entire material on record in the right direction and came to the correct conclusion in favour of the plaintiff. The above substantial questions of law in ground Nos. 7(a), 7 (b) and 7 (d) are answered accordingly. In the result, the Second Appeal is dismissed with costs.