

(2013) 06 AP CK 0033

Andhra Pradesh High Court

Case No: C.C.C.A. No's. 25 and 43 of 1997

M/s. Bulchand and Company

APPELLANT

Vs

Syed Yahya and Others

Khamurunnisa Begum and

Others Vs M/s. Bulchand and

Company

RESPONDENT

Date of Decision: June 19, 2013

Citation: (2013) 5 ALD 227 : (2013) 6 ALT 153

Hon'ble Judges: S.V. Bhatt, J; L. Narasimha Reddy, J

Bench: Division Bench

Advocate: R.N. Hemendranath Reddy in C.C.C.A. No. 25 of 1997 and Shaik Mohmood Ali in C.C.C.A. No. 43 of 1997, for the Appellant; Shaik Mahmood Ali in C.C.C.A. No. 25 of 1997 and Sri. R.N. Hemendranath Reddy in C.C.C.A. No. 43 of 1997, for the Respondent

Final Decision: Dismissed

Judgement

S.V. Bhatt, J.

These two appeals are directed against the decree and judgment dated 12-12-1996. in O.S. No. 1334 at 1989, on the file of the V additional Judge, City Civil Court, Hyderabad. For the sake of convenience, the parties herein are referred to, as arrayed in O.S. No. 1334 of 1989.

2. O.S. No. 1334 of 1989 was filed for the relief of specific performance of an oral agreement of sale, in respect of the suit schedule property. The trial Court dismissed the suit and denied the relief of specific performance. However, a decree was passed to the effect that the defendants shall refund a sum of Rs. 5,000/-, said to have been received by them towards advance, with interest. While the plaintiff filed CCCA No. 25 of 1997, feeling aggrieved by the denial of relief of specific performance, defendants filed CCCA No. 43 of 1997, challenging the decree, directing them to pay the amount of Rs. 5,000/-.

3. The facts pleaded by the parties, in brief, are that the premises of the suit schedule properties were original held by Khan Bahadur Abdul Kareem Babu Khan. He, in turn, leased the premises to the plaintiff, several decades ago. In the partition made, as a result of the decree, passed in O.S. No. 38 of 1964, the property fell to the share of the defendants, and the tenancy was attorned to them.

4. The defendants filed O.S. No. 901 of 1985 on the file of the V Additional Judge, City Civil Court, Hyderabad, for the relief of eviction of the plaintiff from the premises, and for mesne profits. During the pendency of that suit, the plaintiff filed the present suit for the relief of specific performance of agreement of sale. It was pleaded that he entered into oral agreement of sale with the predecessor-in-title of the defendants for a sum of Rs. 1,62,000/-, and a sum of Rs. 5,000/- was paid, as advance. He pleaded that being the successors-in-title, the defendants are under obligation to convey the property. An allegation was also made to the effect that the defendants have also agreed to execute the sale deed, at one point of time, for a sum of Rs. 14 lakhs.

5. The defendants opposed the suit, by filing written-statement. It was pleaded that the so-called oral agreement to sell, that too, by the predecessors, was a fictitious one, and that at no point of time there was an agreement to sell the property. They further pleaded that the present suit was filed only as a counterblast, to O.S. No. 901 of 1985, filed for eviction. A specific plea was raised to the effect that, even otherwise, the suit is barred by limitation.

6. O.S. Nos. 901 of 1985 and 1334 of 1989 were clubbed. Through common judgment dated 12-12-1996, the trial Court decreed O.S. No. 901 of 1985 and dismissed O.S. No. 1334 of 1989. CCCA No. 23 of 1997 filed by the plaintiff herein against the judgment and decree in O.S. No. 901 of 1985 was dismissed by this Court through a separate judgment, today itself.

7. Sri. R.N. Hemendranath Reddy learned counsel for the appellant/plaintiff submits that the plaintiff has proved the existence of oral agreement by filing a receipt for a sum of Rs. 5,000/-, marked as Ex. B-1. and once the trial Court accepted that the payment under Ex. B-1 is true, it ought to have decreed the suit for specific performance, instead of directing the defendants to refund it. He further submits that the very fact that the plaintiff was permitted to remain in possession for so many decades, discloses that the defendants and their predecessors-in-title acknowledged the existence of agreement of sale.

8. As observed in the preceding paragraphs, both the appeals arise out of judgment and decree in O.S. No. 1334 of 1989. Based upon the pleadings before it. the trial Court framed the following issues for its consideration:

1. Whether the plaintiff is entitled for the specific performance of the contract of agreement of sale?

2. Whether the suit filed by the defendants in O.S. No. 901/85 seeking eviction, arrears of rent and damages against plaintiff is as counter blast suit?

3. Whether the suit is barred by limitation?

4. Whether the defendants are not entitled to claim damages at the rate of Rs. 5,000/- p.m.?

9. The relief of specific performance was not granted, and a decree was passed, for payment of Rs. 5,000/- with interest at 12% per annum. Though an appeal is filed challenging the decree, directing payment of Rs. 5,000/-, with interest at 12% per annum, it is not pressed by the defendants.

10. The points that arise for consideration are,

1) Whether the suit filed by the plaintiff is barred by limitation; and

2) Whether the plaintiff is entitled for the relief of specific performance of agreement of sale.

Point No. 1:

11. The limitation, stipulated for a suit for specific performance, is three years from the date of refusal, or agreement, as the case may be. The defendants denied the very existence of agreement of sale. The agreement is said to have come into existence in the year 1962. In the paragraphs pertaining to limitation and cause of action, in the plaint, is it stated,

It is submitted that the plaintiffs herein have entered in an agreement for purchase of the plaint schedule property for the sum of Rs. 1,62,000/- in or about the year 1962 and have paid Rs. 5,000/- towards earnest money.

The cause of action for this suit initially arose in or about the year 1962 when the predecessor in interest of the defendants namely Khan Bahadur Abdul Kareem Babu Khan contracted to sell the plaint schedule property for Rs. 1,62,000/- and received the sum of Rs. 5,000/- by way of earnest money. The cause of action also arose in or about January 1985 when the first defendant among others and the deceased Khamarunnisa Begum agreed to execute and register a sale deed in respect of the plaint schedule property on receipt of the sum of Rs. 14,00,000/-. The cause of action also arose on the issuance of plaintiffs notice dated 25.4.1985 calling upon the deceased Khamrunnisa Begum to execute and register the sale deed.

12. The plaintiff wanted to reckon the period of limitation from 25-04-1985, i.e. from the date of issuance of notice. He failed to explain as to what steps have been taken between 1962 and 1985, i.e. 23 years from the date of the so-called agreement of sale. Added to that, the defendants filed O.S. No. 901 of 1985 for eviction of the plaintiff. With the filing of the suit, their intention to evict the plaintiff from the suit schedule premises became clear. The present suit was filed in the year 1989.

Whether one goes by the date of agreement, or the date of notice, issued by the plaintiff, or the date of filing of O.S. No. 901 of 1985, the present suit is clearly barred by limitation. Therefore the point is answered against the plaintiff.

Point No. 2:

13. In a suit for specific performance, the minimum one expects from a plaintiff is that he files the agreement of sale. In the instant case, no such thing is forthcoming. He pleaded that the agreement of sale was obtained from Bahadur Abdul Kareem Babu Khan and his wife, since the defendants got the property from Bahadur Abdul Kareem Babu Khan, in a suit for partition. The plaintiff obviously wanted to plead that the property was allotted to the defendants, subject to the agreement of sale. However, no written document was filed. The oral evidence adduced in this behalf is absolutely of no use. Though an attempt is made to evolve the theory of agreement of sale, through a receipt, for a sum of Rs. 5,000/-, which is marked as Exs. B-1, one cannot form an opinion, that it constitutes, by itself, a commitment, on the part of the owner of the property, to sell it. No steps were taken, during the lifetime of Bahadur Abdul Kareem Babu Khan. There is no reference, or undertaking of the obligation of late Khamrunnisa Begum, the mother of the defendants.

14. One circumstance, which strongly militates against the plaintiff, is that he entered into lease, with Khamrunnisa Begum, for a period of five years, under Ex. A-1. This improbabilises the existence of alleged contract to sell, in 1962. It is unbelievable and also unnatural that the said owner has again negotiated with the plaintiff in the year 1985, and agreed to sell the suit schedule properties for a consideration of Rs. 14 lakhs. What is important is that even this settlement fails short of the required details, to constitute a contract to sell, between the parties. No terms and conditions have been stated. No amount either has been paid towards advance, or anything has been done, in furtherance of such oral contract between the parties. A bald plea has been introduced. Therefore, the second point is answered against the plaintiff.

15. In the result, both the appeals are dismissed. The miscellaneous petitions filed in these appeals shall also stand disposed of. There shall be no order as to costs.