

(2014) 10 AP CK 0030

Andhra Pradesh High Court

Case No: Second Appeal Nos. 579 and 619 of 2013 and 787 of 2014

S. Deep Singh

APPELLANT

Vs

V. Varalaxmi

RESPONDENT

Date of Decision: Oct. 31, 2014

Acts Referred:

- Transfer of Property Act, 1882 - Section 106

Citation: (2015) 2 ALD 671

Hon'ble Judges: L.N. Reddy, J

Bench: Single Bench

Advocate: A.S. Bhavani Shankar, Advocate for the Appellant; R.A. Achutanand, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.

These three appeals are between the same parties. Hence, they are disposed of through a common judgment.

2. For the sake of convenience, the parties are referred to as arrayed in S.A. No. 619 of 2013.

3. The first appellant is the lessee. He took the premises owned by the first respondent on lease. He filed O.S. No. 1113 of 2012 in the Court of the Additional Judge, City Small Causes Court-cum-VI Senior Civil Judge, City Civil Court, Hyderabad, for specific performance of an agreement of sale dated 27.09.1997. He pleaded that after the premises was taken on lease, the first respondent came forward to sell the property and accepting the offer, he paid a sum of Rs. 3,00,000/- towards consideration. It was pleaded that in spite of repeated demands, the first respondent did not execute the sale deed.

4. The first respondent filed a written statement opposing the suit. According to her, the amount of Rs. 3,00,000/- was borrowed on the strength of the promissory note

and a clause was incorporated depicting as though it is an agreement of sale. The respondents filed O.S. No. 1427 of 2002 in the same Court for eviction of the first appellant. It was pleaded that though a notice was issued under Section 106 of the Transfer of Property Act to vacate the premises, he did not comply with the same. That suit was opposed by the first appellant by filing a written statement. It was pleaded that the property was covered by an agreement of sale and a suit for specific performance is pending.

5. Through its common judgment dated 30.06.2010, the trial Court dismissed O.S. No. 1113 of 2002 and decreed O.S. No. 1427 of 2002. The first appellant filed A.S. Nos. 295 and 380 of 2010 feeling aggrieved by the decrees passed in both the suits, in the Court of XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad. During the pendency of the appeals, the first appellant died and his legal representatives, appellants 2 to 6, were brought on record.

6. Through its common judgment dated 26.12.2012, the lower appellate Court confirmed the decree in O.S. No. 1427 of 2002 and decreed O.S. No. 1113 of 2002 granting the relief of refund of the sum of Rs. 3,00,000/- with interest @ 12% per annum from the date on which the premises are vacated. While the appellants filed S.A. Nos. 579 and 619 of 2013 feeling aggrieved by the decrees, the respondents filed S.A. (SR) No. 24546 of 2013 not only feeling aggrieved by the decree for refund of the amount but also denial of arrears of rent.

7. Heard Sri A.S. Bhavani Shankar, learned counsel for the appellants and Sri R.A. Achutanand, learned counsel for the respondents.

8. The trial Court framed the following issues in the suits:

O.S. No. 1113 of 2002:

Issues:

1. Whether the contract dated 27.09.1997 is true, valid and binding on the defendant?
2. Whether the plaintiff is entitled for specific performance against the defendant?
3. Whether the plaintiff is entitled to recover part of suit property?
4. To what relief?

Additional Issues:

A. Whether the alleged pronote dated 27.09.1997 can be treated as an agreement of sale and such claim is maintainable under the provisions of Stamps and Registration Act?

B. Whether the suit of the plaintiff is time barred?

O.S. No. 1427 of 2002:

1. Whether the first plaintiff has executed pronote/written contract dated 27.09.1997 in favour of defendant is true, valid and binding on the 1st plaintiff?
2. Whether the defendant has became the owner of the suit property in view of execution of pronote of written contract dated 27.09.1997?
3. Whether the first plaintiff is entitled for eviction of defendant from the suit schedule premises?
4. Whether the first plaintiff is entitled for arrears of rents as claimed by the plaintiff?
5. Whether the first plaintiff is entitled for mesne profits?
6. To what relief?

9. The suits were clubbed and common evidence was recorded. On behalf of the appellants, P.Ws. 1 and 2 were examined and Exs. A. 1 to A. 18 were filed. On behalf of the respondents, D.Ws. 1 and 2 were examined and Exs. B. 1 to B. 4 were filed.

10. O.S. No. 1113 of 2002 was dismissed and O.S. No. 1427 of 2002 was decreed.

11. In the appeal, the lower appellate Court framed the following points for consideration:

1. Whether the plaintiff in O.S. No. 1113 of 2002 is entitled for specific performance?
2. Whether the plaintiffs in O.S. No. 1427 of 2002 are entitled for eviction of the tenant and recovery of amount of Rs. 53,400/- and also entitled for mesne profits to be ascertained by way of separate petition?
3. Whether is there any interference is required in the judgment of the lower Court?

12. The nature of disposal given by the lower appellate Court has already been indicated.

13. The relief of specific performance was claimed on the strength of Ex. A. 1, which is the promissory note-cum-receipt. The only basis to treat it as the agreement of sale is a recital, which reads "If hand loan not repaid within three years thereafter Deep Singh can get 2.3.18/13, registered in his name at any time".

14. There is serious dispute as to the origin and genuineness of this clause. Even if it is taken as true, it is difficult to treat the document as an agreement of sale. The trial Court as well as the lower appellate Court have arrived at appropriate conclusion's. The difference was only as to how the amount of Rs. 3,00,000/- must be treated.

15. It is no doubt true that the suit was filed for the relief of specific performance and not for recovery of money. All the same, the Court can grant the relief. Once the respondents did not dispute the factum of receipt of Rs. 3,00,000/-, may be as hand loan, the decree granted by the lower appellate Court for the sum of Rs. 3,00,000/-

cannot be found fault with. Though the appellants made strenuous efforts to challenge the decree of eviction, once if it is not disputed that the lease is not covered by the Transfer of Property Act and a notice under Section 106 is given, there is no way they can prevent the eviction. The only dispute is about arrears of rent or mesne profits. This Court is of the view that the interest payable of Rs. 3,00,000/- covered by Ex. A. 1 can be balanced against the arrears of rent, if any, or damages. The payment of Rs. 3,00,000/- can be linked to the eviction from the premises.

16. Therefore, the Second Appeals are disposed of directing that,

- (a) the decree of eviction shall stand affirmed, but without the right of the respondents to claim any arrears of rent or damages; and
- (b) the appellants shall be entitled to be paid a sum of Rs. 3,00,000/- covered by Ex. A. 1 on their vacating the premises.

If the appellants do not vacate the premises by 31st December, 2014, the respondents shall be entitled to claim damages and arrears of rent apart from withholding the sum of Rs. 3,00,000/- till the date of eviction. The respondents shall be entitled to withdraw the amount deposited by the appellants towards rent from time to time. There shall be no order as to costs.

17. The Miscellaneous Petitions filed in these appeals shall stand disposed of.