

Janampally Narasimha Reddy

Vs

M/S. A. S. Krishna & Company (Private) Limited and Others

Civil Appeal No. 1380 of 1970

(A.Alagiriswami, N.L. Untwalia, P.K. Goswami JJ )

02.09.1975

JUDGMENT

GOSWAMI, J. –

1. This appeal is by certificate granted by the High Court of Andhra Pradesh against its judgment of February 20, 1969, in First Appeal No. 72 of 1964. The appeal arises out of a suit for specific performance of the contract of sale of land dated June 2, 1961. The plaintiff (first respondent herein) also prayed in the alternative for a decree for the return of earnest money and also for damages for breach of the contract. The trial Court in appeal decreed the suit for specific performance attaching certain condition to the decree.

2. Briefly the facts are as follows :

2A. An agreement of sale was entered into on June 2, 1961, between the plaintiff and the appellant (first defendant) in respect of the land in suit. The said agreement provided, inter alia, that the appellant should retain for himself one acre of land out of the total extent of 32 acres 29 guntas and sell the balance of about 31 acres to the plaintiff for a sum of Rs. 2000. It was also stipulated that out of the consideration money, the plaintiff should pay Rs. 4000 to the appellant by installments for enabling the latter to obtain a sale deed from his vendors. In other words the appellant utilised part of the consideration in purchasing the land in suit from the previous owners and it is only after completion of that sale that he would have conveyed the same for the agreed price in favour of the plaintiff. The appellant in due course informed the plaintiff that he had obtained a sale deed from his vendors on August 7, 1961, and that he would execute a sale deed in favour of the plaintiff after measurement of the land. The appellant also took certain steps to facilitate transfer of the land in favour of the plaintiff before the Deputy Collector, Hyderabad, on September 27, 1961, allowing the corrections at the instance of the original owners. The appellant informed the plaintiff about the orders passed by the Deputy Collector in his favour. Although the plaintiff was ready with the money and was anxious to obtain the sale deed, the appellant adopted devious ways to avoid the sale. Ultimately the appellant made certain frivolous claims and also demanded higher price for the land. Apprehending that he would not fulfill the promise; the plaintiff issued a registered notice to the appellant on October 30, 1961 and took other steps. In reply to the notice the appellant admitted receipt of Rs. 4000 from the plaintiff and the execution of the agreement, but set up a false plea that the suit property belonged to the joint family of himself and his son (defendant No. 2) and that there was a dispute between

him and his son. When the appellant failed to execute the sale deed, the plaintiff brought the suit impleading the appellant as well as his son, the second defendant. Both the appellant and his son denied the plaintiff's claim that the land was the self-acquired property of the appellant and averred that it was a joint family property purchased from the joint family funds. It was also pleaded by them that the agreement was unenforceable as the permission of the revenue authorities under the relevant provisions of the Tenancy Act had not been obtained prior to the execution of the agreement. The High Court came to the conclusion that it was the self-acquired property of the appellant. Although the appellant and his son alleged that the price of the land was Rs. 60,000 the trial Court gave a finding that Rs. 20,000 was the adequate price for the suit property. The High Court agreed with this finding.

3. This appeal is only by the first defendant (appellant). The second defendant, whose interests are affected by the decree, has not preferred any appeal against the decree. That being the position, the appellant cannot be heard to contest the decree in view of the admitted position that he has executed the sale agreement and had received part consideration. At any rate, he cannot question the agreement. The finding that the entire suit property is the self-acquired property of the appellant cannot be contested by him in this appeal. The real person who should be aggrieved by this finding has not even chosen to appeal against the decree. There is, therefore, no merit in the objection taken by the learned Counsel with regard to the character of the suit property.

4. It is next contended by the learned Counsel that the decree is not executable in view of the provisions of the Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 (briefly the Act) which came into force on June 5, 1972. It is contended by Counsel that Section 4 of the Act prohibits alienation of vacant land by way of sale, lease etc. and any such sale in contravention of this section shall be null and void. Under sub-section (2) of Section 4 the provisions of sub-section (1) shall apply to any transaction of the nature referred to therein in execution of a decree or order of a civil court or of any award or order of any other authority.

5. Section 5 puts certain restrictions on registration of documents.

6. We need not refer to the other provisions of the Act to which also our attention was drawn. Counsel submits that in view of the provisions of the Act the decree should be set aside. We are unable to accede to this contention. This question relating to the applicability of the provision of this Act cannot be entertained at this stage in this appeal and this may, if the appellant is so advised, be raised at the time of execution of the decree. The Act has not made any provision for making the decree a nullity. The submission of the learned Counsel on the basis of the provisions of this Act, therefore, is of no avail.

7. We express no opinion about the applicability of the provisions of the Act with reference to the subject-matter of this suit.

8. In the result the appeal is dismissed with costs.

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