

SUPREME COURT OF INDIA

Beemaneni Maha Lakshmi

Vs.

Gangumalla Appa Rao

C.A.No.4537-4538 of 2017

(L.Nageshwara Rao and M.R.Shah,JJ.,

09.05.2019

JUDGMENT

M.R.Shah,J.,

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature Andhra Pradesh at Hyderabad dated 6.8.2007 in Appeal Suit No. 2638 of 1993 and CMP No. 7692 of 2003, by which the High Court has dismissed the said appeal preferred by the appellant herein - the original defendant and has confirmed the judgment and decree of specific performance passed by the learned trial Court, the original defendant has preferred the present appeals.

2. The facts leading to the present appeals in nutshell are as under:

That the appellant herein - the original defendant purchased the suit schedule property admeasuring 17 acres 39 cents situated at village Billawaka, Thimmapuram Post, Kakinada Taluk, East Godavari District, Andhra Pradesh by a registered sale deed dated 6.10.1971. The land in question was subjected to the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, which came into force in the year 1975. That vide order dated 20.11.1976, the Land Reforms Tribunal held that the appellant is holding an excess land to the extent of 0.0013 cents. It appears that a revision application was pending/proceedings before the High Court at the instance of the predecessor in title of the suit property. That the appellant herein executed an agreement to sell in favour of the respondent herein - the original plaintiff vide agreement to sell dated 30.12.1985 and agreed to sell the said property (suit property) for a sale consideration of Rs.2,45,000/-. The respondent herein - the original plaintiff - purchaser paid the part sale consideration of Rs.55,000/-. The remaining balance amount was required to be paid within three months. According to the plaintiff, it was also agreed that the appellant has to execute the sale deed after measuring the suit land for arriving at the actual sale consideration payable. According to the plaintiff, time and again, he demanded the original sale deed in favour of the appellant dated 6.10.1971 as well as the final order passed by the Tribunal/final

certificate issued by the Agricultural Land Tribunal and also requested the vendor to measure the land and execute the sale deed. However, as the vendor - the appellant did not execute the sale deed, though according to the plaintiff he was ready and willing to pay the balance sale consideration and perform his part of contract, nothing further was done and therefore the purchaser - the plaintiff served a legal notice upon the appellant dated 6.4.1987. The said notice was replied by the defendant vide reply dated 14.4.1987. That thereafter the respondent herein - the original plaintiff instituted Original Suit No.16/1993 in the Court of the Subordinate Judge, Pithapuram praying for a decree for specific performance of the agreement to sell dated 30.12.1985 by directing the defendant to execute the sale deed in favour of the plaintiff by producing the original title deed and non-surplus order in the land ceiling case of the defendant and her vendor. In the alternative, it was prayed to pass a decree for a sum of Rs.75,169.75 with interest from 30.12.1985 on Rs.55,000/-.

2.1 The suit was resisted by the defendant by filing a written statement. It was the case on behalf of the defendant that the plaintiff was not ready and willing to perform his part of contract as he was not having balance of sale consideration and therefore, he could not pay the amount and obtain the sale deed. It was also the case on behalf of the defendant that she purchased the land in question from one Y. Somayya Choudary and the land thereafter held in favour of the defendant and the Land Tribunal held that the said transaction between the defendant and the Y. Somayya Choudary was a bona fide transaction. According to the defendant, the same had attained finality. It was the case on behalf of the defendant that the plaintiff was aware of the aforesaid transaction and even the order passed by the Land Tribunal. It was also the case on behalf of the defendant that before entering into the agreement itself, in the beginning, the defendant informed the plaintiff that the sale deed is filed in the land ceiling proceedings of Y. Somayya Choudary and after termination of the proceedings the document will be obtained and delivered to the plaintiff. It was also the case on behalf of the defendant that the copies of the land ceiling orders were handed over to the plaintiff and having satisfied the plaintiff entered into the agreement to sell.

2.2 On the basis of the pleadings of the parties, the learned Trial Court framed the following issues:

- (1) Whether the plaintiff is ready and willing to perform his part of the contract and is entitled to seek for specific performance of the suit agreement of sale?
- (2) Whether the plaintiff is entitled for the alternative relief of refund of advance of sale consideration with interest as claimed?
- (3) To what relief?

2.3 The plaintiff examined himself as PW1 and marked Exhibits A1 to A4. The defendant examined 5 witnesses including herself as DW1 and marked Exhibit X1

through DW3. It appears that during the course of trial, as it was the case on behalf of the defendant that the plaintiff had no money to pay the balance sale consideration and therefore the learned trial Court directed the plaintiff to deposit the balance of the sale consideration into the Court to verify his bona fides. That the plaintiff deposited the balance sale consideration within the extended time granted to him on a petition.

3. That thereafter on appreciation of evidence and considering the entire material on record including the deposition of DW1 and even reply to the notice by DW1, the learned trial Court decreed the suit by directing the defendant to execute a sale deed in favour of the plaintiff. While decreeing the suit, the learned trial Court specifically observed and held that it was the defendant who committed the breach of contract. On appreciation of evidence, the learned trial Court also found that the plaintiff was always ready and willing to perform his part of the contract and it was the defendant who committed the breach of contract and therefore the plaintiff is entitled for the relief of specific performance.

4. Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court, the defendant preferred appeal before the High Court. The defendant - the appellant herein also filed an application for additional evidence under Order 41 Rule 27 of the CPC. That the High Court allowed the said application for additional evidence partly. That thereafter on appreciation/re-appreciation of the entire evidence on record, by the impugned judgment and order, the High Court has dismissed the appeal preferred by the appellant herein - the original defendant and has confirmed the judgment and decree of specific performance of the agreement to sell dated 30.12.1985 passed by the learned trial Court.

5. Challenging the impugned judgment and order passed by the High Court in dismissing the appeal and confirming the judgment and decree of specific performance passed by the learned trial Court and in partly rejecting the application for additional evidence under Order 41 Rule 27 of the CPC, the original defendant - the appellant before the High Court has preferred the present appeals.

6. Shri Basant R, learned Senior Advocate has appeared on behalf of the appellant - the original defendant and Shri Pramod Swarup, learned Senior Advocate has appeared on behalf of the respondent - the original plaintiff (since dead and now represented by his legal heirs).

6.1 Shri Basant R, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, both the courts below have materially erred in decreeing the suit and passing the decree of specific performance of the agreement to sell dated 30.12.1985.

6.2 It is further submitted by the learned Senior Advocate appearing on behalf of the appellant that both the courts below have materially erred in holding that it was the defendant who committed the breach of the terms of the contract/agreement to sell.

6.3 It is further submitted by the learned Senior Advocate appearing on behalf of the appellant that it was the case on behalf of the defendant from the very beginning that the plaintiff had no capacity to pay the balance sale consideration. It is submitted that even the plaintiff could not deposit the balance sale consideration at the first instance as directed by the learned trial Court by which the learned trial Court directed the plaintiff to deposit the balance sale consideration to show his bonafides. It is submitted that in fact the plaintiff could deposit the balance sale consideration within the extended period of time out of the amount received from the property sold by him in the year 1993. It is submitted that therefore when the plaintiff was not having sufficient fund to pay the balance sale consideration, both the courts below have materially erred in passing the decree of specific performance of the agreement to sell dated 30.12.1985. It is submitted that as such the plaintiff in the cross-examination has specifically admitted that he paid the balance sale consideration as directed by the learned trial Court from the amount received by him on sale of the property in the year 1993.

6.4 It is further submitted by the learned Senior Advocate appearing on behalf of the appellant that in the agreement to sell there was no condition that the sale deed to be executed only after the property is measured. It is vehemently submitted by the learned Senior Advocate appearing on behalf of the appellant that both the courts below have materially erred in giving much importance to the admission of defendant no.1 who is an illiterate widow that before execution of the sale deed the land was to be measured.

6.5 It is further submitted by the learned Senior Advocate appearing on behalf of the appellant that both the courts below have materially erred in not appreciating the fact that prior to the entering into the agreement of sale, the plaintiff was aware of the defendant having purchased the property from Y. Somayya Choudary and also was aware of the land ceiling proceedings. It is submitted that even before entering into the agreement itself in the beginning the defendant informed the plaintiff that the sale deed is filed in the land ceiling proceedings of Y. Somayya Choudary and after termination of the proceedings the document will be obtained and delivered to the plaintiff. It is submitted that in the reply to the notice by the defendant, the plaintiff was specifically informed/told that the sale deed is in the court file of the land ceiling proceedings of Y. Somayya Choudary and the plaintiff can obtain a copy of the same from the concerned court. It is submitted that therefore both the courts below have materially erred in holding that it was the defendant who committed the breach of the terms of the contract/agreement to sell. It is further submitted that both the courts below have materially erred in holding that the plaintiff was always ready and willing to perform his part of the contract/agreement to sell.

6.6 It is further submitted by the learned Senior Advocate appearing on behalf of the appellant that even otherwise decree for specific performance of a contract is a discretionary relief and in the facts and circumstances of the case, more particularly

when the plaintiff did not come with clean hands, as though was not in possession but stated that he is in possession, both the courts below ought not to have granted the discretionary relief and ought not to have passed a decree for specific performance of the agreement/agreement to sell. In support of his above submission, Shri Basant R, learned Senior Advocate has heavily relied upon the decision of this Court in the case of *K.S. Vidyadnam v. Vairavan, reported in*¹.

6.7 It is further submitted by the learned Senior Advocate appearing on behalf of the appellant that even the High Court has materially erred in dismissing the application for additional evidence under Order 41 Rule 27 of the CPC by not permitting the appellant to produce the xerox copies of the certified copies of the agreement of sale dated 30.08.1993 executed by the plaintiff in favour of one Vegisina Venkata Satya Ananda Gajapathi Raju and the deposition of the plaintiff in O.S. No. 236 of 1994 on the file of the Principal Senior Civil Judge, Kakinada. It is submitted that if both the aforesaid documents would have been permitted to produce on record as an additional evidence, it can be seen that the plaintiff was not having sufficient fund to pay the balance sale consideration.

6.8 Shri Basant R, learned Senior Advocate appearing on behalf of the appellant has submitted that even otherwise in the facts and circumstances of the case, the courts below have materially erred in passing the decree for specific performance of the contract for sale of immovable property which was after number of years and would cause undue hardship to the defendant. It is submitted that in the present case the plaintiff waited till the period of limitation to come to an end and even did not file the suit for specific performance immediately. It is submitted that therefore the grant of decree for specific performance in the circumstances would amount to an instrument of oppression giving unfair advantage to the vendee. In support of his above submission, learned Senior Advocate has heavily relied upon the decision of this Court in the case of *P.R.Deb and Associates v. Sunanda Roy, reported in*².

6.9 It is further submitted by the learned Senior Advocate appearing on behalf of the appellant that in the present case in the agreement to sell, it was specifically mentioned that the balance sale consideration was to be paid within a period of three months from the date of execution of the agreement to sell. It is submitted that admittedly the plaintiff did not pay the balance sale consideration within three months from the date of execution of the agreement to sell and therefore the said failure disentitled the plaintiff to obtain decree of specific performance. In support of his above submission, learned Senior Advocate has heavily relied upon the decision of this Court in the case of *Padmakumari v. Dasayyan, reported in*³.

6.10. Making the above submissions and relying upon the above decisions, it is prayed to allow the present appeals.

7. The present appeals are vehemently opposed by Shri Pramod Swarup, learned Senior Advocate appearing on behalf of the respondent - the original plaintiff.

7.1 It is submitted by the learned Senior Advocate appearing on behalf of the respondent that in the present case there are concurrent findings recorded by both the courts below that there was a failure on the part of the defendant - vendor to perform her part of the terms of the contract and that the plaintiff was always ready and willing to pay the balance sale consideration. It is submitted that the aforesaid findings of fact recorded by the learned trial Court as well as the High Court are on appreciation of evidence and therefore the same may not be interfered with by this Court. It is submitted that in view of the aforesaid findings of fact recorded by the trial Court, confirmed by the High Court, it cannot be said that the learned trial Court and the High Court committed an error in passing a decree for specific performance.

7.2 It is vehemently submitted by the learned Senior Advocate appearing on behalf of the respondent that in fact the defendant in reply to the notice - A3 as well as in her deposition has specifically admitted that the land was to be measured and only thereafter the sale deed was to be executed. It is submitted that as admitted the land was not measured and therefore there was no occasion on the part of the plaintiff to pay the balance sale consideration at the relevant time. It is submitted that even the defendant - vendor did not give the sale deed in her favour executed by Y. Somayya Choudary. It is submitted that Y. Somayya Choudary was the husband of the sister of the defendant and only with a view to save the property from the Agricultural Land Ceiling Act, he executed the sale deed in favour of the defendant. It is submitted that the plaintiff insisted for the final certificate issued by the Land Tribunal so as to see that there is a clear title in favour of the defendant - vendor. It is submitted that there was a necessity to have the land measured. It is submitted that therefore when the vendor neither gave the sale deed in her favour nor gave the final certificate/order issued by the Land Tribunal nor even got the land measured, there was a cloud on the title which was required to be removed by the defendant as vendor, before the plaintiff makes the payment of balance sale consideration. It is submitted that as the defendant - vendor failed to clear the cloud by not giving the copy of the sale deed in her favour; by not producing the final certificate/order issued by the Land Tribunal and by not measuring the land till then there was no question of any payment of balance sale consideration by the plaintiff. It is submitted that from the very beginning, it was the case on behalf of the plaintiff that the plaintiff was always ready and willing to pay the balance sale consideration, subject to the defendant's fulfilling her part of the contract.

7.3 It is further submitted by the learned Senior Advocate appearing on behalf of the respondent that unless and until the defendant - vendor complied with her terms and conditions of the agreement by fulfilling her part of the contract, the plaintiff was not required to deposit any amount either in the bank or with the Court. It is submitted that as soon as the learned trial Court directed to deposit, the plaintiff deposited the balance sale consideration to show his bonafides. It is submitted that merely because in the year 1993 when the amount was deposited the plaintiff might have deposited the said amount out of the fund received by selling the property in the year 1993 by that itself cannot be said that prior thereto the plaintiff was unable

to pay the balance sale consideration.

7.4 Making the above submissions and relying upon the decision of this Court in the case of Narinderjit Singh v. North Star Estate Promoters Limited, reported in AIR 2012 SC 2035, it is prayed to dismiss the present appeals.

8. We have heard the learned Senior Counsel for the respective parties at length.

9. We have perused and considered in depth the impugned judgment and order passed by the High Court as well as the judgment and decree passed by the learned trial Court. At the outset, it is required to be noted that as such there are concurrent findings of fact by both, the learned trial Court as well as the High Court that it was the appellant - vendor who did not perform her part of the contract. The learned trial Court also observed and held that as the respondent - vendee deposited into Court the amount payable by him as per Ex. A1, which was as per the order of the trial Court, and therefore his failure to "demonstrate" that he was having sufficient money with him to pay the balance sale consideration under Ex. A1 by the date of his evidence is not much of consequence and the contention of the appellant - vendor that the respondent - vendee was not ready and willing to perform his part of the contract cannot be believed or accepted. The aforesaid finding has been confirmed by the High Court.

10. It is true that in Ex.A1, it was not specifically mentioned that vendor has to first get the land measured and only thereafter the vendee has to pay the balance sale consideration. It is also true that as per Ex. A1 - agreement to sell the vendee was required to deposit the balance sale consideration within a period of three months from the date of execution of the agreement. However, at the same time, it was the specific case on behalf of the plaintiff - vendee that it was also agreed that the vendor has to execute the sale deed after measuring the suit land. The aforesaid is as such admitted by the vendor - the defendant, not only in reply to the notice dated 14.04.1987 but as well in her deposition. In the reply to the notice on 14.04.1987, the defendant has specifically admitted that the sale deed should be executed after measuring he land and after arriving at the consideration for the land that was arrived at on measurement. Even in the cross-examination, the defendant - vendor who has been examined as DW1 has specifically admitted that at the time of execution of the agreement, it was settled to get the land measured and to arrive at the consideration and to deliver the original sale deed. It has also come on record that no measurement was carried out at any point of time, more particularly after the execution of the agreement to sell. Thus, till the land was measured and the final amount was arrived at, there was no obligation on the part of the vendee - the plaintiff to deposit/pay the balance sale consideration. It is required to be considered along with the fact that all throughout the vendee was insisting that the original sale deed in favour of the vendor be given to the vendee and that the final certificate issued by the Land Tribunal be shown and given to the vendee. It is an admitted position that copy of the sale deed was not given to the vendee. However, it was the case on behalf of the defendant - vendor that the plaintiff was informed that the original sale deed is produced in the court in the proceedings initiated by Y.Somayya Choudary - predecessor in title and therefore the vendee may get the copy from that court. Nothing is on record on which date the vendor delivered to the vendee the

land ceiling papers. At this stage, it is required to be noted that the land in question was subjected to the land ceiling proceedings. It has come on record that the vendor - defendant purchased the suit property by sale deed dated 6.10.1971 from one Y. Somayya Choudary - the husband of the sister of the vendor. From the evidence, it appears that Y. Somayya Choudary was also claiming the ownership over the land in question. Dispute was that Y. Somayya Choudary executed the sale deed in favour of the defendant - vendor with a view to see that the land is not declared as excess land under the Land Ceiling Act. It has come on record that the Land Tribunal held in favour of the vendor and the transaction in her favour was found to be bonafide. However, the said Y. Somayya Choudary was also continued to claim the ownership which was not accepted by the land Tribunal. That is why, the vendee - the plaintiff was insisting to deliver the land ceiling papers. The conduct on the part of the plaintiff - vendee to insist for the original sale deed in favour of the vendor and the delivery of the land ceiling papers was natural. Any prudent person who was to purchase the property would definitely insist for the title papers, so as to be satisfied that the title is clear. Before the learned trial Court, the defendant did not produce any final order/certificate issued by the Land Tribunal, which came to be produced for the first time before the High Court along with the application for additional evidence under Order 41 Rule 27 of the CPC. The High Court permitted the appellant to produce the proceedings of the Land Reforms Tribunal dated 20.11.1976. The same came to be considered by the High Court and observed that Ex. B1 is a xerox copy of a certified copy of the order dated 20.11.1976 of the Land Reforms Tribunal. The High Court has also observed that the relevant portion of the certified copy (Ex. B1) which contain the details relating to the date when the copy application was filed; when the stamps were called for and when the copy was made ready are not available in Ex. B1. The High Court has also observed that if they are available, the date on which the copy application was made would have known. That on appreciation of evidence and considering the document Ex. B1, the High Court has specifically observed that it cannot positively be said that the original of Ex. B1 was available with the vendor by the date of Ex. A1. Therefore, the High Court observed that the contention of the appellant that the respondent was shown the document relating to land ceiling clearance at the time of Ex. A1 cannot be believed or accepted. The aforesaid is the finding recorded on appreciation of evidence. Therefore, the learned trial Court and the High Court have specifically observed and held that the buyer insisted on the seller producing all the documents necessary for making out a complete chain of his/her title. Therefore, on conjoint reading of Ex. A1 and the reply to the notice by the defendant dated 14.04.1987 and the cross-examination of the defendant - vendor, both the learned trial Court and the High Court have rightly observed and held that it was the appellant - vendor that did not perform her part of the contract. Once, the finding is recorded that it was the appellant - vendor that did not perform her part of the contract, thereafter as rightly observed by the High Court, the failure on the part of the vendee to "demonstrate" that he was having sufficient money with him to pay the balance sale consideration under Ex. A1 by the date of his evidence is not much of consequence. Even otherwise, it is required to be noted that the plaintiff deposited the entire balance sale consideration as directed by the learned trial Court within the extended period of time. It is required to be noted that as it was submitted on behalf of the defendant before the learned trial Court that the plaintiff does not have any capacity to pay the balance sale consideration, to test his bonafides the learned trial Court directed the plaintiff to deposit the balance sale consideration which the

plaintiff did deposit. Merely because the said amount was deposited out of the fund/amount received by him by selling the property in the year 1993, by that itself cannot be presumed and/or inferred that at the time of execution of the agreement to sell and/or thereafter even at the time of the notice, the plaintiff was not having sufficient fund to pay the balance sale consideration. It is required to be noted that an agreement to sell is dated 30.12.1985 and the plaintiff was directed to deposit the amount in the year 1993. It is not expected from the plaintiff that he would continue to deposit the same with the bank all these years. What is required to be considered is as and when he is called upon to make the deposit, he has deposited the amount to show his bonafides or not? Therefore, as such, both the learned trial Court as well as the High Court have rightly passed a decree for specific performance.

11. Now so far as the submission on behalf of the appellant that if the decree for specific performance of the contract is passed after number of years, it would cause undue hardship to the defendant - vendor and the reliance placed upon the decision of this Court in the case of P.R.Deb (supra) is concerned, it is required to be noted that in the written statement the defendant has not pleaded any hardship to be caused if the decree of specific performance of the contract is passed against the defendant - vendor. At this stage, the decision of this Court in the case of *A. Maria Angelena v. A.G. Bakis Bee*⁴, reported in is required to be referred to. In the aforesaid case, the vendor sought to raise the plea of hardship for the first time before this Court and this Court did not permit the vendor to raise such a plea of hardship by observing that as no plea as to hardship if relief for specific performance is granted was raised by the defendant - vendor in written statement nor any issue was framed that the plaintiff - purchaser could be compensated in terms of the money in lieu of decree for specific performance, such plea cannot be entertained for the first time in appeal by way of SLP, more so, when there are concurrent findings that the plaintiff was ready and willing to perform his part of the contract has been recorded by the lower courts. Therefore, the plea raised on behalf of the vendor on hardship cannot be permitted to be raised now, more particularly when no such plea was raised/taken in the written statement.

12. Now so far as the reliance placed upon the decisions of this Court by the learned Senior Advocate appearing on behalf of the appellant, referred to hereinabove, are concerned, none of the decisions shall be applicable to the facts of the case on hand and more particularly the findings recorded by the learned trial Court, confirmed by the High Court, which we also confirm.

13. In view of the above and for the reasons stated above, the present appeals fail and deserve to be dismissed and are accordingly dismissed. We confirm the judgment and decree passed by the learned trial Court for specific performance of the agreement to sell dated 30.12.1985, confirmed by the High Court. However, in the facts and circumstances of the case, there shall be no order as to costs.

Judgment Referred.

¹(1997) 3 SCC 0001

²(1996) 4 SCC 0423

³(2015) 8 SCC 0695

⁴AIR 2002 SC 2385