

CASE NO.:
Appeal (civil) 8303-8304 of 2003

PETITIONER:
V.R. Sudhakara Rao & Ors

RESPONDENT:
T.V. Kameswari

DATE OF JUDGMENT: 18/04/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

Challenge in these appeals is to the common judgment passed by a learned Single Judge of the Andhra Pradesh High Court disposing of two appeals arising out of common judgment made in OS No. 350 of 1982 on the file of learned Second Additional Subordinate Judge-Vishakapatnam and in OS No. 131 of 1982 on the file of the same Court.

Background facts in a nutshell are as follows:

One Thangirala Venkata Avadhani filed O.S.No.131/82 for recovery of possession of the plaint schedule property after evicting the defendants and for the relief of permanent injunction and O.S.No.350/82 was filed by one Sudhakar Rao against Thangirala Venkata Avadhani and certain others for the relief of specific performance of an oral agreement of sale relating to the plaint schedule property. The said Thangirala Venkata Avadhani died during the pendency of the said suits. T.A.Kameswari, the appellant in both appeals before the High Court, had been brought on record as the legal representatives of the said Venkata Avadhani. In O.S.No.131/82 the said Venkata Avadhani as plaintiff had pleaded that the staff of Andhra University formed a Co-operative Society. The said Society purchased from her Highness Janaki Ratnayammajee. CBE, Dowager Rani Saheba of Gangapur Ac.8.80 cents forming part of T.S. No.125 (part) of Waltair Ward in Visakhapatnam Municipality. The said Society allotted a plot to the 1st plaintiff, i.e. Plot No.30, in the said lay-out by means of a registered sale deed dated 30.11.1967 and delivered possession. To the South of the Plot No.30 there is Plot No.31. The 1st plaintiff came to learn that the defendants purchased this plot. In the plot purchased by the defendants they constructed building. While constructing the said building, as their plot was having road on three sides, they requested the 1st plaintiff for permission to stock their sand, stone and granite and bricks in the site of the plaintiff and as the site of the 1st plaintiff was vacant he said no objection and in utter good faith he gave the said permission. Suddenly on the evening of 10.5.1982, the 1st plaintiff was informed that the defendants were constructing a compound wall on the East and West of the 1st plaintiff's plot No.30. He also found that the foundations were dug and the stone was laid in the foundation both on Eastern side and Western side. On the early morning he immediately gave a report to the III Town Police Station. Along with the 1st plaintiff a police constable came and the 1st plaintiff found

that the Eastern compound wall was completed and in the Western compound wall the construction with bricks was started on the basement raised on 10th May, 1982. The police informed them not to do any construction but later they began construction even in spite of the police warnings. The plaintiff never sold the site nor agreed to sell the same to any body including the defendants. He is absolute owner of the property.

The 1st defendant filed written statement inter-alia stating that 1st defendant's correct name is I.B.V. Narasimharao and not I. Narasimharao as mentioned in the plaint. It was stated that this defendant's mother-in-law was one Kotagiri Srivara Manga Tayaramma. She wanted to acquire two plots at Visakhapatnam and asked this defendant to arrange the purchase of two plots at Visakhapatnam.

Consequently, this defendant approached the plaintiff on behalf of the mother-in-law and it was agreed that the plaintiff should sell 665 sq.yards of the property covered by Plot No.30 to Manga Tayaramma at Rs.65/- per sq.yard for a total consideration of Rs.42,575/-. The said oral agreement of sale was entered into between the plaintiff and Smt. Manga Tayaramma represented by this defendant as her agent in the last week of November, 1979 at the plaintiff's residence in Visakhapatnam. This defendant paid an amount of Rs.16,575/- towards part of the sale consideration to the plaintiff on behalf of the vendee, his mother-in-law in the last week of November, 1979 and the plaintiff delivered possession of the schedule property to this defendant representing the vendee-his mother-in-law. The plaintiff in fact noted down on a piece of paper and calculated the total sale consideration for 665 sq. yards at Rs.65/- per sq.yard and arrived at the figure of Rs.42,575/-. He wrote the name of this defendant as 'I.Narasingarao' on the top of the said slip of paper and he also noted the sale consideration as plaintiff delivered the slip of paper to this defendant at that time. The 1st defendant stated that plaintiff required him to obtain a demand draft for Rs.26,000/- being the balance. of sale consideration payable to him and he also agreed to execute and register the necessary sale deed in favour of the vendee Smt. Manga Tayaramma within a week after the oral agreement of sale and promised to obtain the required clearance for the sale of schedule property under the provisions of the Urban Land Ceiling Act, 1976 (in short 'ULC Act') at the cost of the vendee i.e. Manga Tayaramma. Further, it was agreed that the Demand Draft of Rs.26,000/- should be handed over to the plaintiff at the time of registration of the sale deed. This defendant's mother-in-law Manga Tayaramma in pursuance of the said oral agreement of sale obtained a draft for an amount of Rs.26,000/- in favour of the plaintiff. This defendant thereupon approached the plaintiff immediately after 3.12.1979 and had shown to him the Demand Draft and asked him if he had obtained the required clearance from the Urban Land Ceiling Authority. The plaintiff thereupon stated that he did not obtain the required clearance as yet and promised to execute and register the sale deed as soon as he obtained the clearance. The 1st defendant pleaded that it is only the plaintiff that did not perform his part of the contract and caused breach of the terms of the contract and ultimately choose to deny the existence of the contract. On 10.12.1979, the 1st defendant, Manga Tayaramma purchased plot No.31. He pleaded that in fact a wall was constructed on the Eastern side for both the plot Nos.30 and 31 and likewise another wall on the West was constructed to both the said plot Nos.30 and 31. As both the plots originally belonged to the same owner Manga Tayaramma, no wall was constructed in between the two plots. Further the wooden material for the proposed building was stocked in the site of Sri Gangapur Rani, which is situated to the South of Plot No.31. It is false to state that the defendants requested the

plaintiff for permission to stock their sand and stone in the plaint schedule site. Plaintiff is not entitled either for delivery of possession or for a permanent or mandatory injunction.

The 2nd defendant in the said suit also filed a written statement stating that he was unnecessarily impleaded as a party.

On the strength of the above pleadings, the following issues were settled:

- 1 Whether the plaintiff is entitled to possession'?
- 2 Whether the plaintiff is entitled to prohibitory and mandatory injunction as prayed for?
3. To what future damages, if any, and at what rate the plaintiff is entitled to?
4. Whether the suit is bad for non-joinder of necessary parties?
5. Whether the plaintiff is estopped?
6. To what relief?

As stated supra, I.V.R. Sudhakar Ras filed O.S.No.350/82 for the relief of specific performance on the strength of an oral agreement of sale and the plaintiff in the said suit pleaded as follows:

Plaintiff's grand mother Manga Tayaramma wanted to acquire two house plots at Visakhapatnam and requested her son-in-law to arrange the purchase of the same for the construction of house at Visakhapatnam. Consequently, plaintiff's father approached the 1st defendant on behalf of Manga Tayararnma. The 1st defendant agreed to sell the schedule site at Rs.651/- per sq. yard and for a total consideration of Rs.42,575/-. The said oral agreement of sale was entered into between the 1st defendant and the plaintiff's maternal grand mother in the first week of November 1979 at the Ist defendant's residence in Visakhapatnam. At the time of oral agreement, Sri. I.B.V. Narasimharao paid an amount of Rs.16,575/- to the 1st defendant towards portion of the sale consideration on behalf of vendee Manga Tayaramma in the presence of Sri Rao Venkatarama Narasimharao. After the death of Manga Tayaramma plaintiff as legatee has been in possession of the site as per the will executed by her on 15.4.1980. After receiving the said amount of Rs.16,575/-, the Ist defendant at the time of the said agreement of sale noted down on a piece of paper and calculated the total sale consideration for 655 sq. yards at Rs.65/- per sq. yard and arrived at the figure of Rs.42,275/-. He wrote the name of the vendees' agent and son-in-law as 'I.Narasimharao' on the top of the said slip of paper and he also noted the sale consideration at the rate of Rs.40/- per sq.yard. As per the terms of the said agreement of sale, it was also agreed that the vendee Manga Tayaramma should obtain a demand draft for the balance of sale consideration of Rs.26,000/- in favour of the Ist defendant and the defendant should obtain the required permission from the urban ceiling authority and execute the registered sale deed within about a week after the said oral agreement of sale. It was further agreed that the said demand draft should be handed over to the defendant at the time of the registration of the sale deed. In pursuance of the said agreement of sale, Manga Tayaramma obtained a demand draft for an amount of Rs.25,000/- in favour of the Ist defendant on 3.12.1979. The defendant stated that he did not obtain the permission as yet that it would take some time and

promised to execute and register the sale deed as soon as the permission is obtained. Plaintiff also pleaded that on 10.12.1979, I.B.V. Narasimharao on behalf of late Manga Tayaramma purchased plot No.31 which is situate to the South of the schedule plot and the said Tayaramma took possession of the same. The Ist defendant filed suit O.S. No. 131/82 against the plaintiff and others completely denying the agreement of sale. Since the Ist defendant came forward with a false case denying the agreement of sale in its entirety, the plaintiff filed this suit.

The 1st defendant in the said suit filed a written statement with the following allegations.

The allegations that the plaintiff's father approached the 1st defendant for purchase of site and the 1st defendant agreed to sell the site at Rs.65/- per sq. yard, that the total sale consideration was Rs.42,575/-, that the oral agreement was entered into between the them, are false and denied. The allegations that at the time of oral agreement Narasimharao paid Rs.16,575/- to this defendant towards a portion of sale consideration on behalf of Manga Tayaramma, that the plaintiff as a legatee was in possession of the site as per the will executed by her on 15.4.1980, are not valid and tenable under law. The allegations that after receiving the amount of Rs. 16,575/- at the time of agreement of sale, this defendant noted down on a piece of paper and calculated the total sale consideration for 655 sq yards at Rs 65/- per sq yard and arrived at a figure of Rs 42,575/-, that he wrote the name of the vendee's agent and son-in-law was Narasimharao on the top of the slip of paper, that he also noted the sale consideration at the rate of Rs.40/- per sq.yard, that the 1st defendant delivered the slip of paper to Narasimharao at that time, are false and invented for the purpose of the suit. The allegations that as per the agreement of sale it was agreed that Tayaramma should obtain a demand draft for the balance of sale consideration of Rs.26,000/- in favour of the Ist defendant that the Ist defendant should obtain the required permission from the urban ceiling authority for execution and registration of the sale deed, that the defendant promised to obtain the said permission and execute the register sale deed, that he agreed to do so within about a week, are all invented for the purpose of the suit. The further allegations that Thayaramma in pursuance of the agreement of sale obtained a demand draft for an amount of Rs.25,000/- in favour of the Ist defendant on 3.12.1979, that she sent the same to Narasimharao to approach the 1st defendant to complete the transaction and execute the sale deed duly registered by this defendant, that the 1st defendant stated that he did not obtain the permission yet, that it would take some time and promised to execute and register the sale deed as soon as the permission is obtained, are utterly false. The allegation that on 10.12.1979 Narasimharao on behalf of Thayaramma purchased Plot No.31 and took possession of the same, that it devolved in Ramachandra Rao is denied and the plaintiff is put to strict proof of the same. This suit is only a counter-blast to O.S.No.131/82 on the file of IInd Additional Subordinate Judge's Court, Visakhapatnam. The plaintiff is not entitled for any relief whatsoever.

On the strength of the respective pleadings, the following issues were settled in the suit for specific performance:

1. Whether the alleged oral agreement of sale and payment of Rs.16,575/- towards portion of sale consideration to defendant No.1 as pleaded by plaintiff in his plaint are true?
2. Whether the plaintiff is entitled to sue the defendants?
3. Whether the plaintiff is entitled to the relief of specific performance of the alleged suit contract as prayed for?

4. Whether the plaintiff is entitled to claim Rs.46,000/- towards damages for breach of contract of sale?

5. To what relief?

Since the subject matter of both the suits was one and the same, the suits were disposed of by a common judgment after recording the evidence of PW-1 to PW-3, DW-1 to DW-3 and after making Exs.A-1 to A-3 and Exs.B-1 to B-5 and the Court of first instance had believed the oral agreement of sale and had decreed the suit, O.S.No.350/82 and had dismissed the other suit filed for possession and other reliefs i.e. O.S.No. 131/82, and as already stated supra, Thangirala Venkata Avadhani was examined as PW and subsequent thereto since he died the legal representative T.A.Kameswari was brought on record and aggrieved by the said common judgment and the decree made therein the appellant had preferred appeals before the High Court and since the subject matter was considered to be one and the same, both the appeals were disposed of by the High Court by the common judgment which is assailed in the present appeals.

The High Court formulated the following points for consideration:

"1. Whether there was an oral agreement of sale and payment of Rs.16,575/- towards a portion of the sale consideration as contended by the 1st respondent in A.S.No.753/89?

2. Whether the appellant in A.S.No.1014/89 is entitled to the relief of possession and the other ancillary reliefs prayed for in the said suit O.S.No.131/82?

3. Whether the plaintiff in O.S.No.350/82 is entitled to the discretionary relief of specific performance?

4. Whether the plaintiff in O.S.No.350/82 is entitled to the alternative relief of Rs.46,000/ towards damages for breach of contract of sale?

5. If so, to what reliefs the parties are entitled to?"

The High Court held that the evidence is not of a very clear proof. The payment of advance amounting to Rs.16,575/- was established. Therefore, the alternative relief in favour of plaintiff in OS No. 350 of 1982 i.e. refund of Rs.16,575/- with interest at the rate of 12% p.a. from the date of payment of the amount till the date of realization, was granted. It was directed that there shall be a charge over the plaint schedule for realization of the said amount. So far as the other suit is concerned, it was held that the suit OS No. 350 of 1982 for the relief of specific performance was to be decreed to that extent. The plaintiff in OS No.131 of 1982 was entitled to the decree of possession and ancillary reliefs. Appeal was accordingly disposed of.

In support of the appeals, learned counsel for the appellant submitted that the ordinary rule is that the prayer for specific performance of the agreement is to be granted and only on equitable considerations the same can be refused. Reliance is placed in this context on Prakash Chandra v. Angadlal and Others [1979(4) SCC 393]. Though there was no direct evidence, other evidence taken note of by the trial court should not have been lightly brushed aside by the High Court and therefore the alternative relief should not have been granted and the main relief

prayed for should have been granted. The effect of the Section 53(A) of the Transfer of Property Act, 1882 (in short the 'T.P. Act') has not been taken note of.

There is no appearance on behalf of the respondent though counter affidavit has been filed.

First it would be necessary to deal with the effect of Section 53(A) of the T.P. Act. It is fairly accepted that in the case of an oral agreement of sale the defence under Section 53(A) of the TP Act is not available to a party who alleges to be in possession of the property.

The High Court has rightly concluded that there is no clear proof relating to the other terms of condition. The relief of specific performance is discretionary relief and except the oral evidence, there is no clear evidence to prove several of the essential terms which have been taken note of by the High Court. The High Court, on analyzing the evidence, has come to hold that except Exhibit B-1 and the oral evidence of DW 1 and DW2, there is no other clear proof relating to the other terms and conditions of the contract which can be termed as essential conditions like delivery of possession and also the obtaining of permission from the Urban Land Ceiling Authorities and therefore, it cannot be said that all the essential terms and conditions of a well concluded contract had been established in the case at hand.

These conclusions on fact do not appear to be in any way unsustainable and on the other hand are in line with the applicable legal principles. That being so, the appeals are sans merit, deserve dismissal which we direct. No costs.