



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3397]

WEDNESDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

SECOND APPEAL NO: 332/2024

Between:

Chandu Sankara Rao

...APPELLANT

AND

Varikuti Siva Satyanarayana

...RESPONDENT

Counsel for the Appellant:

1. V V N NARAYANA RAO

Counsel for the Respondent:

1. NIMMAGADDA REVATHI

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.332 of 2024

JUDGMENT:

This second appeal is filed aggrieved against the Judgment and decree dated 31.10.2023, in A.S.No.43 of 2019, on the file of the Principal District Judge, West Godavari District at Eluru, confirming the Judgment and decree dated 27.12.2018 in O.S.No.147 of 2014, on the file of the I Additional Junior Civil Judge, Eluru.

2. The appellant herein is the plaintiff and the respondent herein is the defendant in O.S.No.147 of 2014, on the file of the I Additional Junior Civil Judge, Eluru.

3. The plaintiff initiated action in O.S.No.147 of 2014, on the file of the I Additional Junior Civil Judge, Eluru, with a prayer for specific performance of contract directing the defendant to execute a registered sale deed in pursuance of the oral agreement of sale dated 29.07.2009 in respect of the plaint schedule property by receiving the agreed amount of Rs.40,000/- (Rupees forty thousand only) before the elders subsequent to the police complaint.

4. The learned I Additional Junior Civil Judge, Eluru, after conclusion of trial, dismissed the suit. Felt aggrieved of the same, the unsuccessful plaintiff in the above said suit filed the appeal in A.S.No.43 of 2019, on the file of the Principal District Judge, West Godavari District at Eluru. The learned Principal

District Judge, West Godavari District at Eluru, dismissed the first appeal with costs by confirming the judgment and decree passed by the trial Court. Aggrieved thereby, the unsuccessful plaintiff/appellant approached this Court by way of second appeal.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the original suit.

6. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.147 of 2014 is as follows:

- I. The defendant is the absolute owner of the plaint schedule property and on 29.07.2009 he purchased an extent of Ac.0.20 cents of land from the defendant for a consideration of Rs.70,000/-. The plaintiff pleaded that, prior to the said transaction, the defendant had entered into an agreement of sale with his vendor, Sri Maddirala Venkata Subbarao @ Somasivarao of Ammapalem, in respect of the plaint schedule property. The plaintiff further pleaded that he was informed by the defendant that he had agreed to purchase the property from the said vendor for a consideration of Rs.50,000/- in December, 2008. The plaintiff further pleaded that the defendant offered to sell the said extent of Ac.0.20 cents to the plaintiff, representing that he was not interested in obtaining a registered sale deed in his favour. Believing the representations made by the defendant, the plaintiff paid a sum of Rs.70,000/- to the defendant on 29.07.2009 in the presence of Sri Pamarthi Venkata

Satyanarayana, Sri Kotaru Sambasiva Rao and Sri Dyvala Venkateswara Rao under an oral agreement of sale and as the parties were closely related, the plaintiff did not insist upon the execution of any written agreement or receipt evidencing the payment of sale consideration.

- II. The plaintiff further pleaded that after the oral agreement of sale, he was put in possession of the property and, during the year 2009 itself, constructed an RCC residential building thereon by spending an amount of about Rs.12,00,000/-. The plaintiff further pleaded that the defendant, being a Civil Engineer, periodically supervised the construction undertaken by the plaintiff, thereby acknowledging the plaintiff's possession and enjoyment of the property. The plaintiff further pleaded that he had been repeatedly requesting the defendant to perform his part of the contract and execute a registered sale deed in his favour. However, the defendant allegedly postponed the matter on one pretext or another. Since the parties were close relatives, the plaintiff waited in the hope that the defendant would perform his part of contract and execute the sale deed. The plaintiff further pleaded that the defendant subsequently brought into existence a registered sale deed dated 25.02.2012 in his favour containing false recitals and incorrect boundaries in respect of the plaint schedule property. The plaintiff further pleaded that when disputes arose between the parties, the

matter was reported to the police and the Station House Officer advised both parties to settle the dispute amicably through village elders.

- III. The plaintiff further pleaded that the dispute was placed before village elders, namely, Sri Kotaru Sambasiva Rao and Sri Pamarthi Venkata Satyanarayana on behalf of the defendant, and Sri Dyvala Venkateswara Rao and Sri Kandula Satyanarayana on behalf of the plaintiff. The plaintiff further pleaded that the elders advised him to pay an additional sum of Rs.40,000/- to the defendant and suggested that the defendant execute a registered sale deed thereafter. However, the defendant did not heed to the said advice. The plaintiff further pleaded that he got issued a registered legal notice dated 29.07.2013 to be issued to the defendant, calling upon him to receive the balance amount of Rs.40,000/- as suggested by the elders and execute a registered sale deed in respect of the plaint schedule property. The plaintiff further pleaded that in response thereto, the defendant issued a reply notice dated 11.09.2013 containing false and untenable allegations and refused to execute the sale deed. Hence, the plaintiff was constrained to file the present suit seeking for a decree of specific performance of the oral agreement of sale dated 29.07.2009 by directing the defendant to execute a registered sale deed in respect of the plaint schedule property, more fully described in the schedule attached to the plaint.

7. The defendant filed written statement before the trial Court and the brief averments in the written statement filed by the defendant are as follows:

- I. The defendant pleaded that the plaintiff failed to produce any valid receipt or documentary evidence to substantiate his allegation that a sum of Rs.70,000/- was paid to the defendant on 29.07.2009 in the presence of Sri Pamarthi Venkata Satyanarayana, Sri Kotaru Sambasiva Rao and Sri Dyvala Venkateswara Rao. The defendant further pleaded that the alleged oral agreement of sale and payment of consideration are false and have been invented only for the purpose of the suit. The defendant further pleaded that he is the lawful purchaser and absolute owner of the plaint schedule property and is entitled to protect and safeguard his legitimate rights over the same. The defendant further pleaded that in view of the unauthorized acts of the plaintiff in relation to the property, he was constrained to institute O.S.No.413 of 2012 on the file of the Court of the I Additional Junior Civil Judge, Eluru, seeking recovery of possession and permanent injunction. The defendant further pleaded that, in the said suit, the trial Court granted status quo in I.A.No.931 of 2012 in his favour, restraining the plaintiff from proceeding with any further construction in the suit property. The defendant further pleaded that the plaintiff filed his counter and written statement in the said proceedings containing false, baseless and concocted allegations.
- II. The defendant further pleaded that the present suit is frivolous, vexatious and devoid of merit and the suit is neither maintainable in law nor supported by any genuine cause of action. The defendant further

pleaded that the plaintiff has initiated the present suit with an ulterior motive to grab the valuable property belonging to the defendant and thereby interfere with his lawful rights and possession over the property. The defendant further pleaded that there is no cause of action in the suit and as such, he prayed for dismissal of the suit with costs.

8. On the basis of above pleadings, the learned I Additional Junior Civil Judge, Eluru, framed the following issues for trial:

- 1) Whether, the defendant is liable to execute registered sale deed in favour of plaintiff?
- 2) To what relief?

9. During the course of trial before the trial Court, on behalf of the plaintiff, P.W.1 to P.W.3 were examined and Exs.A-1 to A-9 were marked. On behalf of the defendant, D.Ws.1 and 2 were examined and Exs.B-1 to B-19 were marked.

10. The learned I Additional Junior Civil Judge, Eluru, after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit. Felt aggrieved thereby, the unsuccessful plaintiff in the aforesaid suit filed the appeal suit in A.S.No.43 of 2019, on the file of the Principal District Judge, West Godavari District at Eluru, wherein the following points came up for consideration:

- 1) Whether Chandu Sankara Rao could prove the existence of the alleged agreement of sale (oral) with valid consideration entered with Varikuti

Siva Satyanarayana in the presence of elders and as such, he is entitled for the relief of specific performance for execution of regular sale deed?

2) Whether Chandu Sankara Rao has any grounds to interfere and set aside the impugned decree?

3) To what relief?

11. The learned Principal District Judge, West Godavari District at Eluru, i.e., the first appellate Judge, after hearing the arguments, answered the points, as above, against the plaintiff and dismissed the appeal suit with costs, filed by the plaintiff. Felt aggrieved of the same, the plaintiff in O.S.No.147 of 2014 filed the present second appeal before this Court.

12. Heard Sri V.V.N.Narayana Rao, learned counsel, appearing for the appellant and Smt. Nimmagadda Revathi, learned counsel, appearing for the respondents.

13. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. It is regulated in accordance with law. A second appeal preferred under Section 100 of C.P.C., could be admitted only when the appellant satisfies the Court that substantial question of law between the parties arise in the case. A proper test for determining whether a question of law raised in the case is substantial would be or whether it directly and substantially affects the rights of the parties and if so,

whether it is either an open question in the sense that it is not finally settled by the superior Courts or is not free from difficulty or cause for discussion of alternative views. In a case of ***Boodireddy Chandraiah v. Arigela Laxmi***¹, the Apex Court held that it is not within the domain of High Court to investigate grounds on which the findings were arrived at by the last Court of fact namely, the first appellate Court. In a case where from a given set of circumstances two inferences of facts are possible, one drawn by the lower appellate Court will not be interfered by the High Court in a second appeal. Adopting any other approach is not permissible. Where, the facts required for a point of law have not been pleaded, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. Mere appreciation of facts, documentary evidence and contents of documents cannot be held to be raising a substantial question of law.

14. The plaintiff having chosen to invoke the jurisdiction of this Court under Section 100 of Civil Procedure Code, it is for him to meet the above principles and satisfy the Court whether there exists any substantial question of law.

15. This second appeal is filed against the concurrent findings arrived by both the Courts below, therefore, the grounds urged in the second appeal are to be scrutinized to find out whether the appellant has shown any substantial question of law. The contention of appellant is that the judgment and decree of the trial Court as well as the first appellate Court are contrary to law and that the second appeal may be allowed by setting aside the judgment and decree

¹ (2007) 8 SCC 155

passed by both the Courts below i.e. the trial Court as well as the first appellate Court.

16. The case of the appellant/plaintiff is that the defendant is the absolute owner of the plaint schedule property and on 29.07.2009, he purchased an extent of Ac.0.20 cents from the defendant for an amount of Rs.70,000/-. He further pleaded that he did not insist on the defendant executing any document evidencing the agreement of sale and receiving a consideration of Rs.70,000/- and he himself constructed an RCC building in the plaint schedule property by spending an amount of Rs.12,00,000/- in the year 2009 itself. He further pleaded that he has been repeatedly requesting the defendant to fulfill his contract, but the defendant had been requesting the plaintiff to wait for some time without giving any reasons and that he is constrained to file the suit.

17. The alleged oral agreement between the plaintiff and the defendant and receipt of consideration of Rs.70,000/- is seriously disputed by the respondent/defendant. Therefore, the entire burden casts upon the plaintiff, who approached the Civil Court for seeking relief of specific performance of agreement of sale. The plaintiff has to plead and prove that he obtained an oral agreement of sale from the defendant on 29.07.2009. Even as per the own case of the plaintiff herein, the defendant is not the registered owner of the plaint schedule property by the date of 29.07.2009.

18. In order to prove the case of the plaintiff, the plaintiff relied on the evidence of P.W.1 to P.W.3. The appellant herein is the plaintiff in the suit and P.W.1 is the plaintiff. It is the specific case of the plaintiff that he paid the consideration of Rs.70,000/- in the presence of P.W.2 and P.W.3. But, P.W.2 and P.W.3 admitted in their evidence in cross-examination that they have no personal knowledge about the offer of the sale of the plaint schedule property of the defendant and they pleaded ignorance about the conversation that took place between the plaintiff and the defendant in respect of the alleged sale transaction and they also asserted that they do not know about the actual day and week when the plaintiff constructed the structure in the plaint schedule property. There is no whisper in the evidence of P.W.2 and P.W.3 about the offer of sale of the plaint schedule property by the defendant. Furthermore, P.W.1 himself admitted that by the time when the defendant offered to sell the plaint schedule property, none were present. Admittedly, no material is placed by the appellant to show that there was an agreement between him and the defendant in respect of the purchase of the plaint schedule property and that he paid an amount of Rs.70,000/- under an oral agreement of sale to the defendant. There is no whisper in the plaint that there was a mutual agreement between the plaintiff and the defendant. It is well settled that an agreement must create rights and obligations between both the parties. In the case at hand, the plaintiff failed to prove the alleged agreement between himself and the defendant.

19. The learned counsel for the appellant would contend that both the Courts below failed to consider that the defendant was not ready to execute a sale deed in favour of the plaintiff. As could be seen from the averments in the plaint, the plaintiff pleaded that he has been requesting the defendant to fulfill his part of the contract, but the defendant requested the plaintiff to wait for some time. Admittedly, there is no oral evidence to show that the plaintiff herein repeatedly requested the defendant and the defendant postponed execution of the regular registered sale deed. There is no evidence on record to show that the plaintiff herein issued a legal notice to the defendant to perform his alleged part of the contract. In the case at hand, the appellant failed to prove that there was a valid agreement between himself and the defendant. Unless and until the plaintiff in a suit for specific performance of agreement of sale proves that there is a valid agreement between both the parties, the question of deciding readiness and willingness does not arise and the question of granting relief of specific performance of oral agreement of sale will arise when there is an agreement between both the parties to the suit.

20. As per the own case of the plaintiff herein, the defendant herein is not the registered owner of the plaint schedule property by the date of the alleged oral agreement of sale dated 29.07.2009. As noticed supra, the alleged oral agreement of sale and also payment of an amount of Rs.70,000/- to the defendant by the plaintiff is not at all proved by the appellant/plaintiff. Even as per the own case of the plaintiff, the alleged oral agreement is dated

29.07.2009. But the plaintiff filed the suit in the year 2014, i.e. after five (05) years of the alleged oral agreement of sale. It was pleaded by the plaintiff in the plaint that he issued a legal notice dated 29.07.2013 to the defendant and on 11.09.2013, the defendant issued a reply with false allegations to the plaintiff herein. But for the reasons best known to the plaintiff, the said notices were not produced by the appellant/plaintiff.

21. Learned counsel for the appellant placed a case law in ***Hero Vinoth (Minor) Vs. Seshamma***², wherein the High Court of Bombay held as follows:

“24. The principles relating to Section 100 CPC, relevant for this case, may be summarized thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the

² (2006) 5 Supreme Court Cases 545

law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

22. Having regard to the reasons assigned, this Court is satisfied that the concurrent findings of fact recorded by both the Courts below on all the issues/points in favour of the defendant and against the plaintiff do not brook interference and that both the Courts below are justified in dismissing the suit of the plaintiff. The findings of fact recorded by both the Courts below were based on proper appreciation of evidence and the material on record and there was neither illegality nor irregularity in those findings and therefore, the findings do not require to be upset. Further, the existence of a substantial question of law is a sine qua non for the exercise of jurisdiction by this Court as per Section 100 of Code of Civil Procedure. The questions raised, strictly speaking, are not even pure questions of law, let alone substantial questions of law.

23. Viewed thus, this Court finds that none of the questions raised are substantial questions and there is no subsistence in the questions raised and that therefore, the second appeal is devoid of merits and is liable for dismissal

at the stage of admission. The law is well settled that a second appeal shall not be admitted if no substantial question of law arises for consideration and when no substantial question of law is involved. The view of this Court is reinforced by the ratio laid down by the Apex Court in the case of ***Gurdev Kaur v. Kaki***³. In the case on hand, as stated supra, this Court finds after careful examination of the pleadings, evidence and contentions that no substantial question of law is involved, this second appeal is liable for dismissal at the stage of admission, in view of narrow compass of Section 100 of Civil Procedure Code.

24. In the result, the second appeal is dismissed at the stage of admission, confirming the judgment and decree of both the Courts below. Pending applications, if any, shall stand closed. No costs.

V. GOPALA KRISHNA RAO, J.

Date: 24.06.2026

SRT

³ AIR 2006 SC 1975