

APHC010139642014



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

[3365]

TUESDAY ,THE TWENTY THIRD DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

FIRST APPEAL NO: 486/2014

Between:

Puli Varalakshmi

...APPELLANT

AND

Puli Govinda Reddy

...RESPONDENT

Counsel for the Appellant:

1.P RAJKUMAR

Counsel for the Respondent:

1.VELIVELA VEERARAGHAVIAH

SUBMITTED FOR APPROVAL:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to
see the fair copy of the Judgment? | Yes/No |

Dr. V.R.K.KRUPA SAGAR, J

*** HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

+ FIRST APPEAL NO: 486/2014

% 23.04.2024

Between:

Puli Varalakshmi

...APPELLANT

AND

Puli Govinda Reddy

...RESPONDENT

! Counsel for the Appellant(s) : Sri P. Raj Kumar

^ Counsel for Respondent(s) : Sri P. Veera Raghavaiah

And

Sri K. Srinivas

< Gist:

> Head Note:

? Cases referred:

- 1. 2022 SCC Online SC 840**
- 2. 2022 SCC Online SC 71**
- 3. (2020) 3 SCC 280**

The Court made the following Judgment:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR
APPEAL SUIT No.486 of 2014

JUDGMENT:

1. Defendant in O.S.No.226 of 2008 preferred this appeal under section 96 CPC impugning the judgment dated 02.07.2014 of learned Principal Senior Civil Judge, Gajuwaka. Respondent herein is the plaintiff in the said suit. O.S.No.226 of 2008 is a suit for specific performance of an agreement for sale with an alternative relief of refund of advance sale consideration along with interest and for costs and such other reliefs.

2. The appellant has been owning 2,222 square yards of vacant site in Chinagantyada Village. Her husband is Sri P. Satyanarayana Reddy. The respondent/ plaintiff Sri P.Govinda Reddy is the younger brother to Sri P. Satyanarayana Reddy and thus is brother-in-law for the appellant/ defendant. The controversy revolves around 1,111 Square Yards of the vacant site along with an office room situated therein alleging that his sister-in-law executed an agreement for sale dated 16.10.2003 in his favour and thereafter failed to execute registered sale deed, the respondent/ plaintiff filed the suit. Defendant filed a written statement and resisted the claim raising various contentions. Learned trial court settled the following issues for trial: -

1. Whether the plaintiff is entitled for specific performance of contract of sale or in the alternative for recovery of Rs. 6,73,666/- with 6% interest per annum towards interest?

2. To what relief?

Plaintiff testified as PW.1. One of the attestors to the agreement for sale testified as PW.2. The scribe of the document testified as PW.3. The agreement for sale is Ex.A1. Earlier to the institution of the suit, plaintiff got issued notice dated 01.09.2008 as per Ex.A2 and it came returned unserved with a postal endorsement that the “addressee/ appellant refused to receive it” as per Ex.A3. As against the above evidence, defendant/ appellant testified as DW.1 and her husband testified as DW.2. No documents were exhibited for defendant.

3. On considering the entire evidence on record and the contentions raised on both sides, the learned trial court recorded its findings that Ex.A1 was executed by defendant/ appellant in favour of plaintiff/ respondent and the vendor received the entire sale consideration under Ex.A1. It further held that even on assessment of equities, it found that the primary relief for specific performance is deserved. Accordingly, it decreed the suit in favour of the plaintiff in the following terms: -

“In the result, plaintiff is entitled for a decree for specific performance of agreement of sale dated 16.10.2003. It is shown that the plaintiff paid the entire sale consideration of Rs.5,00,000/- and it is also shown the plaintiff is ready and willing to come for registration. The defendant is ordered to execute a regular sale deed within 45 days of passing of decree upon the plaintiff duly informing the defendant the

suitable date for getting the sale registered. The suit decreed with costs.”

4. Aggrieved by it, the defendant filed the present appeal. Sri P.Raj Kumar, learned counsel for appellant and Sri P. Veera Raghavaiah and Sri K.Srinivas, the learned counsel for respondent submitted their respective arguments.

5. The principal contentions of appellant are that the respondent/ plaintiff was a minor and had no source of income and had never paid the alleged sale consideration of Rs.5,00,000/- and that there have been disputes between the respondent/ plaintiff and his father on one side and the husband of the appellant on the other side and that the appellant had other assets and thriving business and there was no need for her to sell the property covered by Ex.A1. The learned counsel further contended that by the averments in the written statement and by her evidence as DW.1, the appellant denied execution of Ex.A1 agreement for sale and denied signature on it attributed to her and that she has always been subscribing her signature in English language whereas the impugned Ex.A1 agreement for sale contains signature in Telugu language which does not belong to her and the respondent/ plaintiff failed to produce any evidence contrary to that. Learned counsel further argued that the evidence led by respondent/ plaintiff is mired in inconsistencies. That the agreement for sale is of the year 2003 and the suit was filed in the year 2008 and that is also indicative of the fact that the respondent/ plaintiff has not been ready and willing to obtain a registered sale deed and that as the prices of landed properties

have been increasing manifold and in the backdrop of disputes among family members, the respondent/ plaintiff along with his father got Ex.A1 fabricated and sued this appellant without any reason. Learned counsel submits that the learned trial court totally failed in assessing the relative merits of the evidence and prays this court to set aside the judgment that is impugned in this appeal.

6. As against it, the learned counsel for respondent/ plaintiff argued that the parties to the litigation are so closely related and that the respondent/ plaintiff did not and had no reason to fabricate Ex.A1. That the evidence on record would show that the appellant is an educated person and is capable of putting her signature in Telugu language and only to avoid her obligations she has been disputing the agreement for sale. That the disputes that are alleged among family members were not there by the time Ex.A1 was executed. The respondent/ plaintiff did business along with his father and therefore had capacity to pay the sale consideration which in fact was paid and is evidenced by Ex.A1 and that the learned trial court appropriately considered the evidence on record and rightly reached to correct conclusions and there is no warrant for interference and seeks dismissal of the appeal.

7. On 23.02.2024 and 07.03.2024, the learned counsel on both sides argued this appeal. It is at that stage appellant filed I.A.No.1 of 2024 seeking for reception of additional evidence in the form of five documents.

8. For respondent a counter was filed. The documents that are sought to be introduced are to show that the appellant in her earlier transactions subscribed her signature in English language and to probabalize that contention these documents are sought to be filed. In the counter affidavit filed for respondent strong protest is raised stating that no reason is made out for not filing these documents earlier.

9. The learned counsel on both sides submitted arguments in the appeal as well as the application for additional evidence. The following points fall for consideration: -

- 1. Whether evidence on record was improperly appreciated by the trial court and it committed an error in its finding that Ex.A1 agreement for sale was proved?**
- 2. Whether a case is made out in terms of Order XLI Rule 27 CPC by the appellant for reception of additional evidence?**
- 3. Whether the judgment of the trial court is riddled with incorrect and perverse observations leading to wrong conclusions?**

POINTS: -

The appellant is vendor and the respondent is purchaser. Ex.A1 agreement for sale is at the center of controversy. The descriptive particulars of parties as mentioned in this document indicate that the vendor is a resident of Gajuwaka and the

intending purchaser is a resident of Amaravilli. The property that was transacted was situated in Autonagar of Visakhapatnam town. This Ex.A1 consists of two sheets of stamp papers purchased by the intending purchaser and they were purchased from a stamp vendor at Tuni. It was made on 16.10.2003. It is an un-registered non-possessory agreement for sale. The sale consideration is mentioned as Rs.5,00,000/- and it is recited that the intending purchaser paid the entire sale consideration and the vendor received the entire sale consideration and this payment of sale consideration occurred simultaneously at the time of making of Ex.A1. The cause of sale is mentioned as family needs and business investment. It further recites that as and when the intending purchaser seeks registration of a regular sale deed, the vendor would do it at the expenses of the intending purchaser. On both the papers, there is signature of the vendor in Telugu language both for surname and body name. It bears the signature of two attesting witnesses and that of the scribe of the document. The recitals in this document show that the vendor acquired this property and has been in possession and enjoyment of this property and that the property had no encumbrance and was never mortgaged. There is no mention about the source of title of the vendor. It does not contain any recitals about furnishing of necessary documents indicating title by the vendor to the vendee either at the time of the document or earlier to it and that it also does not mention about any promise to hand over such documents at the time of execution of regular registered sale deed.

10. Though the entire sale consideration is stated to have been paid on 16.10.2003 at the time of making Ex.A1, it is clear that soon thereafter the deal did not translate itself into execution of any registered sale deed. For the first time, on 01.09.2008, which is nearly after five years, the intending purchaser issued Ex.A2 notice to the vendor demanding for execution of registered sale deed. As evidenced by Ex.A3, the vendor refused to receive it. That prompted the intending purchaser to present his plaint on 29.09.2008. It is in the backdrop of these physically verifiable material, the evidence on record required its consideration.

11. At the trial as well as in this appeal, one of the contentions raised was that the respondent/ plaintiff was a minor by the time of execution of Ex.A1. An agreement for sale creates obligations on both sides and a minor, in the eyes of law, is incapable of consenting and therefore a transaction through a contract should always be attended by the guardian. Thus, the contention raised has legal ramifications. Therefore, whether the respondent/ plaintiff was a minor or not is a matter of some importance. Appellant as DW.1 and her husband as DW.2 did not furnish the date of birth of the respondent/ plaintiff. Respondent/ plaintiff testified as PW.1 and it was elicited from his mouth that he was born on 13.02.1982. Ex.A1 agreement for sale is of the year 2003. If the date of birth furnished is correct, the respondent/ plaintiff was aged 20 years plus. It was suggested to PW.1 that he was born in the year 1984 which the witness denied. Even if it is taken that he was born in the year 1984, he was aged about 19 years by the time of Ex.A1 which was made in the year

2003. Therefore respondent/ plaintiff was not a minor by the time of Ex.A1 and therefore he was capable of entering into a contract for purchase of immovable property.

12. Another principal contention raised at the trial through pleadings and evidence as well as in this appeal is that the respondent/ plaintiff was only a student by the time of Ex.A1 and had no assets and no earnings and was incapable of paying the alleged sale consideration of Rs.5,00,000/- and Ex.A1 is devoid of consideration. The respondent/ plaintiff who deposed as PW.1 was accepted to speak on these aspects since such allegations were made in the written statement itself. While deposing as PW.1 in his examination in chief affidavit he did not advert to these aspects and did not disclose any facts to meet those contentions. While cross-examining him, the appellant elicited the following facts from PW.1/ respondent/ plaintiff.

- In the year 2003, I was studying intermediate.
- During that period, I did not have any property fetching any income.

13. Thus, PW.1 made it clear that it was during his student-hood days Ex.A1 transaction took place and by then he for himself had no assets and no revenue earned from any such assets. That brings out the question as to how he collected Rs.5,00,000/- and paid it to vendor. As mentioned earlier, he did not positively give a statement in his examination in chief about this aspect. During cross-examination, he volunteered a statement saying that he along with his father did prawn

business. He admitted that he did not have any document to show that he ever participated in such prawns business. He also admitted that except this Ex.A1, he had no other material to indicate he had Rs.5,00,000/- and he had paid that to vendor. Learned counsel for respondent/ plaintiff contended that the father of respondent furnished the sale consideration to the respondent and that was paid to the appellant/ vendor. There is no merit in this contention since the said contention has no basis in the pleadings and evidence. Plaintiff had no reference to source of money for plaintiff/ respondent/ purchaser. Before the trial court the suit was pending for more than five years and nothing prevented him from furnishing necessary details about his prawns business and from examining his father or others in proof of his source of funds for the alleged payments allegedly made at the time of entering into Ex.A1 agreement for sale. He did not do it. Therefore, from the material on record it seems reasonable to conclude that the respondent/ plaintiff did not have necessary funds and Ex.A1 agreement for sale is devoid of consideration. There is clear lapse on part of the learned trial court in paying any attention on this vital aspect of the case.

14. One of the contentions raised before the trial court as well as here is about absence of any need for vendor to sell this property at that time to this plaintiff. That was spoken to by DWs.1 and 2. By cross - examining PW.1, it was elicited that his brother/ husband of appellant/ DW.2 was possessed of properties at Gajuwaka even by the year 2003 and that DW.2 was doing business at Gajuwaka. Thus, the relative probability of the above

facts do indicate that the appellant and her husband had a business giving rise to regular income and they also had immovable properties and thus the need to meet family expenses as recited under Ex.A1 may or may not have been in existence at that time. On the other hand, it is already seen that the respondent/ plaintiff was only a student and did not have assets yielding any revenue and there is no evidence showing that his father had given him Rs.5,00,000/- to pay to his sister-in-law to enable her to meet her financial needs.

15. Coming to the actual execution of Ex.A1 and exchange of sale consideration on the date of Ex.A1, there is evidence of PWs.1 to 3. All the three witnesses stated that in their presence, the vendor/ appellant received Rs.5,00,000/- from the respondent/ plaintiff and then she subscribed her signature on Ex.A1. Learned trial court considered those pieces of evidence and recorded its finding that Ex.A1 is a truthful document and under that document full consideration was received by the appellant. In the opinion of this court, these findings of the learned trial court cannot be supported for various reasons which are to be narrated now. The recitals in Ex.A1 show that consideration was passed simultaneously at the time of execution of Ex.A1. Where was this document made and executed is not mentioned in Ex.A1. PW.2/ the attesor said in his evidence that plaintiff is his friend and the defendant's husband is also his friend. He said that he attested Ex.A1 at Tuni. PW.1/ respondent/ plaintiff in his cross-examination stated that one of the attestors is Sri V.Pratap Reddy. The said Sri V. Pratap Reddy and Sri

Satyanarayana Reddy (DW.2/ brother of respondent) came to Gajuwaka and obtained the signature of the defendant/ appellant herein on Ex.A1. Thus, according to him, this appellant subscribed her signature on Ex.A1 at Gajuwaka. This stands in conflict with the evidence of PW.2 who said that he witnessed this appellant signing this Ex.A1 at Tuni. Thus, there is no unanimity from the evidence led by plaintiff/ respondent about the place of execution of Ex.A1.

16. PW.2 stated that the sale consideration of Rs.5,00,000/- was paid in cash and it was through currency notes of the denomination Rs.100/- and Rs.500/- and he saw it. PW.3/ the scribe in his cross-examination stated that he saw physical cash being passed from plaintiff to defendant in the denomination of the currency notes was Rs.500/- and Rs.1000/- in bundles. Thus, both have seen it differently. Both of them said that this physical consideration was passed on the date of Ex.A1. Whereas, PW.1 in his cross-examination made the following statement: -

“two months prior to the date of Ex.A1 I paid consideration amount to the defendant. I did not obtain any receipt at that time. It is not mentioned in Ex.A1 that consideration amount was received two months prior to the date of this execution”.

Thus, the very person who sued the vendor said on oath that two months earlier to execution of Ex.A1 itself he paid the entire sale consideration to vendor. If that is accepted, the evidence of PW.2 and 3 that they witnessed cash being

exchanged at the time of Ex.A1 cannot co-exist. Therefore, there is no unanimity in the evidence led by plaintiff/ respondent about the date of passing of consideration.

17. It is not that the trial court did not notice all these vital discrepancies. At paragraph No.26 in the impugned judgment the learned trial court mentioned that there is such variance in the evidence of PW.1 to 3 with regard to payment of consideration and execution of Ex.A1 and then narrated those discrepancies. Then at paragraph No.27, it made its assessment and said that it is not the stand of the defendant that the signature in Ex.A1 is not her signature. Then it went on to say that once it is her signature that is there on Ex.A1 then nothing else is required to be considered. It is in that manner, it did not give any value to those pitfalls in the evidence. To say the least, it is a perverse way of deciding the lis on part of the trial court. Paragraph No.9 of the written statement reads: -

“The defendant further submit that the defendant never executed any sale agreement in favour of the plaintiff at any point of time.”

At paragraph No.11 of her examination in chief affidavit as DW.1, she reiterated the same. All that is enough denial of execution of Ex.A1. In every suit for specific performance of a contract, the court is required to pose un-toe itself - whether there is a valid agreement for sale between the parties to the agreement. The approach of the learned trial court in finding answer to such question went on the assumption that Ex.A1 is a

true and genuine document. It grossly erred in not comprehending the actual defence raised by the defendant/appellant. It did not furnish proper reason as to how the vital discrepancies in the evidence of witnesses could be said to have probalised the case of intending purchaser. It seems to have understood the principle that one who has taken the defence that agreement for sale is fabricated must prove that it is fabricated and on failing to prove that contention it must be accepted by the court that the document in question is proved. Such an approach of the trial court is incorrect.

18. One of the attestors is Sri V. Pratap Reddy. He is junior paternal uncle to the vendor. Thus, he is related to both parties to the suit. He did not testify in court. At paragraph No.27 of its judgment, the learned trial court observes that such a close relative would not subscribe his signature to a document if the document is false. Thus, without the said witness testifying on a fact, the court concluded on vital facts based on no evidence. Could it not be said that plaintiff withheld the evidence of such a relative since he was afraid that the relative would not support his case based on Ex.A1. That is also an equally possible dimension to the issue. Learned trial court did not feel to consider for a moment the various possibilities. At paragraph No.27, the learned trial court also made an observation that execution of Ex.A1 has to be believed because PW.1/ plaintiff is younger to DW.2/ husband of appellant. To say the least, it is atrocious. It is unfortunate that the learned trial court concluded to believe the disputed agreement for sale because the intending purchaser is

younger to the husband of the vendor. It suits neither common sense nor logic nor law. Paragraph No.34 of the impugned judgment makes one wonder whether the learned trial court appropriately comprehended the evidence or not. For benefit, a few sentences are required to be extracted here: -

” It is pleaded and deposed by PW.1 that the plaintiff purchased 2,222 square yards of property for consideration of Rs.7,00,000/-. It is shown that the plaintiff has sold the property for a consideration of Rs.5,00,000/-.....It is shown that the date of the sale deed in favour of the plaintiff is dated 22.11.2002. Suit agreement for sale is dated 16.10.2003. It is shown that the plaintiff was getting higher returns within one year.”

19. The above pieces of material from the impugned judgment speak about plaintiff in the suit as the owner of the property which is totally incorrect and perverse since it is the defendant in the said suit who was owner of the property. The discussion in other paragraphs and paragraph No.33 of the impugned judgment is that when the defendant failed to show that her signature was fabricated, her defence that she did not receive any consideration pales into insignificance. Thus, the trial court held the opinion that even when there are specific assertions in the written statement that the vendor neither received the consideration nor executed agreement for sale, the trial court did not think it fit to examine these two aspects separately and then arrive at respective conclusions.

20. It has been the law that the intending purchaser must plead and prove his readiness and willingness. Readiness means the capacity of the purchaser to perform the contract which would indicate his financial position. Willingness relates to the conduct of the plaintiff. For a period of limitation of three years that is provided by the statute, does not mean that a purchaser can wait for one or two years and file a suit and obtain specific performance. That the time is made essence of the contract or not, the court may infer that it is to be performed in reasonable time and that has to be assessed from the surrounding circumstances vide ***U.N.Krishnamurthy V. A.M.Krishna Murthy***¹. The foundation of a suit for specific performance lies in asserting whether the plaintiff has come to the court with clean hands and has, through his conduct, demonstrated that he has always been willing to perform the contract. The readiness, which is the legal requirement to be proved casts obligation on the intending purchaser to show his financial capacity to pay the consideration. He must disclose to the court how he mustered the funds or how he would collect the funds. In cases of total inaction for years together, the relief of specific performance does not augur well while prices of the properties have been galloping vide ***Shenbagam V. K.K.Rathinavel***². A suit for specific performance requires attention to the conduct of the plaintiff prior

¹ 2022 SCC Online SC 840

² 2022 SCC Online SC 71

to and after the filing of the suit along with other attending circumstances vide **C.S. Venkatesh V. A.S.C Murthy**³.

21. Scrutinizing the material on record through the above highly cherished principles of law makes the matter very clear that the respondent/ plaintiff during his student-hood had no assets and revenue and had no business giving rise to income and had not shown minimum evidence that he was possessed of Rs.5,00,000/- and failed to show any evidence that his father supported him for that money and the evidence brought on record is totally discrepant as to the passing of consideration and the place of execution of the document. Learned trial court committed gross errors in appreciation of facts as well as in application of its logic. In the considered opinion of this court Ex.A1 agreement for sale is not proved to have been executed by the appellant and is not proved to have been supported by consideration. Total inaction on the part of the respondent/ plaintiff for incurring necessary registration charges for about five years is indicative of the fact that he is not ready and willing to perform his part of the contract. Learned trial court delivered the judgment which is perverse and could not be supported.

22. One of the contentious issues between the parties was about the language in which the appellant subscribes her signature. According to appellant, she signs in English language. Ex.A1 bears the signature in Telugu language. The attestor and

³ (2020) 3 SCC 280

the scribe/ PW.2 and PW.3 stated that they saw her signing Ex.A1. In that way, plaintiff/ respondent proved the disputed signature. During trial, it was well within the competence of the appellant/ defendant to adduce necessary evidence showing that she has always been subscribing her signatures in English language and not in Telugu language. She did not bring on record any such evidence. However, it is at this appellate stage, she intended to bring such evidence and for that purpose, she filed I.A.No.1 of 2024 to bring on record the following documents.

1. Registered sale deed dated 30.07.2008
2. Registered lease deed dated 15.05.2010
3. Income tax return verification form for assessment year 2020-2021
4. Memorandum for extension of equitable mortgage by deposit of title deeds dated 26.02.2011
5. Housing loan closure letter issued by the State Bank of Hyderabad dated 01.06.2016

The proposed documents bear her signature in English language. Plaint in the suit was filed on 29.09.2008 as seen from the copy of the decree available on record. Many of the proposed documents came into existence after filing of the suit as they pertain to the years 2010, 2011, 2016 and 2021. Therefore, they cannot be taken into consideration. One document is dated 30.07.2008 which is earlier to the date of institution of the suit. That document was very much available for the appellant to

produce in evidence during trial. She did not file it during trial. She has not explained the cause of her failure to file the same during trial. Thus, in terms of Order XLI Rule 27 CPC, no case is made out for reception of such additional evidence. Therefore, I.A.No.1 of 2024 stands dismissed.

23. That the material on record makes it clear that Ex.A1 is devoid of consideration and its due execution is not proved. Therefore, neither primary relief of specific performance nor the alternative relief of refund of money could have been granted by the trial court.

24. Thus, points 1 and 3 are answered in favour of the appellant. Point No.2 is held against the appellant.

25. In the result, this appeal is allowed. There shall be no order as to costs. Consequently, judgment dated 02.07.2014 in O.S.No.226 of 2008 of learned Principal Senior Civil Judge, Gajuwaka is set aside and O.S.No.226 of 2008 stands dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 23.04.2024

Dvs

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

APPEAL SUIT No.486 of 2014

Date: 23.04.2024

Dvs