

Jonnalagadda Suryakantham Vs. Ragani Sathiyyamma

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Court : Andhra Pradesh

Decided On : Oct-12-1993

Reported in : 1994(1)ALT93

Judge : P. Venkatarama Reddi, J.

Acts : [Specific Relief Act, 1963](#) - Sections 16; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100

Appeal No. : Second Appeal No. 468 of 1993

Appellant : Jonnalagadda Suryakantham

Respondent : Ragani Sathiyyamma

Advocate for Pet/Ap. : K.V. Subramanya Narusu and ;K.S.R. Murthy, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

P. Venkatarama Reddi, J.

1. The second appeal arises out of the suit for specific performance of an agreement of sale dated 3-6-1973 in respect of vacant land. The suit was decreed and in appeal, the judgment was confirmed. The second appeal is filed by the defendant. Ex.A-2 is the sale agreement.

2. The case of the plaintiff is that on the date of execution of the sale deed itself, the defendant received a total consideration of Rs. 10,000/- in cash and the possession of the plaint schedule property was delivered. The defendant agreed to execute the sale deed as and when demanded by the plaintiff. As the plaintiff was in possession and enjoyment, the plaintiff did not press the defendant to execute the sale deed for considerable time. However, one year prior to the suit, the plaintiff requested the defendant to execute the sale deed. On 30-5-1979, the plaintiff purchased the stamp paper worth Rs. 1,000/- and got the sale deed typed. When the plaintiff approached the defendant on the night of 30-5-1979, the defendant promised to come to the plaintiff's place on 1-6-1979 and sign and register the sale deed, but the defendant did not turn up. The plaintiff sent his son on 2-6-1979. At that juncture, the defendant and her husband informed the plaintiff's son that they were not prepared to execute the sale-deed. Hence the suit was filed in the year 1979.

3. The case set up by the defendant is that Rs. 10,000/- was not paid on the date of agreement and it was only promised to be paid and the possession was to be delivered on receipt of the same. The property remained in possession of the defendant. The plaintiff informed the defendant orally that she was not interested in taking the sale-deed and promised to return the sale agreement and the original sale-deed dated 15-2-1971 executed by the defendant's vendor. the defendant denied the allegation that she agreed to sign and register the sale-deed on 1-6-1979.

4. The Courts below, having regard to the specific recital in the agreement of sale regarding the payment of the entire sale consideration and delivery of possession, the consistent version of P.Ws. 1 and 2 and the non-examination of the defendant came to the conclusion that the entire sale consideration was paid as stated in the Agreement and that the defendant refused to execute the sale deed on 1-6-1979. The Courts below also took into account the fact that the link document (Ex.A-1) was admittedly handed over to the plaintiff and that the defendant never demanded back the said document nor the Agreement to sell. If the defendant was aware that the plaintiff was not interested in the sale transaction, in the normal course, he should have asked for return of the documents. These are essentially findings of fact based on evidence which cannot be interfered with in the second appeal.

5. The learned Counsel for the appellant submits that by virtue of Section 16(c) of the Specific Relief Act (hereinafter referred to as 'the Act'), there must be a specific averment that the plaintiff has been ready and willing to perform the essential terms of the contract which are to be performed by him. He cited the passage in Prem Raj v. D.L.F. Housing and Construction (Private) Limited, : [1968]3SCR648 . It was observed therein that in a suit for specific performance, the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation, the suit is not maintainable. The same principle which flows from the express provision contained in Section 16(c) of the Act was reiterated in Abdul Khader Rowther v. Sara Bai, : 1989(43)ELT797(SC) .

6. The above proposition based upon Section 16(c) of the Act admits of no doubt. But in the present case, the said principle has no application. No doubt, there is no specific averment to the effect that the plaintiff is ready and willing to perform his part of the contract but that is really unnecessary in the background of the facts of this case. According to the plaintiff, he had already paid the entire amount of sale consideration and obtained possession of the property. It is also the case of the plaintiff that she purchased the stamp-papers, got the sale deed written in the hope that the defendant would sign the same as promised. This version of the plaintiff has been believed by both the Courts. In a second appeal, it is not permissible to upset those findings.

7. In the circumstances of the case, the failure to make a specific averment cannot be put against the plaintiff-respondent. Section 16(c) of the Act presupposes that certain essential terms of the contract remain to be fulfilled by the plaintiff who sues for specific performance. If the plaintiff had already performed the obligation under the contract and he has nothing more to do to comply with the essential terms of the contract, the averment that he is ready and willing to perform his part of the contract has really no meaning and it would be wholly inappropriate. The averment contemplated by Section 16(c) of the Act cannot be regarded as a ritualistic formality. I do not think that Section 16(c) intends to give primacy to form, ignoring the substance. A pedantic repetition of what is mentioned in Section 16(c) of the Act is not what the law requires. The averment should suit the facts of the case. For instance, in the Supreme Court case cited by the learned Counsel, the plaintiff wanted to avoid the contract on the ground that it was void in law and at the same time asked for an alternative relief by way of specific performance. In such a situation, naturally, an averment that the plaintiff was ready and willing to perform the obligations under the contract was considered to be essential. In none of the cases cited by the learned Counsel, including the decision in Nallaya Gounder v. P. Ramaswami Gounder, the situation like the one obtaining in the present case had arisen. On the facts of those cases, a specific averment was warranted. But the facts of this case stand apart.

8. I, therefore, see no merit in the second appeal and I do not find any substantial question of law to be decided in the second appeal. Hence it is dismissed at the admission stage.