

**THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI**

**SECOND APPEAL No.562 of 2018**

**JUDGMENT:**

The plaintiff is the appellant in the above second appeal. The present second appeal is filed against the judgment and decree dated 29.11.2017 in A.S.No.14 of 2015 on the file of XI Additional District and Sessions Judge, Tenali, confirming the judgment and decree dated 05.12.2014 in O.S.No.259 of 2011 on the file of Principal Senior Civil Judge, Tenali.

2. For the sake of convenience, the parties shall be referred to as they are arrayed in the O.S.No.259 of 2011.

3. The plaintiff filed the suit seeking specific performance of agreement of sale dated 23.07.2011 or alternatively for refund of advance sale consideration of Rs.90,000/- with interest and costs etc. In the plaint, it was contended *inter alia* that defendants 1 and 2 entered into a contract of sale dated 23.07.2011 agreeing to sell the plaint schedule property on bill contract rate of Rs.4,10,000/- by receiving advance sale consideration of Rs.90,000/-; that as per the terms of agreement of sale, balance sale consideration is to be paid by the plaintiff within 30 days and thereafter, defendants 1 and 2 have to execute registered sale deed either in favour of plaintiff or his nominees; that if the plaintiff fails to pay balance consideration within the stipulated time of 30 days, defendants 1 and 2 are entitled to interest @24% p.a. on balance sale consideration; that the plaintiff is always ready and willing to

perform his part of contract, but defendants 1 and 2 failed to perform their part of contract; that plaintiff got issued legal notice dated 02.08.2011 calling upon the defendants 1 and 2 to execute sale deed by receiving balance sale consideration; that defendants 3 and 4, being daughters of 1<sup>st</sup> defendant and sisters of 2<sup>nd</sup> defendant, got issued a reply notice dated 11.08.2011; that defendants 1 and 2 also got issued a reply notice dated 19.08.2011, wherein it was stated that they alone cannot sell the entire schedule property and ready to return the amount of Rs.90,000/- and further requested the plaintiff to return the agreement amount; that the terms of agreement of sale dated 23.07.2011 are binding on defendants 3 and 4 and hence, filed the suit.

4. Defendants 1 and 2 filed written statement and contended *interalia* that they informed even before the execution of agreement of sale about the share of defendants 3 and 4 in the schedule property, however, defendants 3 and 4 did not agree to sell their share; that defendants 1 and 2 are ready to return the advance of Rs.90,000/- and in fact, the same was informed through legal notice dated 19.08.2011 and prayed to dismiss the suit.

5. Defendants 3 and 4 filed written statement and contended that the plaint schedule property belonged to their father Shaik Namruddin and after his death, all the defendants succeeded to the property; that defendants 1 and 2 have no exclusive right to

alienate the schedule property and prayed the Court to dismiss the suit.

6. During the course of trial, plaintiff examined himself as P.W.1, got examined P.Ws.2 and 3 and Exs.A-1 to A-11 were marked. On behalf of defendants, 2<sup>nd</sup> defendant examined himself as D.W.1, 4<sup>th</sup> defendant examined herself as D.W.2 and Exs.B-1 to B-6 were marked.

7. The trial Court on consideration of oral and documentary evidence vide judgment dated 05.12.2014 granted alternative relief of refund of Rs.90,000/- with interest @24% p.a. from 23.07.2011 till the date of filing of suit and subsequent interest @12% p.a. from the date of suit till the date of decree and thereafter with interest @6% p.a. till realization against defendants 1 and 2. Suit claim against defendants 3 and 4 was dismissed without costs.

8. Aggrieved by the said judgment and decree, the plaintiff filed A.S.No.14 of 2015 on the file of XI Additional District and Sessions Judge, Tenali. The first appellate Court, being final fact finding Court, after framing necessary points for determination, dismissed the appeal *vide* judgment dated 29.11.2017. Aggrieved by the said judgment and decree, the present second appeal is filed.

9. Heard Sri P.A.Seshu, learned counsel for appellant.

10. Learned counsel for the appellant would contend that since the execution of Ex.A-1 is not denied by defendants 1 and 2, the Courts below ought to have decreed the suit. He would further contend that the appellant/plaintiff is always ready and willing to perform his part of contract and the agreement of sale is binding on defendants 3 and 4 also and thus, prayed the Court to allow the second appeal.

11. The following substantial questions of law arise for consideration:

**1) Whether the judgments of Courts below are vitiated in ignoring to consider as to the readiness and willingness of appellant/plaintiff?**

**2) Whether the plaintiff is entitled to relief of specific performance since D3 and D4 are not parties to the Agreement in view of Sec 17 of the Specific Relief Act?**

12. The undisputed facts are that suit schedule property in an extent of 49 sq. yards of vacant house site in Kolakaluru Gram Panchayat, Tenali Mandal, Guntur District, belonged to Shaik Namruddin. The said Namruddin died leaving behind him, 1<sup>st</sup> defendant (wife), 2<sup>nd</sup> defendant (son), defendants 3 and 4 (daughters). Defendants 1 and 2 executed Ex.A-1 and received Rs.90,000/-.

13. Since defendants 1 and 2 failed to perform their part of contract, legal notice dated 02.08.2011 was issued and thereupon, defendants 3 and 4 issued legal notice dated

11.08.2011 claiming share in the schedule property. D1 and D2 also issued separate reply notice.

14. The appellant, being P.W.1 during cross examination admitted that he is native of Kolakaluru village and he knew the original owner Shaik Namruddin from the beginning. Curiously, he pleaded ignorance when a question was put to him about the number of children to 1<sup>st</sup> defendant. He further deposed in his cross examination that defendants 1, 2 and Gaffoor, one of the attestors of Ex.A-1, told him that they would get the signatures of defendants 3 and 4, if necessary.

15. P.W.2 in his cross examination deposed that Shaik Namruddin died leaving behind him, defendants 1 to 4 as his legal heirs. P.W.3 deposed in his cross examination that defendants 3 and 4 were not available and hence, they did not sign the agreement.

16. The above cross examination of P.Ws.1 to 3 manifests that the plaintiff is aware of the right of defendants 3 and 4 in the suit schedule property, however, entered into agreement with defendants 1 and 2. The plaintiff did not take steps to get the signatures of defendants 3 and 4 on the agreement of sale. Going by the conduct of the appellant/plaintiff in not entering agreement with D3 and D4 having knowledge about their share disentitles him to get the relief of specific performance of contract.

17. Ex.A-1 agreement of sale is unenforceable, since the defendants 1 and 2 had no absolute right and title over the suit schedule property to sell the same in view of Section 17 of the Specific Relief Act, 1963. The plaintiff being native of the village, though aware of the share of defendants 3 and 4 in the suit schedule property, entered into agreement with defendants 1 and 2.

18. Considering all these aspects, the trial Court partly decreed the suit by granting relief of refund of amount of Rs.90,000/- with interest. The first appellate Court, independently considered the material available on record, both oral and documentary and dismissed the appeal vide judgment and decree dated 29.11.2014.

19. Findings of the fact recorded by the Courts below are neither perverse nor contrary to the evidence available on record, which warrants no interference of this Court under Section 100 of CPC. Though it was contended execution of sale agreement is admitted by D1 and D2, since D3 and D4 are also having share in the suit schedule property unless D3 and D4 are consented to alienate their share in the schedule property the agreement of sale do not bind them. In fact, a careful consideration of evidence on record manifests that plaintiff is also aware of the share of D3 and D4. Evidence of P.W.2 and P.W.3 also makes it clear about the interest of D3 and D4.

20. In view of the facts narrated supra and the findings recorded by Courts below no questions of law much less

substantial questions of law involved in the above appeal. Hence, the appeal is liable to be dismissed, however, without costs.

21. Accordingly, the second appeal is dismissed. No order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

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**SUBBA REDDY SATTI, J**

1<sup>st</sup> April, 2022

PVD

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