

***THE HON'BLE SMT. JUSTICE P.SREE SUDHA**

+ APPEAL SUIT No.486 OF 2015

% 21-08-2023

Vemula Kishtaswamy.

...Appellant

vs.

\$ Mirza Maqsood Baig.

... Respondent

!Counsel for the Appellant: Sri K.Raguveer Reddy

^Counsel for Respondent : Sri V.Rohith and

Sri Y.Neelakanta Reddy

<Gist :

>Head Note :

? Cases referred:

IN THE HIGH COURT FOR THE STATE OF TELANGANA

HYDERABAD

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APPEAL SUIT No.486 OF 2015

Between:

Vemula Kishtaswamy.

...Appellant

vs.

Mirza Maqsood Baig.

... Respondent

JUDGMENT PRONOUNCED ON: 21.08.2023

THE HON'BLE SMT JUSTICE P.SREE SUDHA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : -
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : -

JUSTICE P.SREE SUDHA

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA**APPEAL SUIT No.486 of 2015****JUDGMENT:**

This Appeal Suit is filed against the Judgment and Decree dated 29.04.2015 in O.S.No.69 of 2012 passed by the learned Family Court-cum-Additional District and Sessions Judge, Karimnagar.

2. Respondent/plaintiff filed a suit in O.S.No.69 of 2012 for Specific Performance of Agreement of Sale dated 04.08.2011 against the appellant/defendant. The trial Court examined P.Ws.1 to 3 and marked Exs.A1 to A16 on behalf of the plaintiff and also examined D.Ws.1 & 2 on behalf of the defendants, but no documents were filed on behalf of the defendants. Considering the oral and documentary evidence, decreed the suit in favour of the respondent/plaintiff and directed him to pay the balance sale consideration of Rs.5,32,327/- along with good will offered by him under Ex.A12 i.e., Rs.1,00,000/- with interest at 12% per annum from the date of suit till the date of deposit within one month, on such deposit appellant/defendant has to execute the regular sale deed in respect of the plaint schedule property. Aggrieved by the said Judgment, defendant therein preferred the present appeal.

3. Appellant mainly contended that respondent/plaintiff is not ready to perform his part of contract. He failed to comply the terms and conditions of the Agreement of Sale in paying the balance sale consideration, as such appellant cancelled the Agreement of Sale by duly issuing notice to the respondent, but the trial Court erroneously came to the conclusion that respondent/plaintiff is ready and willing to perform his part of the contract and the burden was put on the appellant/defendant to prove regarding the cancellation of the Agreement. Moreover, as per Ex.A11 Arbitration Award, respondent/plaintiff is not entitled to file the suit. The burden of proving is on the respondent/plaintiff, but it was shifted to the appellant/defendant erroneously. Respondent/plaintiff cannot depend on the weakness of the appellant/defendant. Therefore, requested the Court to set aside the Judgment of the trial Court.

4. The parties herein are referred as plaintiff and defendant as arrayed before the trial Court for the sake of convenience.

5. One Mirza Maqsood Baig/plaintiff filed a suit for Specific Performance against one Vemula Kishtaswamy/defendant. Plaintiff stated that he is having agricultural land in

Sy.No.132/B, 133 and 134 situated to east side of the defendant's land. The defendant is having agricultural lands abutting to Rajiv Rahadari main road. Plaintiff for the purpose of having a direct way from main road to his lands approached the defendant for the purchase of 15 ft width of land to reach the land of plaintiff (from hereinafter referred as 'Suit Schedule land'). After bargaining with the defendant, he agreed to sell the suit schedule land to plaintiff at Rs.1,900/- per Sq.yrd with a condition that defendant will include his 5 ft land towards south side of the suit land for using 20 ft land including suit land for himself and plaintiff jointly. Further defendant agreed that for 20 ft way including suit land, plaintiff is at liberty to permit the adjacent land owners by receiving amounts and defendant has no right to demand any amount from the adjacent land owners or from the plaintiff.

6. On 04.08.2011, defendant entered into an Agreement of Sale with the plaintiff agreeing to sell the said 15 feet width suit land starting from 100 ft Rajiv Rahadari road to the lands of the plaintiff at Rs.1,900/- per Sq.yrd and received Rs.2,00,000/- as earnest money and agreed to receive a part payment of Rs.3,00,000/- on or before 30.08.2011 and the balance payment shall be paid by the plaintiff on 30.02.2012 by

measuring the suit land and get the sale deed executed by the defendant on his name and defendant acknowledged the receipt of earnest money of Rs.2,00,000/-. Plaintiff stated that on 02.09.2011, he paid part payment of Rs.3,00,000/- to the defendant and on the backside of the Agreement of Sale, defendant executed the receipt of the said amount before the witnesses.

7. In the first week of February 2012, plaintiff requested the defendant to receive the balance sale consideration by measuring the suit schedule land and to execute the registered sale deed in his favour, but the defendant has not come forward on one or other pretext, as such plaintiff got issued legal notice dated 13.02.2012 and it was served upon defendant on 14.02.2012. Defendant after receiving the legal notice approached him personally and requested him to convene a Panchayat before the elders and on 22.02.2012, both of them along with their elders conducted a meeting and fixed the date of panchayat as 23.02.2012 and both the parties agreed to abide by the decision of the elders. Accordingly a document was affected on 22.02.2012, regarding conducting of panchayat on 23.02.2012 and it was signed by both the parties and their elders. On 23.02.2012, panchayat was held before the elders in

the presence of both the parties and in the said panchayat defendant demanded extra amount and plaintiff also agreed to pay Rs.1,00,000/- extra amount to the defendant. Accordingly, elders gave decision in writing on white paper on 23.02.2012 stating that plaintiff shall pay Rs.1,00,000/- to the defendant towards good will. The defendant shall measure the suit scheduled land and shall execute the registered sale deed at Rs.1,900/- per sq.yrd on or before 25.03.2012. The plaintiff is at liberty to take amounts from the adjacent land owners for the purpose of using the suit scheduled land as a way for their lands.

8. Plaintiff on the date of panchayat agreed to pay the total amount to the defendant or to keep the said amount before the elders, but the defendant and elders stated that after measuring the suit land defendant will receive the balance sale consideration. Plaintiff approached him for several times for measuring the suit land and to receive the balance sale consideration, but he avoided to measure the suit land and also to receive the balance sale consideration. On 29.03.2012, defendant got issued false legal notice against the plaintiff stating that plaintiff has not come forward to pay Rs.1,00,000/- extra amount along with the balance sale consideration, as he

was not having money with him. In fact, plaintiff was a business man and has business turn over in Crores of rupees, he was an Income Tax assessee and he was having fixed deposits and accounts in number of banks with amounts. He was ready and willing to perform his part of contract and ready to deposit the amount before the Court. Later, when he came to know that defendant was trying to sell the suit land, he approached the defendant on 08.04.2012 at his house and demanded him to execute the registered sale deed by receiving balance sale consideration, but he refused to perform his part of contract, as such he was constrained to file a Civil Suit. He requested the Court to direct the defendant to perform his part of contract by measuring the suit land and to execute the registered sale deed in his favour, by receiving the balance sale consideration as per the Agreement of Sale dated 04.08.2011 and in case of failure to do so by the defendant, the Court may execute the registered sale deed in his favour.

9. In the Written Statement filed by the defendant, he stated that he is the owner and possessor of the suit scheduled property covered by Sy.No.140 of Rangamapalli village of Peddapalli mandal. He also admitted that plaintiff got some land

towards eastern side of his land. As he wanted to have access to his land from the Rajiv Rahadari, he approached the defendant and requested him to sell his land for the purpose of having way measuring width of 15 ft and length of 326 ft in the month of August, 2011. Accordingly, he agreed to sell the required area at Rs.1,900/- per Sq.yds. At the time of settlement of sale consideration, defendant was called by the plaintiff to their house without the assistance of his family members and he was not given any chance to demand for the payment of actual market value. In fact, as on the date of Agreement of Sale, market value was more than Rs.5,000/- per Sq.yrd. Plaintiff hurriedly obtained his signatures on the Agreement of Sale and he thought that agreement was written for a sale consideration of Rs.5,000/- per Sq.yrd and it was reduced into writing on 04.08.2011. Accordingly, plaintiff paid Rs.2,00,000/- as advance and he shall have to pay Rs.3,00,000/- towards part of sale consideration on or before 30.08.2011 and balance amount has to be paid by the end of February, 2012. The last date of payment was fixed as 30.02.2012, but by any stretch of imagination, there cannot be 30th February, 2012. He never agreed with the plaintiff to use it as a way to other land owners to reach their lands.

10. Further, he denied the fact that plaintiff approached him in the first week of February, 2012 to pay the balance sale consideration and got issued legal notice dated 13.02.2012, demanding him to receive the balance sale consideration and a panchayat was also conducted to that effect, in which he agreed to execute the registered sale deed by receiving Rs.1,00,000/- extra amount. He further stated that as the plaintiff did not pay the balance sale consideration, he got issued legal notice dated 29.03.2012, and as per the agreement the advance sale consideration paid by him can be forfeited. He also stated that he was misled by the plaintiff and under the mistaken impression plaintiff obtained the Agreement of Sale and he has no right over the suit land. He further stated that in the Agreement of Sale, the area which was agreed to be sold by him was not mentioned, but the plaintiff assessed the value of the land as Rs.10,32,327/- and on what basis he assessed the suit land was not explained. The Agreement of Sale was defective, as it did not contain the specific area of the land and its boundaries and this Court has no jurisdiction to entertain the same. As the plaintiff himself breached the terms and conditions of the Agreement of Sale, he is not entitled for the Specific Performance of contract. Therefore, requested the Court to dismiss the suit.

11. The main contention of the defendant is that the Agreement of Sale was executed hurriedly at the house of the plaintiff at Rs.1,900/- per Sq.yrd, though the market value was Rs.5,000/- per Sq.yrd. In fact, he was under the impression that it was executed for an amount of Rs.5,000/- per Sq.yrd and thus he was misled by the plaintiff and the Agreement of Sale was obtained under the mistaken impression. In the evidence of D.W.1, he himself clearly stated that he agreed to sell the property at Rs.1,900/- per Sq.yrd and in the Cross-examination also he stated that at the time of agreement P.W.1 approached him through P.W.2 and paid Rs.2,00,000/- and the bargain was settled at Rs.1,900/- per Sq.Yrd. P.W.1 paid Rs.3,00,000/- to the defendant in the presence of his son in the house of P.W.2 on 02.09.2011 and both of them made an endorsement to that effect. He admitted his signature on Ex.A1. He also admitted that in the said agreement, it was mentioned that P.W.1 can sell the right of easement of way to others by taking money.

12. He further admitted that P.W.1 got issued legal notice on 13.02.2012. The panchayat was taken place at the instance of P.W.1 on 22.02.2012 and Ex.A12 was entered between them before the elders of both sides. The panchayat was also held on 23.02.2012, in which he along with his son was present and in

the said panchayat, elders decided that P.W.1 should pay Rs.1,00,000/- extra amount, apart from the total sale consideration. He stated that his wife did not agree for the settlement dated 23.02.2012 and he informed the same to the elders on the same day night, but he has not informed about the objection of his wife to P.W.1. He further stated that as per Ex.A12, extra amount of Rs.1,00,000/- and the balance sale consideration has to be payable by 25.03.2012. He got issued legal notice on 29.03.2012 under Ex.A5, in which he has not mentioned about the objection of his wife. He also stated that he was ready to refund the part consideration with double the amount, but he has not mentioned the same in the legal notice. He further stated that in the panchayat, it was decided that parties should not approach the Court and he did not know the resolution under Ex.A11. He did not inform the elders to take the amount from P.W.1.

13. Admittedly, P.W.1 approached P.W.2, who scribed Ex.A1 in his house and he also signed on Ex.A1 as scribe. He stated that Rs.2,00,000/- was paid by the plaintiff to the defendant on the date of execution of the Agreement of Sale. On 02.09.2011, plaintiff, defendant and his son came to his house and plaintiff paid part payment of sale consideration of Rs.3,00,000/- to the

defendant and the defendant on the back side of the Agreement of Sale endorsed the receipt of same before him and the son of the defendant has also signed on the receipt as witness No.2. He clearly stated that defendant agreed to sell his land at Rs.1,900/- per Sq.yrd.

14. In the legal notice dated 29.03.2011 issued by the defendant, he himself clearly stated that he executed Agreement of Sale for 15 ft wide and 360 ft length land in Sy.No.140, situated at Rangampalli siwar in favour of plaintiff on 04.08.2011 at Rs.1,900/- per Sq.yrd. This clearly shows that the Agreement of Sale was not executed under the mistaken impression as stated by him. Defendant examined D.W.2, who is a distant relative. He clearly stated in the Cross-examination that he informed about the price of the property basing on the statement of D.W.1. In his evidence he stated that he acted as broker for the purchase of land by the plaintiff to an extent of Ac.1 – 00 gts previously, but in the Cross-examination, he stated that he did not get any property purchased by P.W.1 previously. Though the defendant stated that the market value of the suit land was Rs.5,000/- per Sq.yrd as on the date of execution of the agreement and also examined D.W.2 to substantiate his version, he failed to prove the same.

15. The learned Counsel for the appellant/defendant stated that in the Agreement of Sale, it was specifically mentioned that if it cannot be executed for the fault of the plaintiff, the advance amount given by him will be forfeited. If it cannot be executed for the fault of the defendant, he has to pay double the amount received by him, but the trial Court ignored the said condition. In spite of directing the defendant to pay double the amount i.e., Rs.10,00,000/- (Rs.2,00,000 + Rs.3,00,000 = Rs.5,00,000 x 2) erroneously directed him to execute the registered sale deed in favour of the plaintiff.

16. Now it is for this Court to see whether the plaintiff is entitled for the execution of the Specific Performance of the Agreement of Sale or for double the amount paid by him.

17. In this case after the execution of Ex.A1, amount was paid by the plaintiff to the defendant on 04.08.2011 and on 02.09.2011, as per the Agreement of Sale defendant also received the said amount and endorsed the same on the Agreement of Sale. When he received Rs.3,00,000/- on 02.09.2011, he along with his son also signed on the back side of the Agreement of Sale. On 13.02.2012, plaintiff got

issued legal notice requesting him to receive the balance sale consideration and to execute the registered sale deed in his favour. It was served on the defendant on 14.02.2012 and plaintiff filed Ex.A3 and A4 in support of his contention. At the instance of both the parties, they approached the elders on 22.02.2012 and agreed to abide by their decision.

18. Accordingly, the date of panchayat was fixed to be held on 23.02.2012, and on that day both the parties along with their elders were present and executed Ex.A12 in their presence and it was signed by both the parties and also by the elders of both the parties. The elders of the panchayat directed the plaintiff to pay extra amount of Rs.1,00,000/- to the defendant and also directed him to permit the defendant to walk in the said path. If the plaintiff entered into agreement with adjacent land owners, he can receive the amount from them and plaintiff has to pay the balance sale consideration on or before 25.03.2012, in the meanwhile the land has to be measured and defendant has to execute the registered sale deed after receiving the balance sale consideration and it was also directed that both the parties should not the Court. According to the said agreement, plaintiff again approached the elders on 25.03.2012 and informed that defendant refused to take the balance

amount and to register the sale deed in his favour and thus they directed the defendant to attend the panchayat, but he did not turn up, as such they advised the plaintiff to approach the Court. The said proceedings were marked under Ex.A11 and it was signed by the elders of the plaintiff and also by the elders of the defendant, but not signed by both the parties. Defendant denied regarding the panchayat conducted on 25.03.2012 and also stated that he is not aware of the proceedings marked under Ex.A11 as he is not a party to it. Plaintiff stated that as the defendant failed to receive the balance sale consideration, he was compelled to approach the elders on 25.03.2012 and they directed him to approach the Court, not only his elders but also the elders of the defendant also signed on it. He also examined P.Ws.2 and 3 to substantiate his version.

19. In this case, initially in the Agreement of Sale the date of last payment was wrongly mentioned as 30.02.2012 instead of 28.02.2012, but after 30.08.2011, at the instance of the defendant, they approached the elders and agreed to abide by the conditions imposed by the elders. Accordingly, proceedings were drafted under Ex.A12. When defendant along with the plaintiff agreed with the terms under Ex.A12 and granted one more month for payment of balance sale consideration along

with the additional amount of Rs.1,00,000/-, his argument regarding the payment of double the amount for non-execution of the Agreement of Sale is not sustainable. In spite of having knowledge regarding the proceedings before the elders on 25.02.2012, he did not appear before it voluntarily and also issued legal notice on 29.03.2012, cancelling the Agreement of Sale and informed that the advance amount paid by the plaintiff was forfeited. In fact, the defendant was not interested to register the sale deed, but he received the part payment on 04.08.2011 and also on 02.09.2011. Instead of receiving the balance sale consideration by duly measuring the land, to avoid the same, he along the plaintiff approached the elders and even after agreeing to abide by their decision, violated the same and did not appear before them on 25.03.2012, as such elders directed the plaintiff to approach the Court.

20. Now the defendant is contending that both of them approached the elders and they passed an award under Ex.A12, as such this Court has no jurisdiction. No doubt, both of them approached the elders and Ex.A12 was passed by the elders with the consent of both the parties, but the defendant violated the same on the ground that his wife has not agreed to it. If at all, it is to be decided by his wife, he should have appeared

before the panchayat along with his wife. Initially, he stated that agreement was executed without his family members, but at the time of receiving Rs.3,00,000/-, he appeared along with his son and even after execution of Ex.A12, he could not stick on it, as such now he could not contend that plaintiff cannot approach the Court as per Ex.A12 and he could not argue before the Court as per his whims and fancies.

21. Though the plaintiff was ready to pay the balance sale consideration, defendant has not received the same and further gave legal notice on 29.03.2012 stating that plaintiff could not pay the balance amount along with extra amount of Rs.1,00,000/-, as such he cancelled the agreement. He cannot blow hot and cold at the same time, on one side, he was not receiving the amount and on the other side he stated he cancelled the agreement for non-payment of amount. Defendant further contended that how the plaintiff valued the suit and how he has shown the measurement of the land as 543.33 Sq.yrds with the dimensions of 15 ft x 326 ft in Sy.No.140 situated at Rangampalli village and the value of the suit as Rs.10,32,327/-. He further stated that the said Agreement of Sale was defective as it did not contain the specific area of the land and its boundaries. Even after the direction of the panchayat, he has

not measured the land and arguing before the Court that Agreement of Sale was defective. This clearly shows his conduct before the Court. The trial Court considering the evidence on record rightly directed the defendant to execute the registered sale deed by receiving the balance sale consideration of Rs.5,32,327/- along with Rs.1,00,000/- extra amount under Ex.A12, but this Court finds that it is just and reasonable to modify the same to the extent of terms and conditions agreed under Ex.A12 by both the parties.

22. In the result, the appeal suit is dismissed. The defendant is directed to abide all the terms and conditions mentioned under Ex.A12 and to measure the land within 15 days from the date of this Judgment and on such measurement the plaintiff is directed to pay the balance amount along with extra amount of Rs.1,00,000/- and both the parties are also bound by the other conditions mentioned under Ex.A12. The defendant is further directed to execute the registered sale deed in favour of the plaintiff within one month from the date of receipt of a copy of this Judgment. On such receipt, if he fails to do so, the trial Court is at liberty to execute the registered sale deed in favour of the plaintiff. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATE: 21.08.2023
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THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

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