

CASE NO.:
Appeal (civil) 1055 of 2002

PETITIONER:
Waheed Baig

RESPONDENT:
Bangi Lakshamma & Ors

DATE OF JUDGMENT: 21/04/2008

BENCH:
DR. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
JUDGMENT
REPORTABLE

CIVIL APPEAL NO. 1055 OF 2002

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is by the defendant No. 1 who was the respondent No.1 in the Second appeal filed by the respondents 1, 2 & 3. The second appeal filed in terms of Section 100 of the Code of Civil Procedure, 1973 (in short the 'Code') was allowed by the High Court by the impugned judgment.

2. The background facts in a nutshell are as follows:

OS No. 953 of 1984 on the file of the Second Additional Judge, City Civil Court, Hyderabad was filed by one B. Venkatachalam, the husband of the respondent No.1 and father of respondents 2&3. During pendency of the suit, the said Venkatachalam died and his legal representatives were brought on record.

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The suit was filed by the plaintiffs for the specific performance of agreements of sale (Ex.A-1 and A-4) by passing a decree in favour of the plaintiffs, to convey the plaint schedule property in favour of the plaintiffs by executing a proper sale deed, and if the specific performance of the suit contract is not possible, to repay an amount of Rs.22,475.30 received by the defendant towards the sale consideration with interest thereon at 12% per annum from the date of suit till the date of realization, and to deliver vacant possession of the plaint schedule property to the plaintiffs.

According to plaintiff, the 2nd defendant allotted the plaint schedule house bearing No.SRT 374 situated in the Industrial Housing Colony, Sanathnagar to the 1st defendant in 1962 under the Subsidised Industrial Housing Scheme. The 1st defendant, who was working as helper in the Engineering Industrial Corporation, was in occupation of the suit house as tenant since 1962. In 1968, the 1st defendant leased out the major portion of the house to the plaintiff, and the 1st defendant was residing in the kitchen room. The 1st defendant offered to sell the suit house, and the plaintiff agreed to purchase the same for a consideration of Rs.13,000/-, and accordingly, they entered into an agreement of sale dated 8.2.1976 (Ex.A-1) and pursuant

to the said agreement of sale, an amount of Rs.3,000/- was paid by the plaintiff to the defendant. As per Ex. A-1, the time fixed for concluding the said contract was 6 years; and the balance was agreed to be paid before the expiration of the time fixed for concluding the contract. As the said agreement was not concluded, the same was ratified by another agreement of sale dated 16.7.1976 (Ex.A-4). By that date, the 1st defendant had already received an amount of Rs.6,200/- towards earnest money, and again five years' period was fixed for completion of the concluded contract. As per the terms of Ex.A-4, the original plaintiff has to pay the remaining instalments of the hire-purchase amount due to the Commissioner of Labour apart from the agreed sale consideration of Rs.13,000/- in respect of the suit schedule house. The plaintiff, being a tenant even prior to the contract of sale, is in possession of the suit house as the owner under the part performance of the said contract of sale. It is the case of the plaintiff that the 1st defendant only paid an amount of Rs.1,696.55 in respect of the hire purchase deposit on 25.2.1972. Except the said amount, the 1st defendant has not paid any amount towards the installments. The plaintiff not only paid back the said amount Rs.1,692.55 to the 1st defendant on the next day, but also paid the further installments amount of Rs.9,475.30 on 7.6.1982 towards the full discharge of the hire purchase amount in respect of the suit schedule house on behalf of the 1st defendant in discharge of all installments. Though the 1st defendant had to vacate the kitchen portion, which was under his occupation, and deliver vacant possession to the plaintiff as per the terms of the agreement of sale (Ex.A-4), he has not done so.

As per the agreement of sale (Ex.A-4), the suit house was allotted to the 1st defendant in 1962 and since then, the 1st defendant was in possession of the suit house, and therefore, the 1st defendant inducted the plaintiff into possession of the suit house since last 10 years as on the date of Ex.A-4, i.e. the tenant is in possession of the suit house since 1966. Out of total sale consideration of Rs.13,000/-, an amount of Rs.7,500/- was already paid and the remaining installments amount of Rs.5,500/- was paid by the plaintiff to the Commissioner of Labour. It is further stated that the portion in occupation of the 1st defendant was also to be vacated and handed over to the plaintiff and the plaintiff has to pay the expenses of registration of the suit schedule property and the 1st defendant was to assist the plaintiff in transferring the suit schedule property. The future water charge shall be born by the plaintiff only.

Thus, the plaintiff stated that as per the agreement, he has discharged his part of his contract and paid the entire instalments amount and also discharged loan amount taken by the 1st defendant vide promissory note dated 7.4.1978. Though the plaintiff performed his part of the obligation and he was ready and willing to get the sale deed registered at his expense, the 1st defendant was not willing to perform his part of the contract. It is also stated by the plaintiff that the entire instalments amount has been paid and the consideration payable to the 1st defendant amounting to Rs. 13,000/- was also paid in addition to the instalments amount.

He filed an amended plaint stating that he became the owner by part performance, and therefore, the 1st defendant is liable to pay rents to the plaintiff and the rent is calculated at Rs.92/-per month and the rental dues are calculated at Rs.5,520/-.

As regards the 2nd defendant, it is stated that the 2nd defendant is fully aware about the agreement of sale entered into by the 1st defendant and the plaintiff, and the 2nd defendant received the entire installment amounts from the plaintiff without

any protest, and the plaintiff alone was to pay the electricity and water charges, which he received from time to time without any protest, and after the death of the original plaintiff, his wife, son and daughter, who were brought on record as plaintiffs 2 to 4, are residing in the suit schedule property.

The 1st defendant filed a written statement disputing the contract of sale between the 1st defendant and the plaintiff. According to him the 1st defendant is only a lessee and he has no right to alienate the suit schedule house by agreement of sale, and the right vested with the 2nd defendant as per the terms of the allotment until the entire amount is paid under the lease-cum-sale agreement (Ex.B-2). It is further stated that the suit agreement is not a contract meant to be acted upon by the parties, but it is time by the way of a collateral security in respect of the amounts lent from time to time by the plaintiff to the 1st defendant, and therefore, the suit agreement executed is not an agreement of sale, but was executed for the purpose of a collateral security. It is admitted that the plaintiff paid an amount of Rs.7,500/- to the 1st defendant by cash on different occasions, but the 1st defendant is not aware of the payments made by the plaintiff on behalf of the 1st defendant to the Commissioner of Labour. The 1st defendant is also not aware about the alleged claim of payment of final installment amount by the plaintiff to the Commissioner of Labour. It is stated that the total amount paid by the plaintiff to the 1st defendant and the Commissioner of Labour was only Rs.13,975/-. The 1st defendant stated that the plaintiff is a lessee of the 1st defendant on a monthly rent of Rs.150/- which was enhanced to Rs.200/- subsequently, and again enhanced to Rs.350/- and, therefore, the rental amount is set off against all the amounts paid by the plaintiff. The 1st defendant further stated that the agreement dated 16.7.1976 has no legal basis, and the suit filed by the plaintiff is not maintainable and the 1st defendant has not tried to forcibly evict the plaintiff with the help of anti-social elements as pleaded.

After the written statement was filed, the Commissioner of Labour i.e. respondent no. 4 in this appeal was impleaded.

The following issues were framed:

1. Whether the suit agreement is true, valid and binding on the defendant?
2. Whether the agreement was intended to be as evidence of loan transaction as contended by the defendant?
3. Whether the suit is bad for non-joinder of parties?
4. Whether the suit has not been properly valued?
5. Whether the plaintiff is entitled to specific performance as prayed for?
6. To what relief?

Additional issue was framed which is of considerable significance and reads as follows:
"Whether any relief can be granted against D2".

The suit was decreed by judgment dated 5.4.1993 in OS No. 953 of 1984. Waheed Baig filed an appeal which was numbered as AS No.76 of 1993 on the file of the Chief Judge: City Civil Court, Hyderabad against the judgment and decree of the trial court dated 5.4.1993. The lower appellate court set aside the

judgment and decree of the trial court. The plaintiffs filed the second appeal and the questions which were formulated for consideration as substantial questions of law are as follows:

1. Whether the original plaintiff was ready and willing to perform his part of the contract; and
2. Whether the observations of the Lower Appellate Court that the plaintiff was not ready and willing to perform his part of the contract is an obvious error of fact, as the plaintiff averments and also the evidence on record proved that the plaintiff offered the balance of sale consideration as per Ex.A-60, and as per the evidence of PW-3, and when in fact that was found to be correct by both the Courts below that money was offered but the 1st defendant refused to receive the same?"

The High Court held that the plaintiffs were entitled to succeed in the suit and the appeal was allowed with inter-alia the following conclusions, directions and observations:

"In the result, the suit is decreed directing the plaintiffs to deposit the balance of sale consideration of Rs.5,500/- along with interest @ 12% per annum from the date of filing of the suit, i.e. from 16.7.1984, till the date of deposit into the Court, within two months from today. On depositing such amount by the plaintiffs, the 1st defendant is directed to obtain regular registered sale deed in his favour from the 2nd defendant on paying the registration expenses within two months thereafter, and within one month thereafter, the 1st defendant shall execute a regular sale deed in respect of the suit property in favour of the plaintiffs at their expense. It is further directed that if the 1st defendant fails to take steps to get the sale deed registered in his favour as directed above within the time stipulated above, the 2nd defendant shall directly execute a regular sale deed in favour of the plaintiffs on payment of the registration expenses and other legal expenses, if any, by the plaintiffs within three months from the date of this decree. It is further decreed that if the 2nd defendant fails to execute a registered sale deed either in favour of the 1st defendant as directed above for the fault of the 1st defendant or in favour of the plaintiffs as directed within the time stipulated, the plaintiffs are at liberty to approach the Court to get the sale deed executed in their favour on behalf of the defendants 1 and 2 on payment of necessary registration expenses. Admittedly, the kitchen room portion of the suit house is still in the occupation of the 1st defendant. Therefore, the 1st defendant is directed to vacate the said kitchen portion and deliver it to the plaintiffs within three months from the date of this decree. If the 1st defendant fails to deliver the said kitchen portion as a directed above, after registration of the sale deed in favour of the plaintiffs as directed above, the plaintiffs are at

liberty to approach the Court for taking possession of the said kitchen portion, which is in the possession of the 1st defendant, through process of law."

3. Learned counsel for the appellant submitted that the directions as given by the High Court could not have been given in a Second Appeal.

4. The High Court could not have directed transfer of the property in favour of the appellant and thereafter directing him to transfer the property by giving full effect to the agreement for sale. Such a course is unknown in law.

5. Undisputedly, the land belonged to the Government and the land in question was given on lease cum sale agreement basis by the Labour Department. There was a clear stipulation that the lessee is not the owner of the property and did not have any right to sell or mortgage or otherwise to dispose of the property until sale price finally determined by the Commissioner of Labour, Andhra Pradesh, in his sole discretion is paid in full. Undisputedly at the time alleged agreement of sale was entered into, the appellant was not the owner of the property.

6. The questions formulated were not questions of law and therefore the Second Appeal was incompetent.

7. Learned counsel for the respondents on the other hand submitted that on payment of the installment the lessee became the owner and therefore there was nothing wrong in the direction by the High Court.

8. The questions formulated were as follows:

"1. Whether the original plaintiff was ready and willing to perform his part of the contract; and

2. Whether the observations of the Lower Appellate Court that the plaintiff was not ready and willing to perform his part of the contract is an obvious error of fact, as the plaintiff averments and also the evidence on record proved that the plaintiff offered the balance of sale consideration as per Ex.A-60 and as per the evidence of PW-3, and when in fact that was found to be correct by both the Courts below that money was offered but the 1st defendant refused to receive the same."

9. A copy of the agreement for sale has been filed before us. This does not refer to any condition that after payment of installment the lessee can become the owner and the agreement for sale was to take effect. Since the appellant was not the owner of the property, he could not have entered into an agreement to sell a property of which admittedly he was not the owner. Great emphasis is laid by learned counsel for the respondents on Section 13 of the Specific Relief Act, 1963 (in short the 'Act'). Section 13 reads as follows:

"13. Rights of purchaser or lessee against person with no title or imperfect title.

13. (1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee

(subject to the other provisions of this Chapter), has the following rights, namely :\027

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property

10. The Section deals with rights of a purchaser in certain cases, where a person contracts to sell or let certain immovable property having no title or only an imperfect title. These rights enable the purchaser to take action when title of vender is bettered in the circumstances given in this Section. The vender is under a duty to prove his title and to convey what he has contracted to convey. The Section gives right to purchaser in the event there is a defect in title as enumerated in Clauses (a) to (d) to compel the vender to convey the title or to secure the concurrence or conveyance or to redeem the mortgaged etc. as the case may be. In the instant case the Labour Department was not a party to the agreement. It was not bound to sell the property to the appellant. The State Government had by a detailed written statement before the trial Court stated that the present appellant has no alienable right over the suit property. The High Court did not notice the specific stand of the Labour Department. It has been stated in the written statement that when an authorized officer of the second defendant inspected the quarter it was found that the first defendant was not residing in the quarter and a portion was let out to the first plaintiff. Similar was the position on 18.7.1987. It was categorically pointed out that the alleged agreement between the first plaintiff and the first defendant was without the knowledge of the defendant No.2, it was null and void and it was not binding upon the Government even if certain payments were made by the plaintiff. The title in

the property still vests in the Government and was not registered in favour of the first defendant. The first defendant had no right to sell or alienate the property to any other person. It has been pointed out that in terms of the agreement notice was given to the first defendant to reside in the property immediately, otherwise allotment of the same would be cancelled more particularly when there was sub letting. It was pointed out that the Government has constructed the quarters for the industrial workers on rental basis and subsequently there was a decision to sell those to the industrial workers. The arrangement was for the benefit of the industrial workers and therefore the defendant No.1 had no alienable right in the property.

11. There is substance in the plea as taken by the appellant. As a matter of fact there was no question of the High Court giving direction to the Labour Department to allot the land for facilitating the transfer of the property in favour of the respondent No.1 and further there could not have been any direction to the Labour Commissioner to transfer the property in favour of the respondents 1 to 3. Looked at from any angle, the judgment of the High Court is indefensible and deserves to be set aside which we direct.

12. The direction given by the first appellate Court for refund of the amount paid stands restored.

13. The appeal is allowed to the aforesaid extent without any order as to costs.