



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY ONE

PRSENT

THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN
SECOND APPEAL NO: 770 OF 2016

Between:

1. Gunji Srinivasulu S/o late Venkaiah Age: 32 years, Occ: Agriculture,
R/o Budam Gunta village,
Kavali, SPSR Nellore District

...PETITIONER(S)

AND:

1. Pulimi Madhava Reddy S/o Krishna Reddy
Aged about 44 years, Occ: Unknown,
R/o Budam Gunta village,
Kavali, SPSR Nellore District
2. Thanneru Mala Kondaiah S/o Late Kondaiah
Age: 58 years, Occ: Unknown, R/o Budam Gunta village, Kavali, SPSR
Nellore District
3. Tahanneru Chenchamma W/o Venkateswarlu
Age: 45 years, Occ: Unknown, R/o Budam Gunta village, Kavali, SPSR
Nellore District
4. Pallapu Nagamani W/o Narasimha, Age: 42 years, Occ: Unknown, R/o
Budam Gunta village, Kavali, SPSR Nellore District
5. Kunchala Madhava S/o Chenchaiyah,
Age: 38 years, Occ: Unknown, R/o Budam Gunta village, Kavali, SPSR
Nellore District

...RESPONDENTS

Counsel for the Petitioner(s): P SRI RAM

Counsel for the Respondents: A V V S N MURTHY

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH: AMARAVATHI.

SECOND APPEAL No.770 of 2016

Between:

Gunji Srinivasulu.

... Petitioner

Vs.

Pulimi Madhava Reddy and others

.... Respondents

Date of Judgment Pronounced: 09.02.2021

Submitted for Approval:

HON'BLE SRI JUSTICE B. KRISHNA MOHAN

1. Whether Reporters of Local newspapers
may be allowed to see the judgments ? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment ? Yes/No

JUSTICE B. KRISHNA MOHAN



*** HON'BLE SRI JUSTICE B. KRISHNA MOHAN**

+ SECOND APPEAL No.770 of 2016

% 09.02.2021

Gunji Srinivasulu.

... Appellant

Vs.

\$ Pulimi Madhava Reddy and others

.... Respondents

! Counsel for the appellant : SRI P. SRI RAGHU RAM

Counsel for the Respondents : SRI A.V.V.S.N.MURTHY

<Gist :

>Head Note:

? Cases referred:

1. 2006(5) SCC 558



HON'BLE SRI JUSTICE B. KRISHNA MOHAN

SECOND APPEAL No.770 of 2016

JUDGMENT:

Heard Sri P.Sri Raghu Ram, learned senior counsel appearing for the appellant, and Sri A.V.V.S.N.Murthy, learned counsel appearing for the respondent No.1.

2. This second appeal arises against the decree and judgment, in A.S.No.173 of 2012 on the file of the court of IV Additional District Judge, Nellore, dated 06.02.2016 confirming the judgment and decree in O.S.No.97 of 2006 on the file of the court of Senior Civil Judge, Kavali, dated 17.10.2012.

3. The appellant herein is the 2nd respondent in the first appeal and the 2nd defendant in the suit. Similarly the 1st respondent herein is the 1st respondent in the first appeal and the plaintiff in the suit. The other respondents 2 to 5 are the respondents 3 to 5 in the appeal and defendants 4 to 6 in the suit.

4. For the sake of convenience the parties herein are referred as they were arrayed in the suit before the trial court.

5. Originally, the plaintiff initiated action in O.S.No.97 of 2006 on the file of the court of Senior Civil Judge, Kavali seeking for specific performance of an agreement of sale, dated 21.04.2006, against the 1st defendant to execute a registered sale deed in favour



of the plaintiff at his expenses within a time fixed by the court and in default thereof cause the execution of the registered sale deed by the court itself and costs.

It is the case of the plaintiff that the 1st defendant sold the plaint schedule property to the plaintiff under an agreement of sale, dated 21.04.2006 for a valuable consideration of Rs.1,96,000/- under a Bill makhta; the plaintiff paid Rs.96,000/- as an advance amount on the very same day as per the terms and conditions the plaintiff has to pay the balance of sale consideration within two months from the date of agreement on or before 20.06.2006 and obtain registered sale deed from the 1st defendant at the expenses of the plaintiff; and time is the essence of the contracts; plaintiff is ready and willing to perform his part of the contract under the said agreement of sale dated 21.04.2006; whereas the 1st defendant has been postponing to perform his part of contract on some pretext or the other, then the plaintiff has got issued the legal notice demanding him to receive the balance of sale consideration and register the plaint schedule property in his favour and the 1st defendant gave a reply notice denying the stand of the plaintiff. Hence the suit.

6. *Inter alia* the 1st defendant filed a written statement contending that the plaint schedule property was not offered to sell to the plaintiff, a reply notice on 14.06.2006 was given to the



plaintiff's notice, as he has got another land adjacent to the plaint schedule property developed an intention to grab the same by pressing into service the agreement of sale, dated 21.04.2006 which is a fabricated one and specifically averred that prior to the filing of the suit itself he sold away the plaint schedule property to one Gunji Srinivasulu, under a registered sale deed, dated 10.05.2006 for a valuable sale consideration of Rs.72,000/- and therefore sought for dismissal of the suit.

7. During the pendency of the suit the 1st defendant died leaving behind the 3rd defendant as his legal heir who is the son of the deceased-1st defendant. Since the deceased-1st defendant sold the plaint schedule property to one Gunji Srinivasulu, the said person was also added as party-2nd defendant in the suit. D4 and D5 the daughters of the 1st defendant and D6 the son of Late Kunchala Kondamma who is the deceased daughter of the deceased-1st defendant were also added as defendants 4 to 6 in the suit.

8. The 2nd defendant also filed a separate written statement contending that he is a bona fide purchaser of the plaint schedule property and the title of the said property was conveyed to him under a registered sale deed dated 10.05.2006 and he is in possession and enjoyment of the same from the said date. It is further contended by the 2nd defendant that the agreement of sale



dated 21.04.2006 relied upon by the plaintiff is a fictitious document and it is a fabricated one which cannot be trusted upon. The 3rd defendant also filed a separate written statement supporting the case of the defendants 1 and 2. Whereas the other defendants remained *ex parte*, who are the legal heirs of the deceased/1st defendant as explained above.

9. In view of the aforesaid rival averments and contentions, the trial court framed the following issues:

1) Whether the plaintiff is entitled for specific performance of contract as prayed for?

2) To what relief?

Additional Issue was framed on 29.09.2009:

1) Whether D2 is a *bona fide* purchaser of the plaint schedule property?

10. During the course of trial, the plaintiff himself as PW1 and the attesor of Ex.A4 as PW2 were examined and Exs.A1 to A4 were marked. Ex.A1 is the notice issued by the plaintiff to the 1st defendant dated 20.06.2006, Ex.A2 is the postal acknowledgment for Ex.A1, Ex.A3 is the reply notice issued by the 1st defendant to the plaintiff dated 14.06.2006 and Ex.A4 is the agreement of sale dated 21.04.2006. In support of the case of the defendants, DWs.1 to 3 were examined and Ex.B1 was marked. DW1 is the 2nd defendant. DW3 is the 3rd defendant. DW2 is one



Mr.Tanneru Manohar. Ex.B1 is the certified copy of the sale deed dated 10.05.2006 standing in the name of the 2nd defendant executed by the deceased 1st defendant and others.

11. The trial court relying upon the evidence of PWs.1 and 2 and the documents marked in Exs.A1 to A4 by judgment dated 17.10.2012 decreed the suit of the plaintiff with costs holding that Ex.A4 was executed duly between the plaintiff and the 1st defendant and the contested defendants failed to establish that Ex.A4 dated 21.04.2006 is a fabricated document and the 2nd defendant is not a *bona fide* purchaser of the plaint schedule property. The trial court further directed the defendants 3 to 6 to execute the registered sale deed in favour of the plaintiff in pursuance of the agreement of sale dated 21.04.2006 from the date of judgment failing which the plaintiff is at liberty to get the same done through due process of law.

12. Aggrieved by the same the 3rd defendant who is the son of the deceased-1st defendant preferred an appeal in A.S.No.173 of 2005 on the file of IV Additional District Judge, Nellore. The lower appellate court while deciding the matter on merits has framed the point No.1 by reinserting the first issue framed by the trial court as it is and the point No.2 as “whether the decree and judgment of the trial court is liable to be set aside”?



13. In discussion the lower appellate court observed that the defendants did not choose to send the document i.e., Ex.A4 to the handwriting expert to disprove the thumb impressions appearing on Ex.A4-agreement of sale in order to prove their case that the 1st defendant did not affix the said thumb mark when admitted thumb impressions are available on the vakalat of the 1st defendant and the written statement and dismissed the appeal finally in it's judgment and decree dated 06.06.2016 confirming the judgment of the trial court dated 17.10.2012.

14. The learned senior counsel contends that there are substantial questions of law in the second appeal to the effect that:

1) the appreciation and findings of the courts below are perverse,
2) the plaintiff has not discharged the onus and burden of proof insofar as execution of the document in Ex.A4, dated 21.04.2006 and

3) both the courts below erroneously thrown the burden on the defendants to disprove the execution of the said document Ex.A4.

Thus, both the courts below gave perverse findings by granting relief of specific performance of the agreement of sale dated 21.04.2006. To substantiate the same he has referred to the relevant paragraphs of the judgments of the courts below as well.

15. As stated supra, both the courts below held against the 2nd defendant who purchased the plaint schedule property



bona fide under Ex.B1 registered sale deed, dated 10.05.2006 from the deceased-1st defendant. The learned senior counsel further pointed out that the trial court decreed the suit against D3 to D6 leaving behind D2 who is the *bona fide* purchaser/title holder and the possessor of the said property under Ex.B1 and the same was confirmed by the lower appellate court also. He further contends that the decrees of the courts below cannot be executed since there is no direction against the 2nd defendant as the said judgments and decrees are not against the 2nd defendant to be operative. He further contends that apart from all these anomalies and infirmities, the trial court also failed to frame appropriate issues for the purpose of adjudication of the suit which lead to incomplete adjudication of the matter without adverting to the material points/issues involved in the suit.

16. In furtherance of these contentions, he has referred to the following issues which are necessary to be dealt with by the courts below to prevent miscarriage of justice between the parties in the suit:

1) Whether the Ex.A4-agreement of sale dated 21.04.2006 overrides the effect of Ex.B1-registered sale deed dated 10.05.2006 under law?

and



2) In the absence of a prayer for seeking cancellation of Ex.B1-registered sale deed dated 10.05.2006, can the specific performance of agreement of sale under Ex.A4 dated 21.04.2006 be granted?

For these two vital issues, there was no answer from the courts below and there was no explanation by the plaintiff who relied upon the document of Ex.A4. In such view of the matter, the adjudication of the courts below is materially defective and incomplete leading to perversity and miscarriage of justice.

17. In order to substantiate his contentions, learned senior counsel also referred to **ANIL RISHI V. GURBAKSH SINGH**¹.

Relevant portion is at paragraph 19 reads as follows:

“19. There is another aspect of the matter which should be borne in mind. A distinction exists between burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof as greater force, where the question is, which party is to begin. Burden of proof is used in three ways: (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter-evidence; and (iii) an indiscriminate use in which it may mean either of both of the others. The elementary rule in Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he Discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove

¹ 2006(5) SCC 558



those circumstances, if any, which would disentitle the plaintiff to the same.”

In view of the settled proposition of law laid down by the Hon’ble apex court referred as supra in this case the initial burden and the onus lies on the plaintiff to prove Ex.A4, dated 21.04.2006 that it is not a fabricated document.

18. Further, the 2nd defendant has got a protection as a *bona fide* purchaser under Section 19(b) of the Specific Relief Act, 1963. In view of the provisions of Section 54 of the Transfer of Property Act, 1882 title was already conveyed to the 2nd defendant under Ex.B1, dated 10.05.2006 and his name was also mutated in the revenue records accordingly.

19. As stated supra, the lower appellate court has not framed the point under Order XLI Rule 31 CPC as the point for consideration is also an important thing for adjudication of the matter in the appeal. As per Section 31 of the Specific Relief Act also there is a necessity to seek for a decree for cancellation of the sale deed dated 10.05.2006 marked under Ex.B1. In view of these above said contentions, the learned senior counsel sought for allowing this Second Appeal by setting aside the judgments of the courts below.

20. Per contra, the learned counsel for the 1st respondent contended that both the courts below rightly held that Ex.A4 is prior to the execution of Ex.B1 and as such it will have all the



enforceability and the 2nd defendant is not a *bona fide* purchaser under Ex.B1 by referring to the findings of the judgments of the courts below. He further contended that pursuant to the judgments of the courts below a sale deed was executed in favour of the plaintiff on 06.07.2019 with respect to the plaint schedule property and the delivery of possession is only due and yet to be given.

21. In this context, Sections 19 and 31 of the Specific Relief Act reads as follows:

“19. Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto; (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract; (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant; 1 [(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.] (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation; (e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

31. When cancellation may be ordered.—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or



voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. (2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

22. A reading of the judgment of the lower appellate court, it is clear that it failed to abide by the provisions laid down under Order XLI Rule 31 CPC which mandates for framing of the points for determination for adjudication of the matter in appeal. Further, both the courts below have not gone into the aspect of overriding effect of Ex.A4, dated 21.04.2006 upon Ex.B1 dated 10.05.2006. As discussed supra, since the suit is based on incomplete issues and its adjudication, this court is constrained to set aside the judgments and decrees of the courts below to prevent miscarriage of justice.

23. With the above observations, the Second Appeal is allowed remanding the matter to the trial court to frame the additional issues as mentioned in paragraph 16 of the judgment and proceed with the matter as per law for fresh adjudication giving an opportunity to all the parties concerned. The plaintiff also shall be given liberty to file an application seeking for cancellation of the document dated 10.05.2006 marked under Ex.B1 and amendment petition to the main prayer of the suit. It is further directed that the trial court shall deal with the suit afresh keeping in view of the



above said legal provisions and judgments for the purpose of adjudication. Accordingly, the decrees and judgments of both the courts below are set aside and the sale deed dated 06.07.2019 now executed in favour of the plaintiff is subject to outcome of the suit afresh only. The trial court is further directed to dispose of the suit afresh as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this judgment. There shall be no order as to costs.

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

JUSTICE B. KRISHNA MOHAN

February 9, 2021
LMV



HON'BLE SRI JUSTICE B. KRISHNA MOHAN

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SECOND APPEAL No.770 of 2016

February 9, 2021

LMV