

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

+ APPEAL SUIT No.167 OF 2010

% 12-01-2024

M.Subash Reddy.

...Appellant

vs.

\$ Vidyasagar S.Nitha.

... Respondent

!Counsel for the Appellant: Sri M.Yadagiri

^Counsel for Respondent : Sri M.V.S.Sai Kumar

<Gist :

>Head Note :

? Cases referred:

IN THE HIGH COURT FOR THE STATE OF TELANGANA

HYDERABAD

*** * * ***

APPEAL SUIT No.167 OF 2010

Between:

M.Subash Reddy. ...Appellant

vs.

Vidyasagar S.Nitha. ... Respondent

JUDGMENT PRONOUNCED ON: 12.01.2024

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.167 of 2010****JUDGMENT:**

This appeal suit is filed against the Judgment and decree dated 25.11.2009 in O.S.No.37 of 2003, passed by the learned Senior Civil Judge, Vikarabad.

2. The suit *vide* O.S.No.37 of 2003, was filed by appellant/plaintiff against respondent/defendant for specific performance of Agreement of Sale dated 24.09.2002. The trial Court examined P.Ws.1 to 3 and marked Exs.A1 to A5 on behalf of the appellant/plaintiff. There is no evidence on behalf of the respondent/defendant, but got marked Ex.B1 copy of the Judgment in O.S.No.310 of 2006, on behalf of the defendant. The trial Court after considering the arguments of both sides and evidence on record, decreed the suit to the extent of return of amount of Rs.1,00,000/- with interest @ 6% per annum from 24.09.2002 to till date without costs and respondent/defendant was directed to deposit the amount within two months, failing which, he was directed to pay interest @ 18% per annum. Aggrieved by the said Judgment and decree, plaintiff therein preferred the present appeal.

3. The learned Counsel for the appellant/plaintiff mainly contended that respondent/defendant is the owner of the land measuring Acs.5 – 04 gts in Sy.No.280 and land admeasuring Ac.1 – 24 gts in Sy.Nos.276, 277, 278 and 279, totally admeasuring Acs.6 – 28 gts, situated at Surangal village, Moinabad Mandal, R.R.District. He entered into an Agreement of Sale with respondent under Ex.A.1 on 24.09.2002, for an amount of Rs.5,49,000/- and paid Rs.1,00,000/- as advance on the same day and the respondent/defendant had issued Ex.A2 and also delivered possession to him. Later, when he requested the respondent to receive the balance sale consideration and to execute the registered sale deed, he did not turn up, as such he issued legal notice dated 01.03.2003 and respondent gave reply to the said notice on 17.03.2003, as such he filed the suit for specific performance. He was always ready and willing to pay the balance sale consideration, but the trial Court erroneously not granted decree of specific performance, but only directed the respondent/defendant to pay the advance sale consideration of Rs.1,00,000/- with interest. The evidence of P.Ws.2 and 3 was not considered properly and the respondent/defendant had not taken any steps for cancellation of the Agreement of Sale, as such time is not the essence of contract. Therefore, requested

this Court to set aside the Judgment and decree passed by the trial Court.

4. In the plaint filed by the appellant/plaintiff, he stated that respondent/defendant is the owner of the land admeasuring an extent of Acs.5 – 04 gts in Sy.No.280 and land admeasuring Ac.1 – 24 gts in Sy.Nos.276, 277, 278 and 279, totally admeasuring Acs.6 – 28 gts, situated at Surangal village, Moinabad Mandal, R.R.District. He entered into an Agreement of Sale with the respondent/defendant on 24.09.2002 for a total sale consideration of Rs.5,49,000/-. Appellant/plaintiff paid Rs.1,00,000/- on the same day and respondent/defendant also issued a receipt. He also stated that respondent/defendant put him in physical possession of the suit schedule property. He further stated that though he was ready and willing to pay balance sale consideration, respondent did not come forward to receive the same and thus he issued legal notice dated 01.03.2003 and also filed suit against the respondent herein.

5. In the written statement filed by the respondent, he admitted about the Agreement of Sale dated 24.09.2002 for the land measuring an extent of Acs.6 – 26 gts in the above mentioned survey numbers for a total sale consideration of

Rs.5,49,000/- and appellant also made payment of Rs.1,00,000/- as earnest money. He further stated that appellant got issued legal notice dated 01.03.2003 and he gave reply on 17.03.2003. He contended that appellant filed the receipt dated 24.09.2002, without referring the existence of the same in the notice dated 01.03.2003 and it amounts to suppressing the material facts. There was a default clause in the receipt dated 24.09.2002, in which it was specifically mentioned that if appellant did not turn up with the balance sale consideration on or before 28.02.2003, the Agreement of Sale stands cancelled and the earnest money paid shall stand forfeited. He mentioned the same in his reply notice, as such the Agreement of Sale dated 24.09.2002, had impliedly become infructuous and rescinded under Section 27 and 28 of the Specific Relief Act and thus he alienated the property to another prospective purchaser by entering into another Agreement of Sale. Therefore, requested the Court to dismiss the suit.

6. P.W.1 reiterated the contents of the plaint in his evidence. In the Cross-examination, he stated that he was not aware of the suit filed against him by the respondent/defendant for perpetual injunction. It was suggested to him that he received the notice, but did not turn up before the Court, as such

exparte Order was passed in the year 2006, but he denied it. He admitted that in Ex.A2 receipt, it was clearly mentioned that if he failed to pay the balance amount on or before 28.02.2003, advance amount will be forfeited and it was also mentioned that possession will be delivered at the time of registration and further it was also mentioned that after the cancellation of Agreement of Sale, the respondent/defendant is at liberty to sell the suit land to whomsoever concerned and he will not have any right over the suit land. When he approached the defendant along with other persons, respondent/defendant informed him that passbook and title deeds were not available with him and assured to execute the registered sale deed after getting the same. He also stated that he might have purchased 30 to 35 acres of land within the vicinity of Moinabad, five years prior to date of Agreement of Sale and he has not sold away the said lands. He further stated that he was doing Real estate business. It was suggested to him that he was doing real estate business by entering into Agreement and pay the balance consideration after getting the prospective purchasers, as such he did not pay the balance sale consideration, but he denied it. He also stated that he was doing stone business at Moinabad and his monthly income was around Rs.1,00,000/- per month, but in I.T returns he had shown his income as Rs.2,00,000/- per annum. It was

suggested to him that he took one year for the payment of penalty of Rs.23,000/-, as such he has no capacity to pay the balance sale consideration of Rs.4,00,000/- and odd, but he denied it.

7. P.W.2 in his evidence stated that he along with P.W.1 went to the house of respondent/defendant and requested him to receive the balance sale consideration and to execute the registered sale deed. In the Cross-examination he stated that remaining balance sale consideration has to be paid within five months from the date of Agreement. He also stated that he went to the house of the respondent to pay the balance sale consideration, but respondent was not available in the house in the month of January, 2003. They visited the house of the respondent, but he cannot say the date of visit. He was acquainted with the appellant from his childhood. It was suggested to him that he was deposing falsely at the instance of the appellant, but he denied it. P.W.3 is another witness and he supported the version of P.W.1 in toto. He stated that two months after entering into the Agreement of Sale, he came to know about the purchase of land by the appellant. Appellant informed him about the purchase. He also stated that appellant was having 35 acres of land. He further stated that he

accompanied the appellant to the house of respondent on 16.02.2003, along with Ganesh Reddy, Veeraiah Goud, Khader, Yousuf, Narender Reddy and Subash Reddy, but respondent informed that his daughter was sick and to come after four days to register the land.

8. D.W.1 filed the chief-affidavit reiterating the contents of the written statement. In the Cross-examination, he stated that he knows the appellant/plaintiff from 2002. Appellant approached him through childhood friend namely Yousuf. He further stated that Agreement of Sale was executed after negotiations. It was suggested to him that possession was handed over to appellant, but he denied the same. It was also suggested that appellant approached him within the stipulated time for four or five times to register the sale deed, but he denied it. He admitted that he had not filed any document to show that he entered into an agreement with prospective purchasers regarding the suit schedule property. It was suggested that appellant approached him along with the village elders namely Ganesh Reddy, Sangameshwar and others on 16.02.2003 and he promised to execute the registered sale deed within four days, but failed to do so, but he denied it. It was further suggested that when appellant approached him with

balance sale consideration along with one Narender Reddy, Khader and Yousuf, he postponed the same, but he denied it.

9. D.W.2 is the neighboring land owner of D.W.1. He stated that he knows respondent/defendant from the past 10 years. In the Cross-examination, he stated that he did not know appellant/plaintiff and he did not know the survey numbers of the suit schedule property, but stated that he was having Ac.1 – 20 gts of land in Sy.No.275 and his land is located on the western side of the suit land. He also stated that between his land and the land of respondent, there is a land of Sharath Reddy. He did not know why the suit was filed and he did not know about the purchase of land by the appellant/plaintiff. He came to the Court at the request of respondent.

10. Perusal of the Agreement of Sale dated 24.09.2002, clearly shows that Vidya Sagar/respondent entered into Agreement of Sale with Mandadi Subash Reddy/appellant for a total sale consideration of Rs.5,49,000/- and paid an amount of Rs.1,00,000/- towards part payment and balance has to be paid on or before 28.02.2003, for the land measuring Acs.6 – 28 gts, situated at Surangal (V), Moinabad (M), R.R.District. Receipt was also passed on the same day for an amount of

Rs.1,00,000/-, in which it was specifically agreed that the balance sale consideration of Rs.4,49,400/- has to be paid on or before 28.02.2003 and possession will be handed over after payment of full amount. It was also stated that if the balance amount is not paid, receipt stands cancelled and advance amount will not be repaid, and the owner is at liberty to sell the said land to whomsoever he concerned and the purchaser shall bear the expenses of the registration of the sale deed. P.W.1 got examined P.Ws.2 and 3 and they stated that P.W.1 met the respondent/defendant within the stipulated time with balance sale consideration, but respondent/defendant had not received the same and not executed the sale deed, but in the reply notice given by the respondent/defendant dated 17.03.2003, he clearly stated that appellant/plaintiff never turned up to pay the balance sale consideration. In fact, he approached the appellant with several documents for receiving the balance sale consideration to execute the registered sale deed. He waited for balance sale consideration till 28.02.2003, but it was not paid. He also denied that appellant met him on 15.02.2003 with balance sale consideration, as he waited till 28.02.2003, he entered into Agreement of Sale with another prospective purchaser on 02.03.2003 and also received advance sale consideration and thus the Agreement of Sale dated

24.09.2002, became impliedly infructuous and rescinded under Section 27 and 28 of Chapter-IV of Specific Relief Act, 1963. Even afterwards, appellant filed suit for Specific Performance. The respondent/defendant had filed O.S.No.310 of 2006 seeking perpetual injunction and the same was decreed in his favour on 16.03.2007, and he filed a copy of the said Judgment before the Court. It was suggested to P.W.1 that he could not pay the penalty of Rs.23,000/- for one year, as such he has no capacity to pay the balance sale consideration of Rs.4,00,000/- odd. In fact, he was doing real estate business, he is in the habit of entering into Agreement of Sale and after getting prospective purchasers, he will get the Agreement of Sale registered in the name of prospective purchasers by paying balance sale consideration, but it was denied.

11. Now, it is for this Court to see whether appellant/plaintiff is ready and willing to perform his part of contract or not.

12. Admittedly, time is the essence of contract and appellant has to pay the balance sale consideration on or before 28.02.2003, but he failed to do so. Though, he stated that he approached respondent for several times along with several other persons including P.Ws.2 and 3, he has not filed any

statement of account to show that he was having the balance in his hands prior to the stipulated time. Though, appellant stated that he along with some other persons went to the house of respondent on 16.02.2003 for payment of balance sale consideration, it was denied by the respondent. It is for the appellant to prove that he was ready and willing to perform his part of contract. Though, P.Ws.2 and 3 supported the version of appellant, it was suggested that they are close acquaintances of P.W.1, as such they supported to him in toto. Appellant has not paid the balance sale consideration within stipulated time, as such he is not entitled for specific performance of contract. In the receipt it was specifically mentioned that if appellant fails to pay the balance sale consideration within stipulated time, he is not entitled for repayment of interest amount and it was also stated that respondent is at liberty to sell the property to third parties, as such respondent entered into Agreement of Sale with another prospective purchaser on 02.03.2003 itself. He also informed about the cancellation of the Agreement in the legal notice, later he filed the suit, as such there are no merits in the suit. Appellant is not entitled for specific performance of Agreement of contract and so also he is not entitled for any earnest money. Therefore, the Judgment of the trial Court is set aside.

13. In the result, the appeal suit is dismissed, confirming the finding of the trial Court dated 25.11.2009 in O.S.No.37 of 2003, in so far as the relief of Specific Performance of Agreement of Sale and reversing the finding of the trial Court with regard to refund of advance amount. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATE: 12.01.2024

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THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

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