

Kadupugotla Varalakshmi vs Vudagiri Venkata Rao on 16 February, 2021

Bench: Uday Umesh Lalit, Indira Banerjee, K.M. Joseph

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.543 OF 2021
(Arising out of SLP (C) No(s).9175/2020)

KADUPUGOTLA VARALAKSHMI

APPELLANT

VERSUS

VUDAGIRI VENKATA RAO & ORS.

RESPONDENT

WITH

CIVIL APPEAL NO.544 OF 2021
(Arising out of SLP (C) No(s) 1944/2021)

O R D E R

Application for substitution is allowed.

Leave granted.

These appeals arise out of the judgment and order dated 20-04-2020 passed by the High Court of Andhra Pradesh at Amravati in A.S. No. 531/2008.

Civil suit¹ seeking specific performance of agreement dated 09.10.2004 was dismissed by the Trial Court holding inter alia that the plaintiff had failed to prove the genuineness of the agreement dated 09.10.2004 and that the appellant herein was a bonafide purchaser for consideration without notice of said agreement dated 09.10.2004.

In paragraph 15 onwards of its judgment, the Trial Court also noted certain facts touching upon the question of 1 O.S. No.209 of 2006 in the Court of Senior Civil Judge, Vizianagaram filed by respondent no.1 in both appeals – Vudagiri Venkata Rao.

readiness and willingness on part of the plaintiff.

In the first appeal arising therefrom, the matter was considered by the High Court under Point No.2, in paragraphs 70 to 76 of its judgment as under:

“POINT No.2:-

70. The evidence of the appellant as P.W.1 is that he was ready and willing to perform his part of the contract in terms of Ex.A1. Reasons are assigned while discussing point No.1 that the appellant had established that he was in a position to raise necessary funds to perform his part of the contract under Ex.A1. In Ex.A2 notice, he clearly stated that he was ready and willing to perform his part of the contract thereunder and called upon the 1st respondent to perform his part of the contract upon receiving balance sale consideration and to execute a regular sale deed as well as to get it registered.

References to these circumstances are also made in the plaint, though specific averments to the effect that the appellant was always ready and willing to perform his part of the contract are not brought out in the plaint. Nonetheless the manner in which the appellant expressed his readiness and willingness in so many words in the plaint as well as in Ex.A2 notice clarify the situation and making out this omission insignificant.

71.The nature of defence of denial of execution of Ex.A1 set up by the 1st respondent, without referring or denying that the appellant was always ready and willing to perform his part of the contract is a factor to be considered in this respect.

72. The learned counsel for the appellant placed reliance in *Narinderjit Singh vs. North Star Estate Promoters Limited* [(2012) 5 SCC 712 26] in this respect. In given facts and circumstances, referring to denial of agreement of sale set up as defence in a suit for specific performance, it is observed in this ruling that objection that the plaintiff is not ready and willing to perform his part of the contract under agreement for sale, cannot stand. It was thus observed that the defendant could not have raised a plea relating to want of readiness and willingness on the part of the plaintiff to perform his part of the contract.

73. Further reliance is placed by the learned counsel for the appellant in this context in *Silvey and others vs. Arun Varghese and another*[(2008) 11 SCC 45], apart from a judgment of Punjab & Haryana High Court in *Santa Singh v. Binder Singh and others* [2006 SCC OnLine P&H 442].

74. Contentions are also advanced on behalf of the appellant, referring to the defence of 3rd respondent, who is subsequent purchaser of the suit property under Ex.B4 that she cannot raise such objection. Reliance is placed in this context in *M. M.S.Investments, Madurai and others vs. V. Veerappan and others* [(2007) 9 SCC 660] . In para-6 of this ruling, it is observed as under:

“6. Questioning the plea of readiness and willingness is a concept relatable to an agreement. After conveyance the question of readiness and willingness is really not relevant. Therefore, the provision of the specific Relief Act, 1963 (in short “the Act”)

is not applicable.”

75. In Jugraj Singh and another vs. Labh Singh and others[(1995) 2 SCC 31] in this respect it is observed in para 5 referring to the celebrated judgment in Gomathinayagam Pillai v. Palaniswami Nadar{AIR 1967 SC 868] as under:

“5. This Court in Gomathinayagam Pillai v. Palaniswami Nadar quoting with approval Ardeshir case (AIR 1928 PC 208) had held as follows:

“But the respondent has claimed a decree for specific performance and it is for him to establish that he was , since the date of the contract, continuously ready and willing to perform his part of the contract. If he failed to do so, his claim for specific performance must fail.” That plea is specifically available to the vendor/ defendant. It is personal to him. The subsequent purchasers have got only the right to defend their purchase on the premise that they have no prior knowledge of the agreement of sale with the plaintiff. They are bona fide purchasers for valuable consideration. Though they are necessary parties to the suit, since any decree obtained by the plaintiff would be binding on the subsequent purchasers, the plea that the plaintiff must always be ready and willing to perform his part of the contract must be available only to the vendor or his legal representatives, but not to the subsequent purchasers....”

76. Therefore, in the light of the above legal position, it is not open for the 3rd respondent to raise this plea.

Thus, on the material it has to be held that the appellant did succeed in making out that he was ready and willing to perform his part of the contract under Ex.A1 at all material times against the 1st respondent. Thus, this point is answered.” Thus, the submissions advanced on behalf of the appellant i.e. subsequent purchaser were not taken into account on the premise that it would not be open to a subsequent purchaser to challenge the readiness and willingness on part of the plaintiff. The High Court had relied upon the decision of this Court rendered in Jugraj Singh and Another vs. Labh Singh and Others [(1995) 2 SCC 31] to come to such conclusion.

It must be stated here that the principles laid down in Jugraj Singh and Another (supra) were not accepted by a larger Bench of this Court. The relevant discussion in paragraph 6 in the case of Ram Awadh (Dead) by Lrs. and Others vs. Achhaibar Dubey and Another [(2000) 2 SCC428] was as under:

“6. The obligation imposed by Section 16 is upon the court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that he mandatory requirement of Section

16(c) has not been complied with and it is for the court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jugraj Singh case [(1995) 2 SCC 31] is erroneous.” Learned counsel appearing for the plaintiff - respondent no.1 sought to support on facts the conclusion arrived by the High Court on the issue of readiness and willingness.

However, the fact remains that the entire perspective with which the matter was considered by the High Court was clearly erroneous and as the observations made by the High Court in paragraph 76 disclose, the High Court went on the footing that it was not open to the appellant i.e. subsequent purchaser to raise any submissions on the issue of readiness and willingness. Thus, the judgment under challenge clearly fell in serious error.

We, therefore, deem it appropriate to set aside the decision of the High Court and remit the matter for fresh consideration on merits.

These appeals are, therefore, allowed, the judgment under challenge is set aside and First Appeal being A.S. No.531 of 2008 is restored to the file of the High Court to be decided afresh on merits.

No order as to costs.

.....J. [UDAY UMESH LALIT]J. [INDIRA BANERJEE]J. [K.M. JOSEPH] New Delhi;

February 16, 2021.

ITEM NO.9 Court 4 (Video Conferencing) SECTION XII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 9175/2020

(Arising out of impugned final judgment and order dated 20-04-2020 in AS No. 531/2008 passed by the High Court Of Andhra Pradesh At Amravati) KADUPUGOTLA VARALAKSHMI Petitioner(s) VERSUS VUDAGIRI VENKATA RAO & ORS. Respondent(s) (FOR ADMISSION and I.R. and IA No. 72331/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT; IA No. 75121/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES) WITH SLP(C) No. 1944/2021 (XII-A) (FOR ADMISSION and I.R. and IA No.14100/2021-EXEMPTION FROM FILING C/C OF

THE IMPUGNED JUDGMENT and IA No.14102/2021-APPLICATION FOR SUBSTITUTION and IA No.14101/2021-EXEMPTION FROM FILING O.T.) Date : 16-02-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT HON'BLE MS. JUSTICE INDIRA BANERJEE HON'BLE MR. JUSTICE K.M. JOSEPH For Petitioner(s) Mr. A. Ramalingeswara Rao, Sr. Advocate, Ms. E. R. Sumathy, AOR and Ms. S. Spandana Reddy, advocate -[for SLP(C) No. 1944/2021] Mr. Raavi Yogesh Venkata, AOR Ms. Snigdha Singh [Adv.] Mr. Saurabh Ahluwalia [Adv.] For Respondent(s) Mr. G. Ramakrishna Prasad, AOR Mr. Suyodhan Byrapaneni, Adv.

Ms.Filza Moonis, Adv.(R-1) Mr. A. Ramalingeswara Rao, Sr. Advocate, Ms. E. R. Sumathy, AOR and Ms. S. Spandana Reddy, advocate - for Respondent Nos. 2.1, 2.2, 3.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

These appeals are allowed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(VIRENDER SINGH)
BRANCH OFFICER

(SIGNED ORDER IS PLACED ON THE FILE)