

VUNDAVALLI RATNA MANIKYAM & ANOTHER

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v.

V.P.P.R.N. PRASADA RAO

(Civil Appeal No. 1204 of 2020)

FEBRUARY 06, 2020

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[ARUN MISHRA, VINEET SARAN AND M.R. SHAH, JJ.]

Specific Performance:

Agreement to sell – Entered in 1981 – Earnest money paid – Time extended to pay balance amount – Meanwhile acquisition proceedings – In representation by original vendor and vendee for deletion of the property from acquisition, vendor admitted sale and possession of the property to the vendee – Death of original vendor – Widow of original Vendor (D1) sold the property to D2 – Vendee's suit for permanent injunction against D1&2 – Also suit for specific performance of 1981 agreement – Trial Court admitted execution of agreement and possession of vendee, but dismissed suit for specific performance on the ground of delay applying Article 54 of Limitation Act – High Court decreed the suit and applying Art. 113 of Limitation Act held that there was no delay – Appeal to Supreme Court by defendants – Held: High Court in the facts of the case rightly decreed the suit holding it as not barred by limitation, applying Article 113 – However, direction to vendee to pay additional Rupees fifteen lakhs towards full sale.

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Dismissing the appeal, the Court

HELD: 1. It is not in dispute that under the agreement to sell dated 7.5.1981, the sale deed was to be executed within a period of four months from the date of execution of agreement to sell i.e. 7.5.1981. However, thereafter time was extended by a further period of eight months i.e. up to 6.5.1982. However, before any further steps could be taken by the plaintiff and the original vendor, the suit property was subjected to the acquisition by the State Government. It was the plaintiff who made a representation to the Assistant Collector and requested for deletion of the property from the acquisition. A similar representation was made by the original vendor also. In the representations both the

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A vendor and the vendee specifically stated that the land in question has been sold in favour of the plaintiff and that he is in possession. Therefore, the original vendor as such admitted the execution of the agreement to sell dated 7.5.1981 as well as handing over the possession of the suit property to the plaintiff. Therefore, the trial Court as such rightly believed the execution of the agreement to sell dated 7.5.1981 as well as handing over of possession to the plaintiff. The same is rightly confirmed by the High Court. [Para 7.1][616-C-F]

2. Under the agreement to sell it was for the vendor to settle all the disputes in the property. As the land in question was subjected to the acquisition and thereafter the acquisition proceedings came to be quashed and set aside at the instance of the plaintiff in the year 1984/1985 and thereafter the plaintiff served a legal notice upon the defendants on 20.01.1986 calling upon the defendants to execute the sale deed which came to be refused by reply notice dated 31.1.1986 and thereafter the suit for specific performance was preferred, as rightly observed by the High Court, Article 113 of the Limitation Act would be applicable and not Article 54 of the Limitation Act. The trial Court had dismissed the suit solely on the ground that the suit is barred by limitation considering Article 54 of the Limitation Act though all other findings with respect to the execution of agreement to sell, the plaintiff was put in possession etc. were held to be in favour of the plaintiff. [Para 7.2][617-A-D]

3. Therefore, applying Article 113 of the Limitation Act to the facts of the present case and the conduct of the plaintiff all throughout to protect not only his possession but to protect the property from acquisition and that he was always ready and willing to perform his part of the agreement to sell/contract, the High Court has rightly decreed the suit for specific performance. [Para 7.3][617-D-E]

4. However, considering the fact that the agreement to sell was executed in the year 1981 for a total sale consideration of Rs. 59,200/- and at the relevant time Rs. 26,500/- was paid as an earnest money and all throughout the plaintiff enjoyed the possession and thereafter by now about 40 years have passed

and as agreed by the plaintiff to pay some more amount to the defendants, over and above the sale consideration as mentioned in the agreement to sell, which he had agreed to pay to put an end to the litigation and to buy peace, while dismissing the present appeal, the plaintiff is directed to pay a total sum of Rs. 15,00,000/- (Rupees fifteen lakhs only) to the defendants towards the full sale consideration, which shall be inclusive of the balance amount of sale consideration to be paid to the defendants under the agreement to sell. [Para 7.4][617-E-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1204 of 2020.

From the Judgment and Order dated 25.07.2014 of the High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh in Appeal Suit No. 3511 of 1992.

A. T. M. Rangaramanujam, Sr. Adv., M. A. Chinnasamy, Adv. for the Appellants.

Mrs. K. Sarada Devi, Adv. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 25.07.2014 passed by the High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh in Appeal Suit No. 3511 of 1992, whereby the High Court has allowed the said appeal suit filed by the respondent herein – original plaintiff and has quashed and set aside the judgment and decree passed by the learned trial Court in O.S. No. 55 of 1986 dismissing the suit and consequently decreeing the suit of the respondent herein – original plaintiff for specific performance of the agreement to sell dated 7.5.1981, the original defendants in O.S. No. 55 of 1986 have preferred the present appeal.

3. The facts leading to the present appeal in nutshell are as under:

That one Nimmalapudi Ramaswami – husband of original defendant no.1 was the original owner of the suit land. That the said

- A Nimmalapudi Ramaswami agreed to sell the suit land by executing agreement to sell dated 7.5.1981 in favour of the original plaintiff for a sale consideration of Rs.59,200/-. He received an advance sale consideration of Rs.26,500/- on the same day. As per the agreement to sell, the balance sale consideration was required to be paid within four months. However, the time was extended making endorsement on the reverse of the original agreement to sell for another period of eight months. But during the extended period, the State Government initiated land acquisition proceedings for acquiring the suit property. The original land owner – Nimmalapudi Ramaswami and the plaintiff made a representation for deleting the suit property from the proposed land acquisition. At this stage, it is required to be noted that in the representation made to the Assistant Collector, the original land owner categorically admitted that he has sold the suit land to the plaintiff for consideration and delivered possession of the land to the plaintiff. The plaintiff also stated in the said representation that he has purchased the property under the agreement to sell and has taken possession of the property in question. That thereafter the State Government issued notification under Section 4 of the Land Acquisition Act, vide notification dated 21.09.1981.

- 3.1 The said notification came to be challenged by the plaintiff and another by filing Writ Petition No. 3161 of 1983. The said writ petition came to be allowed and the notification came to be set aside by judgment and order dated 22.11.1984. Appeal against the judgment of the High Court came to be dismissed by the Division Bench vide order dated 4.2.1985. After the death of the original land owner – Nimmalapudi Ramaswami, the original defendant no.1 – wife of Nimmalapudi Ramaswami executed a sale deed in favour of original defendant no.2 – Bogilla Satyanarayana Murthy. Apprehending that the wife of late Nimmalapudi Ramaswami – original defendant no.1 – Nimmalapudi Veeramma and the said Bogilla Satyanarayana Murthy may interfere with his possession, the original plaintiff – respondent herein filed O.S. No. 24 of 1984 in the Court of District Munsiff Court, Ramachandrapuram against the aforesaid two for permanent injunction and obtained a temporary injunction. The aforesaid suit was subsequently transferred to the District Munsif Court, Alamuru which was registered as O.S. No. 188/1984 and later the said suit was transferred to the Subordinate Judge, Ramachandrapuram and registered as O.S. No. 94/1989 claiming permanent injunction restraining Bogilla Satyanarayana Murthy and his men from interfering with his possession.

3.2 That thereafter the plaintiff got issued a legal notice dated 20.01.1986 to original defendant no.1 – widow of late Nimmalapudi Ramaswami and Bogilla Satyanarayana Murthy claiming specific performance of the agreement to sell dated 7.5.1981. Original defendant no.1 – Nimmalapudi Veeramma replied to the aforesaid notice vide reply notice dated 31.1.1986 contending that she has already sold the property to Bogilla Satyanarayana Murthy for a valuable consideration and consequently refused to execute the sale deed. Therefore, the respondent herein – original plaintiff filed O.S. No. 55/1986 on the file of Subordinate Judge, Ramachandrapuram against the appellants herein – original defendants on 23.4.1986 for specific performance of the agreement to sell dated 7.5.1981. Alternatively, the plaintiff prayed to refund the advance amount of Rs.26,500/- together with interest @ 18% per annum and award of damages of Rs.25,000/-.

3.3 That the said suit was resisted by original defendant no.1 – Nimmalapudi Veeramma by filing the written statement contending that after the death of her husband Nimmalapudi Ramaswami she was put in possession of the schedule property and she executed an agreement to sell dated 16.2.1983 and sold the suit property for Rs.20,000/- and received an advance of Rs.2,000/- and thereafter executed a registered sale deed dated 8.7.1983 in favour of defendant no.2 – Bogilla Satyanarayana Murthy and delivered possession to him on 10.05.1983. It was also contended that the alleged agreement to sell dated 7.5.1981 is not true and valid and it is a collusive agreement brought into existence by Nimmalapudi Ramaswami in anticipation of the land acquisition proceedings. Original defendant no.1 prayed to dismiss the suit filed by the plaintiff.

3.4 Original defendant no.2 – Bogilla Satyanarayana Murthy also filed the written statement in O.S. No. 55/1986. It was the case on behalf of original defendant no.2 that he is a bonafide purchaser for a valid consideration and he is in possession and enjoyment of the same by executing the sale deed in his favour executed by the wife of late Nimmalapudi Ramaswami.

3.5 That both the aforesaid suits being O.S. No. 55/1986 (suit for specific performance) and O.S. No. 94/1989 (suit for permanent injunction) were consolidated and heard together. In both the suits, the learned trial Court framed the issues. That both the plaintiffs and the defendants led the evidence, both oral as well as documentary. That on appreciation of evidence on record, the learned trial Court believed the

A execution of agreement to sell dated 7.5.1981 in favour of the plaintiff. The learned trial Court also believed the possession of the plaintiff at the time of filing of the suit. However, the learned trial Court denied the specific performance of the agreement to sell dated 7.5.1981 only on the ground that the claim for specific performance is barred by limitation.

B 3.6 The learned trial Court decreed O.S. No. 94/1989 and granted permanent injunction restraining the appellants – original defendants to interfere with the peaceful possession and enjoyment of the property in question having found that the plaintiff is in possession and enjoyment of the property.

C 3.7 Aggrieved by the common judgment and decree passed by the learned trial Court passed in O.S. No. 55 of 1986 in dismissing the suit for specific performance of the agreement to sell dated 7.5.1981, the original plaintiff filed Appeal Suit No. 3511/1992 before the High Court. The original defendants in O.S. No. 55/1986 also filed Tr.A.S. No. 439/2006 challenging the adverse findings on issue nos. 1 to 5 in

D O.S. No. 55/1986, i.e., believing the agreement to sell in favour of the plaintiff and believing the possession of the plaintiff under the agreement to sell dated 7.5.1981. At this stage, it is required to be noted that the learned trial Court dismissed the suit on the ground of limitation considering Article 54 of the Limitation Act. However, it was the specific case on behalf of the plaintiff that Article 113 of the Limitation Act would be applicable and therefore the suit is within the period of limitation.

E 3.8 That by the impugned common judgment and order, the High Court has allowed the appeal suit no. 3511/1992 preferred by the original plaintiff and has quashed and set aside the judgment and decree passed by the learned trial Court dismissing the suit for specific performance and consequently has decreed the suit for specific performance applying Article 113 of the Limitation Act. By the impugned common judgment and order the High Court has also dismissed Tr.A.S. No. 439/2006 and Tr.A.S. No. 962/2013 preferred by the original defendants confirming the findings on issue nos. 1 to 5 in O.S. No. 55/1986 and also confirming the judgment and decree of permanent injunction in O.S. No. 94/1989.

G 3.9 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court, the original defendants have preferred the present appeal. It is required to be noted that what is challenged in the present appeal is the judgment and order passed by the

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High Court in A.S. No. 3511/1992 only, vide which the High Court has allowed the said appeal preferred by the original plaintiff and consequently has decreed the suit for specific performance of agreement to sell dated 7.5.1981 in favour of the original plaintiff. A

4. Learned Advocate appearing on behalf of the appellants – original defendants has vehemently submitted that in the facts and circumstances of the case the High Court has materially erred in quashing and setting aside the judgment and decree passed by the learned trial Court dismissing the suit on the ground of limitation. B

4.1 It is further submitted by the learned Advocate appearing on behalf of the appellants – original defendants that the High Court has materially erred in not properly appreciating the fact that the learned trial Court rightly dismissed the suit on the ground of limitation applying Article 54 of the Limitation Act. It is submitted that, in the facts and circumstances of the case, Article 113 of the Limitation Act shall not be applicable. C

4.2 It is further submitted by the learned Advocate appearing on behalf of the appellants – original defendants that as per the original agreement to sell dated 7.5.1981 the sale deed was required to be executed within four months from the date of execution of the agreement to sell and even the same was extended up to 6.5.1982 only. It is submitted that therefore the limitation for filing the suit by the plaintiff would be three years from 6.5.1982 as provided under Article 54 of the Limitation Act. It is submitted therefore as rightly held by the learned trial Court the suit of the plaintiff was barred under Article 54 of the Limitation Act. D

4.3 It is further submitted by the learned Advocate appearing on behalf of the appellants – original defendants that the High Court ought to have seen that taking a stray sentence in Ex.A1 (agreement to sell) that vendor has to settle all the disputes in the property cannot be termed as implied covenant. E

4.4 It is further submitted by the learned Advocate appearing on behalf of the appellants – original defendants that the High Court ought to have appreciated that there has been a valid sale by the widow of the vendor in favour of appellant no.2 herein – Bogilla Satyanarayana Murthy and the said sale deed was acted upon by the widow and as she was in possession, she put appellant no.2 herein into possession of the suit property. F

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A 4.5 It is further submitted by the learned Advocate appearing on behalf of the appellants – original defendants that the High Court ought to have appreciated that till notice dated 20.1.1986 was served upon appellant no.2 – original defendant no.2, appellant no.2 was not aware of the alleged agreement to sell dated 7.5.1981 in favour of the plaintiff. It is submitted that appellant no.2 herein – original defendant no.2 is a purchaser without notice of the existence of the earlier agreement and on payment of full sale consideration. It is submitted that therefore the High Court has materially erred in allowing the appeal and decreeing the suit for specific performance in favour of the plaintiff.

C 4.6 Making the above submissions, it is prayed to allow the present appeal.

5. The present appeal is vehemently opposed by Mrs. K. Sarada Devi, learned Advocate appearing on behalf of the original plaintiff – respondent herein.

D 5.1 It is submitted by the learned Advocate appearing on behalf of the respondent herein - original plaintiff that in the facts and circumstances of the case, the High Court has not committed any error in decreeing the suit relying upon and applying Article 113 of the Limitation Act.

E 5.2 It is further submitted by the learned Advocate appearing on behalf of the respondent herein - original plaintiff that so far as the execution of agreement to sell dated 7.5.1981 by original land owner – Nimmalapudi Ramaswami and that the plaintiff was put in possession there are concurrent findings of fact by the learned trial Court as well as the High Court, which are on appreciation of evidence on record.

F 5.3 It is further submitted by the learned Advocate appearing on behalf of the respondent herein - original plaintiff that after the execution of the agreement to sell dated 7.5.1981 and after the time to make the payment and execution of the sale deed was extended by a further period of eight months, the land acquisition proceedings were initiated and it was the plaintiff who challenged the acquisition proceedings and in the petition filed by him the acquisition proceedings came to be set aside and the writ petition was allowed. It is submitted that as mentioned in the agreement to sell – Ex. A1 it was for the vendor to settle all the disputes in the property. It is submitted that after the land acquisition proceedings came to be quashed by the High Court and thereafter when the plaintiff

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served a notice upon the defendants to execute the sale deed and thereafter there was a denial by original defendant no.s 1 & 2 thereafter the suit has been filed within a period of three years. It is submitted that therefore Article 113 of the Limitation Act would be applicable and the same is rightly applied by the High Court.

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5.4 It is further submitted by the learned Advocate appearing on behalf of the respondent herein - original plaintiff that even and as observed by the High Court in the impugned common judgment and order, the execution of the agreement to sell dated 7.5.1981 has not been disputed by the defendants. It is submitted that however it was their defence that the said agreement to sell was to defeat the land acquisition proceedings. It is submitted that therefore when the agreement to sell dated 7.5.1981 has been admitted by the defendants and the plaintiff was always ready and willing to perform his part of the contract and all throughout it was the plaintiff who challenged the acquisition proceedings which shows the bonafides on the part of the plaintiff, the High Court has rightly allowed the appeal and consequently has rightly decreed the suit for specific performance of the agreement to sell dated 7.5.1981.

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5.5 It is further submitted by the learned Advocate appearing on behalf of the respondent herein - original plaintiff that as such there is no appeal preferred by the defendants challenging the impugned common judgment and order passed by the High Court insofar as dismissing their appeals being Tr.A.S. No. 439/2006 and Tr.A.S. No. 962/2013 by which the High Court specifically confirmed the findings on issue nos. 1 to 5 in O.S. No. 55/1986 and also confirmed the judgment and decree of permanent injunction in favour of the plaintiff in O.S. No. 94/1989.

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5.6 It is further submitted by the learned Advocate appearing on behalf of the respondent herein - original plaintiff that as such the plaintiff is in possession of the suit property since 1981 and therefore also the present appeal is required to be dismissed.

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5.7 It is further submitted by the learned Advocate appearing on behalf of the respondent herein - original plaintiff that even otherwise and with a view to put an end to the litigation the plaintiff is ready and willing to pay some more amount than what is required to be paid under the agreement to sell.

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5.8 Making the above submissions, it is prayed to dismiss the present appeal.

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A 6. In reply, learned Advocate appearing on behalf of the appellants – original defendants has submitted that if the impugned judgment and order passed by the High Court is set aside and the property/land in question is reverted back to the appellants -, the appellants are ready and willing to pay a handsome amount to the plaintiff.

B 7. We have heard the learned counsel for the respective parties at length and perused and considered the impugned common judgment and order passed by the High Court as well as the judgment and decree passed by the learned trial Court.

C 7.1 At the outset, it is required to be noted that the original plaintiff instituted the suit for specific performance of agreement to sell dated 7.5.1981 (Ex.A1). It is not in dispute that under the agreement to sell dated 7.5.1981, the sale deed was to be executed within a period of four months from the date of execution of agreement to sell i.e. 7.5.1981. However, thereafter time was extended by a further period of eight months i.e. up to 6.5.1982. However, before any further steps could be
D taken by the plaintiff and the original vendor, the suit property was subjected to the acquisition by the State Government. It was the plaintiff who made a representation to the Assistant Collector and requested for deletion of the property from the acquisition. A similar representation was made by the original vendor also. It is required to be noted that in
E the representations both the vendor and the vendee specifically stated that the land in question has been sold in favour of the plaintiff and that he is in possession. Therefore, the original vendor as such admitted the execution of the agreement to sell dated 7.5.1981 as well as handing over the possession of the suit property to the plaintiff. Therefore, the learned trial Court as such rightly believed the execution of the agreement
F to sell dated 7.5.1981 as well as handing over of possession to the plaintiff. The same is rightly confirmed by the High Court.

G 7.2 However, the trial Court dismissed the suit solely on the ground that the suit for specific performance was barred by limitation applying Article 54 of the Limitation Act. On the other hand, it was the specific case on behalf of the plaintiff that in the facts and circumstances of the case Article 113 of the Limitation Act shall be applicable as the suit was filed within a period of three years when the right to sue accrued. According to the plaintiff, the right to sue accrued when the plaintiff served a notice upon the defendants to execute the sale deed and the
H defendants refused to execute the sale deed. At this stage, it is required

to be noted that under the agreement to sell it was for the vendor to settle all the disputes in the property. As the land in question was subjected to the acquisition and thereafter the acquisition proceedings came to be quashed and set aside at the instance of the plaintiff in the year 1984/1985 and thereafter the plaintiff served a legal notice upon the defendants on 20.01.1986 calling upon the defendants to execute the sale deed which came to be refused by reply notice dated 31.1.1986 and thereafter the suit for specific performance was preferred, as rightly observed by the High Court, Article 113 of the Limitation Act would be applicable and not Article 54 of the Limitation Act as applied by the learned trial Court. We are in complete agreement with the view taken by the High Court in applying Article 113 of the Limitation Act. As observed hereinabove, the learned trial Court dismissed the suit solely on the ground that the suit is barred by limitation considering Article 54 of the Limitation Act though all other findings with respect to the execution of agreement to sell., the plaintiff was put in possession etc. were held to be in favour of the plaintiff.

7.3 Therefore applying Article 113 of the Limitation Act to the facts of the case on hand and the conduct of the plaintiff all throughout to protect not only his possession but to protect the property from acquisition and that he was always ready and willing to perform his part of the agreement to sell/contract, the High Court has rightly decreed the suit for specific performance. We are in complete agreement with the view taken by the High Court.

7.4 However, at the same time, considering the fact that the agreement to sell was executed in the year 1981 for a total sale consideration of Rs.59,200/- and at the relevant time Rs.26,500/- was paid as an earnest money and all throughout the plaintiff enjoyed the possession and thereafter by now about 40 years have passed and as agreed by the plaintiff to pay some more amount to the defendants, over and above the sale consideration as mentioned in the agreement to sell, which he has agreed to pay to put an end to the litigation and to buy peace, while dismissing the present appeal, we direct that the plaintiff shall pay a total sum of Rs.15,00,000/- (Rupees fifteen lakhs only) to the defendants towards the full sale consideration, which shall be inclusive of the balance amount of sale consideration to be paid to the defendants under the agreement to sell, to be paid within a period of eight weeks from today. On payment of the aforesaid amount of Rs. 15,00,000/-

- A (Rupees fifteen lakhs only) to the original defendants by the original plaintiff, immediately thereafter the original defendants are directed to execute the sale deed in favour of the plaintiff.

8. With the aforesaid observations and directions, the present appeal stands disposed of, however, no order as to costs.

Kalpana K. Tripathy

Appeal dismissed.