

A TELIKICHERLA SESIBHUSHAN (DEAD) BY LRS.

v.

KALLI RAJA RAO (DEAD) BY LRS. & ORS.

(Civil Appeal Nos. 6071-6072 OF 2007)

SEPTEMBER 08, 2014

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[SUDHANSU JYOTI MUKHOPADHAYA AND
PRAFULLA C. PANT, JJ.]

SPECIFIC PERFORMANCE : Suit for specific performance - Clause 16(c) of the Specific Relief Act, 1963 provides that specific performance of contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms, the performance of which has been prevented or waived by the defendant - In the instant case, there was concurrent finding of fact against the appellant by both the courts below that the appellant failed to prove that he had been ready and willing to perform his part of the contract - Suit for specific performance of contract was filed by the appellant after a period of seven years, and it was not proved that the appellant had been always ready and willing to perform his part of contract - As such, he is not entitled to the relief of specific performance of contract - Specific Relief Act, 1963 - s.16(c).

The respondent agreed to sell the suit property for Rs. 80,000/-. The agreement of sale disclosed that the respondent had taken a loan of Rs. 20,000/- in the year 1969 and as he could not repay the loan he decided to sell his land and the appellant agreed to repay the loan amount due from the respondent to the Bank. The appellant though made certain payments but failed to repay the entire loan amount. The Bank filed a recovery suit. In the said suit, the appellant got himself impleaded

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as party. The recovery suit was decreed.

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As the appellant did not fulfill the commitment made by him regarding the repayment of the loan amount, the respondent filed a suit against him for recovery of possession of land which he had delivered to him at the time of agreement of sale. The appellant filed a suit after seven years of agreement against the respondent for specific performance of contract.

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The suit by the respondent was dismissed and the suit filed by the appellant for specific performance of contract was partly allowed with direction to pay back the amount paid by him towards repayment of loan. The High Court set aside the order of the trial court pertaining to suit for possession filed by the respondent. The order of the trial court relating to the suit for specific performance was upheld. The instant appeals were filed challenging the order of the High Court.

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Dismissing the appeals, the Court

HELD: 1. There was concurrent finding of fact against the appellant by both the courts below that the appellant failed to prove that he had been ready and willing to perform his part of the contract. Since the appellant failed to repay the entire loan amount in terms of the agreement, and the suit filed by the Bank against the debtor for recovery of remaining amount of loan was decreed, as such, there was ample evidence on record to hold that the appellant failed to perform his part of contract, as such, it cannot be said that he is entitled to the relief of specific performance of contract. The suit for specific performance of contract was filed by the appellant after a period of seven years, and it is not proved on the record that the appellant had been always ready and willing to perform his part of contract. [Para 4] [693-F-H; 694-A]

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A 2. Clause 16(c) of the Specific Relief Act, 1963 provides that specific performance of contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which he has been prevented or waived by the defendant. In the instant case, due to the failure on the part of the appellant to repay the loan in terms of the agreement and further considering the fact that not only the suit filed by the creditor Bank was decreed against the debtor but it attained finality, the Courts below have committed no error of law in refusing to decree the suit of the appellant for specific performance of contract. There is concurrent finding of fact and the same is evident from the record that the appellant has failed to perform his part of contract. The courts below have not erred in law in not granting the relief of specific performance of contract to the appellant. [Paras 5, 7] [694-B-D; 695-G-H; 696-A]

E *Aniglase Yohannan vs. Ramlatha & Ors.* (2005) 7 SCC 534: 2005 (3) Suppl. SCR 440 - held inapplicable.

Case Law Reference:

F 2005 (3) Suppl. SCR 440 Held Para 6 Inapplicable

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.6071-6072 of 2007.

G From the Judgment and Order dated 15.06.2007 of the High Court of Andhra Pradesh in Appeal Suit No.2652 and 2052 of 1996.

H R. Basant, G. Ramakrishna Prasad, Suyodhan Byrapaneni, Wasay Khan, Bharat J. Joshi, Filza Moonis, Kartik Ashok for the Appellants.

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B. Adinarayana Rao, Adinarayana Rao, D. Bharat Kumar, Sayooj. Mohandas M., Abhijit Sengupta, Dharmendra Kumar Sinha, Vikramjit Banerjee, P.S. Sudheer, Rishi Maheshwari, Bharat Sood, Raj Kumar Kaushik, S. Udaya Kumar Sagar, Bina Madhavan, Shivendra Singh, Lawyer's Knit & Co. for the Respondents.

Respondents in Person.

The Judgment of the Court was delivered by

PRAFULLA C.PANT, J. 1. These two appeals are directed against the common judgment and order dated 15th June, 2007 passed by the High Court of Andhra Pradesh in Appeal Suit Nos.2652 and 2052 of 1996.

2. We have heard learned counsel for the parties and perused the papers on record.

3. The factual matrix of the case is that respondent- Kalli Raja Rao (since dead) agreed to sell the property measuring an area of Ac.19.96 cents situated at Pulla village of Eluru Taluk for an amount of Rs.80,000/- (Rupees eighty thousand only) under the agreement of sale (Ex.A/1) dated 10th May, 1980. The said agreement discloses that respondent- Kalli Raja Rao had taken a loan of Rs.20,000/- (Rupees twenty thousand only) from the State Bank of India, Eluru Branch, in the year 1969 and he could not repay the loan, as such, he intended to sell his land, and the present appellant- Telikicherla Sesibhushan agreed to repay the loan amount with interest due from Kalli Raja Rao, to the Bank. It appears that the appellant though made certain payments but failed to repay the entire loan amount with interest. Consequently, the Bank instituted a suit being O.S.No.208 of 1981 against the debtor for recovery of the amount before the Subordinate Judge, Eluru. Later, in the said suit the present appellant got himself impleaded as a party. The suit filed by the Bank for recovery of Rs.46,408.85 was decreed with interest on 31st December, 1986 and the same

A attained finality. Since the commitment made by the appellant
 was not fulfilled by him regarding the repayment of the loan
 amount, as such, Kalli Raja Rao filed suit being O.S. No.28 of
 1985 before the Subordinate Judge, Eluru against the appellant
 for recovery of possession of land which he had delivered to
 B him at the time of aforesaid agreement of sale. On this, the
 appellant appears to have filed O.S.No.37 of 1985 after a
 period of seven years of agreement against Kalli Raja Rao for
 specific performance of contract, before the Subordinate Judge,
 Eluru. Both the suits i.e. O.S.No.28 of 1985 and O.S.No.37 of
 C 1985 were disposed of vide common judgment and order
 dated 12th June, 1996. The concluding part of the said
 judgment and order of the trial court reads as under:

" 26. In the result, O.S.No.28/85 is dismissed. The court
 fee payable on the plaint in O.S.No.28/85 shall be collected
 D from out of the estate of late Rajarao which will come into
 the hands of his legal heirs, Plaintiffs 2 to 10 . O.S.No.37/
 85 is partly allowed with the following conditions:-

- E 1. The Defendants 2 to 10 shall deposit an amount of
 Rs.71,552-45 paise in the court within three months
 from today, and the plaintiff is entitled to withdraw
 the above amount to be deposited in the court.
- F 2. The plaintiff shall surrender the possession of the
 plaint schedule properties of the Defendants 2 to
 10 within one month from the date of deposit of
 Rs.71,552-45 paise to be made by the Defendants
 2 to 10 in the Court.

G In view of the relationship between the parties and in view
 of the present facts of the case, I am not inclined to make
 any order as to costs in both the suits."

H From the above quoted para it is clear that the suit filed
 by Kali Raja Rao was dismissed, and the suit filed by the
 appellant for specific performance of contract was not decreed

but the amount paid by him towards repayment of loan was directed to be paid back to him. It appears that both the parties preferred appeals against the aforesaid judgment and decree passed by the trial court, and the same were disposed of together by the High Court with the following concluding paragraph:

" 51. In the result, A.S. 2052 of 1996 is dismissed confirming the decree and judgment in O.S. 37 of 1985 of the trial Court. A.S.2652 of 1996 is allowed, and consequently O.S.28 of 1985 is decreed subject to fulfilling of conditions imposed in the decree in O.S.37 of 1985 the vendors are entitled to possession on deposit of amount as directed by the trial Court. The vendors are entitled to mesne profits to be determined on a separate application to be filed before the trial Court. The vendors are entitled to mesne profits to be determined on a separate application to be filed before the trial Court from the date of suit O.S.28 of 1985 till the date of possession. However, while evaluating mesne profits the amounts deposited by virtue of this Court's order namely Rs.50,000/- per year should be given effect to. The vendors are entitled to withdraw the amounts deposited by the vendee pursuant to the orders of this Court."

4. It is clear from the record that there is concurrent finding of fact against the present appellant by both the courts below that the appellant failed to prove that he had been ready and willing to perform his part of the contract. Having gone through the papers on record, we find that since the present appellant failed to repay the entire loan amount in terms of the agreement, and the suit filed by the Bank against the debtor for recovery of remaining amount of loan was decreed, as such, there was ample evidence on record to hold that the appellant failed to perform his part of contract, as such, it cannot be said that he is entitled to the relief of specific performance of contract. It is pertinent to mention here that the suit for specific performance

A of contract was filed by the plaintiff/appellant after a period of seven years, and it is not proved on the record that the plaintiff had been always ready and willing to perform his part of contract.

B 5. Clause (c) of the Specific Relief Act, 1963 provides that specific performance of contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which he has been prevented or waived by the defendant. In the present case, as discussed above, due to the failure on the part of the appellant to repay the loan in terms of the agreement dated 10th May, 1980 (Ex.A.1) and further considering the fact that not only the suit being O.S.No.208 of 1981 filed by the creditor Bank was decreed against the debtor but it attained finality, the Courts below have committed no error of law in refusing to decree the suit of the appellant for specific performance of contract.

E 6. In the case of *Aniglase Yohannan vs. Ramlatha & Ors.* (2005) 7 SCC 534 in which reliance has been placed on behalf of the appellant, it has been held that where from the pleadings and evidence of the parties it is manifest that the plaintiff was ready and willing to perform his part of the contract, the relief of specific performance may not be denied to him. Relevant parts of paragraph 9 and 12 of the said judgment read as under:

G "9. The requirements to be fulfilled for bringing in compliance with Section 16(c) of the Act have been delineated by this Court in several judgments. Before dealing with the various judgments it is necessary to set out the factual position. The agreement for sale was executed on 15-2-1978 and the period during which the sale was to be completed was indicated to be six months. Undisputedly, immediately after the expiry of the six-months' period, lawyer's notice was given calling upon the present appellant to execute the sale deed. It is also

averred in the plaint that the plaintiff met the defendant several times and requested him to execute the sale deed. On finding inaction on his part, the suit was filed in September 1978. This factual position has been highlighted in the plaint itself. The learned Single Judge after noticing the factual position as reflected in the averments in the plaint came to hold that the plaint contains essential facts which lead to inference to the plaintiff's readiness and willingness. Para 3 of the plaint indicates that the plaintiff was always ready to get the sale deed prepared after paying necessary consideration. In para 4 of the plaint, reference has been made to the lawyer's notice calling upon the defendant to execute the sale deed. In the said paragraph it has also been described as to how after the lawyer's notice was issued the plaintiff met the defendant. In para 5 it is averred that the defendant is bound to execute the sale deed on receiving the balance amount and the plaintiff was entitled to get the document executed by the defendant. It is also not in dispute that the balance amount of the agreed consideration was deposited in court simultaneously to the filing of the suit.

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12. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief."

7. But in the present case, there is concurrent finding of fact and the same is evident from the record that the plaintiff (present appellant) has failed to perform his part of contract, as such, in our opinion, above case law is of little help to the

A plaintiff/appellant, and the courts below have not erred in law in not granting the relief of specific performance of contract to the plaintiff in OS.No.37 of 1985.

B 8. For the reasons as discussed above, we find no illegality in the judgment and orders challenged before us. Accordingly, both the appeals are dismissed with costs.

Devika Gujral

Appeals dismissed.