

A

THIRIVEEDHI CHANNAIAH

v.

GUDIPUDI VENKATA SUBBA RAO (D) BY LRS. & ORS.

FEBRUARY 20, 2007

B

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Contract Act, 1872—Frustration of Contract—Agreement to sell property—Advance paid—Another agreement containing forfeiture clause—Land Acquisition proceeding by State in respect of suit property—Claim of refund of advance by buyer refused by seller and advance forfeited—Challenge against—Held, seller cannot exercise right of forfeiture of amount—Directed to refund the advance amount.

C

Respondent had entered into an agreement to sell suit property to appellant. Appellant made part payment of the consideration amount. A regular sale deed was to be executed after the entire amount is paid. On the same day, they entered into another agreement whereupon it was agreed that on default of appellant to pay the balance of sale consideration by or before 25.2.1982, the advance amount paid by appellant would be forfeited. Before the deed of sale could be executed, a Notification under S.4 of Land Acquisition Act, 1894 was issued. Respondent challenged the said Notification by filing writ petition before High Court.

D

Appellant requested respondent to refund the advance amount as he was not informed about the said land acquisition proceeding. Respondent replied that on account of failure to pay the balance amount, the money stood forfeited in terms of the agreement. Appellant filed suit for specific performance of contract of sale, which was decreed. On appeal, High Court set aside the decree. Hence the present appeal.

E

Partly allowing the appeal, the Court

F

HELD: 1.1. It is not the case of respondent that he had suffered any damage. He did not deny or dispute that after the Agreement of Sale was executed, a notification under Section 4(1) of the Land Acquisition Act had been issued. He himself raised a contention that the Agreement stood frustrated. It may be true that he not only questioned the validity of the said

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notification, but had also filed a suit, but indisputably the parties were aware that unless and until, the notification was set aside, the Agreement for Sale, in the aforementioned situation, cannot be enforced by either of them. A

[Para 12] [963-H; 964-A-B]

1.2. In the aforementioned facts and circumstances, the respondent could not have forfeited the amount of advance. The High Court committed a manifest error in that behalf in arriving at the finding that the respondent was justified in forfeiting the said amount. The High Court however rightly held that enforcement of agreement for sale would be inequitable. The respondent is directed to refund the amount of advance paid by the appellant to him. B

[Para 13, 14] [964-C-D] C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 853 of 2007.

From the Judgment and final Order dated 22.7.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in FA No. 2692/1988.

Venkateswara Rao Anumolu for the Appellant. D

L.N. Rao, G. Ramakrishna Prasad and Suyodhan Byrapaneni for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted. E

2. This appeal is directed against the judgment and order dated 22.07.2005 passed by a learned Single Judge of the High Court of Judicature at Andhra Pradesh in First Appeal No. 2692 of 1988 whereby and whereunder the appeal preferred by the respondents herein from a judgment and decree dated 28.11.1998 passed by the Additional Subordinate Judge, Guntur in O.S. No. 258 of 1984 decreeing the suit for specific performance of an agreement of sale dated 19.07.1981 was allowed. F

3. The basic fact of the matter is not in dispute. An Agreement of Sale was entered into by and between the parties on 19.07.1981, in terms whereof the respondent offered to sell the suit property admeasuring 2.96 cents out of 11.82 cents for Rs.44,000/- per acre in D. No. 140 situate at Agatavareppadu Village in the District of Guntur. Appellant advanced a sum of Rs. 50,000/- towards part payment of the said consideration. The balance amount of consideration was to be paid on or before 25.02.1982 whereupon a regular sale H

A deed was to be executed. On the said date, however, another agreement was entered into by the parties in terms whereof it was agreed that on default of the appellant to pay the balance of sale consideration on or before 25.02.1982, the said amount of advance shall be forfeited.

4. However, before the Deed of Sale could be executed, a notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short, 'the Act') was issued. Legality of the said notification was questioned by the respondent by filing a Writ Petition before the High Court of Andhra Pradesh which was marked as Writ Petition No. 434/1982. A suit was also filed by him for a decree for permanent injunction restraining the State of Andhra Pradesh from interfering with his possession.

5. In view of the aforementioned developments, the appellant herein by a notice requested the respondent to refund the said sum of Rs. 50,000/- with interest at the rate of 18 per cent per annum as he was not informed about the said land acquisition proceeding. However, in reply thereto, the respondent contended that as he has failed and/or neglected to pay the balance amount, the money stand forfeited in terms of the said agreement dated 19.07.1981. The suit filed by the appellant herein, was allowed by a judgment and order dated 28.11.1998, holding :

"In the result, the suit is decreed with costs for specific performance of contract of sale dated 19.07.1981 directing the defendant to execute the registered sale deed in favour of the plaintiff in respect of the plaint schedule property after receiving the balance of sale consideration. It was also directed that the balance of sale consideration shall be deposited on or before 31.1.1989 and that the defendant shall execute the sale deed on or before 28.2.1989. Failure to execute the sale deed by the defendant on or before 28.2.1989 the plaintiff is at liberty to obtain the sale deed from the Court."

6. The said decree was passed having regard to the fact that in the meanwhile, the High Court had quashed the aforementioned notification issued by the State under Section 4(1) of the Act by a judgment and order dated 18.02.1986. By reason of the said judgment the contention of the respondent herein that in view of the issuance of the said notification, the contract between the parties stood frustrated, was rejected.

7. The High Court, however, reversed the said judgment and decree passed by reason of the impugned judgment opining :

- (i) The appellant was not ready and willing to perform his part of contract; A
- (ii) He was aware of the proceedings under the Act;
- (iii) Issuance of mere notification would not lead to the conclusion that the contract had become frustrated; and B
- (iv) In the aforementioned situation, forfeiture of the advance money was justified. B

8. This Court issued a limited notice to the respondent as to why the amount of earnest money/advance should not be directed to be refunded to the appellant. C

9. Execution of the Agreement of Sale on 19.7.1981 is not in dispute. However, the same did not contain any stipulation in regard to the right of the respondent to forfeit the amount of advance. Such stipulation was made in a separate document which reads as under:-

“You executed an agreement of sale on 19.7.1981 in my favour to sell land admeasuring 2.9 acres for a consideration of Rs. 44,000/- per acre and today I paid Rs. 50,000/- as advance. If I failed to pay the balance of consideration before 25.02.1982 there is no need to refund my advance amount. Before the above said date, if I pay the balance of consideration, I will get the sale deed on my own expenses. On my consent if I sold partly, I would get the registration accordingly.” D E

10. Notification under Section 4(1) of the Act was issued on 02.01.1982. Appellant evidently was of the view that the respondent was aware of the intention of the State to acquire the said property, but despite his knowledge, he executed the said Agreement for Sale. F

11. The notice dated 4.3.1983 was issued on behalf of the appellant on the said premise that the respondent did not have any transferable title. It was on that basis refund of Rs. 50,000/-, which was paid by way of advance, was sought for from the respondent. It is only at that stage, the respondent invoked the forfeiture clause. G

12. The only question which arises for our consideration is as to whether in a situation of this nature, the respondent could exercise his right of forfeiture of the entire amount. It is not his case that he had suffered any damage. He did not deny or dispute that after the Agreement of Sale was H

A executed, a notification under Section 4(1) of the Act had been issued. He himself raised a contention that the Agreement stood frustrated. It may be true that he not only questioned the validity of the said notification, but had also filed a suit, but indisputably the parties were aware that unless and until, the notification was set aside, the Agreement for Sale, in the aforementioned situation, cannot be enforced by either of them.

B

13. In the aforementioned facts and circumstances of this case, we are of the opinion that the respondent could not have forfeited the amount of advance. The High Court, in our opinion, committed a manifest error in that behalf in arriving at the finding that the respondent was justified in forfeiting the said amount. We, however, agree with the High Court that enforcement of agreement for sale would be inequitable.

C

14. We, therefore, direct that respondents to refund the amount of advance paid by the appellant to him. Such payment should be made within a period of 4 weeks from date; failing which the same would carry interest at the rate of 12 per cent per annum from the said date till the date of actual payment.

D

15. The appeal is allowed to the aforementioned extent. However, in the facts and circumstances of this case, there shall be no order as to costs.

D.G.

Appeal allowed.