

IN THE COURT OF X. ADDL. DIST. JUDGE (FTC), R.R.DISTRICT

PRESENT: SRI VENKATESWARLU. K
XI ADDL. DIST JUDGE, (FTC),
F.A.C. XI ADDL. DIST JUDGE, (FTC),
AT L.B.NAGAR, R.R.DISTRICT

Monday the 27th day of April, 2015.

O.S. No. 710 of 2010

Between:

V.Dhana Lakshmi W/o.V.Raj Kumar Aged: 42 years ... Plaintiff

And

- 1.Uppala Sridhar S/o.Narsaiah Aged: 34 years
- 2.Jeedipally Ram Reddy S/o.Narayana Reddy Aged: 57 years
- 3.Aakula Krishna Murthy S/o.Late Vittal Aged: 41 years
- 4.B.Satyanarayana S/o.Narsaiah Aged: 53 years
- 5.G.Sanjeeva S/o.Kishtaiah Aged: 52 years Defendants.

This suit coming before me on 13-3-2015 in the presence of Sri.B.Chakrapani, Advocate for the plaintiff, Sri.GB Raj, Advocate for D1 to D5, and upon perusal of the material papers on record having stood over for consideration till this day, this court delivered the following:

JUDGMENT

1. This is a suit for recovery of Rs.61,48,600/- with interest and costs. The case of the plaintiff is that that defendants offered to sell Ac.1.00 of land in Sy. No.50 of Yadaram Grampanchayat in Medchal Mandal and plaintiff agreed to purchase the same and an agreement of sale was entered between them on 28-12-2006 under which plaintiff agreed to purchase the said land for Rs.51,50,000/- and paid Rs.42,00,000/- as advance, that subsequently when plaintiff was getting to ready to pay balance of sale consideration and sale deed she received notice dt.10-12-2007 on behalf of Bangarajah claiming title and possession over the said property, that plaintiff informed about the notice to the defendants who assured her to clear the cloud



on their title but defendants kept quiet, then plaintiff got issued a notice to the defendants calling upon them to act upon agreement, that having received the said notice defendant kept quiet, that earlier defendants promised to repay the advance received by them with interest 36% per annum, but as they failed to pay that amount plaintiff got issued another notice dt.9-10-2010 demanding refund of the amount with interest, that having received the said notice defendant kept quiet. Hence the suit.

12. D5 filed written statement which is adopted by D1 to D4. The case of the defendants is that there was an agreement of sale between plaintiff and defendants for sale of land for a total consideration of Rs.51,50,000/- and in pursuance of the agreement dt. 28-12-2006 plaintiff paid only Rs.12,00,000/- but not Rs.42,00,000/- as claimed by the plaintiff, that though the defendants have been ready and willing to perform their part of the contract plaintiff did not come forward, that cheques issued towards payment of balance consideration were dishonoured, that as the plaintiff and her husband were not coming forward a settlement was made in the presence of Nanda Reddy under which Rs.10,00,000/- was refunded to plaintiff and her husband on 2-2-2008 in the presence of Nanda Reddy, Jeevan Reddy and others and an agreement was also executed to that effect which was signed by the husband of the plaintiff, that having received the amount plaintiff kept quiet for a long time, that due to good faith defendant did not obtain any receipt for the amount refunded, that defendants are not liable to pay any amount to the plaintiff.

3. Based on the aforesaid pleadings the following issues are settled for trial.

1. Whether the plaintiff is entitled for recovery of Rs.61,48,600/- as prayed?
 2. Whether the suit is in time?
 3. Whether the defendant paid a sum of Rs.10 Lakhs on dt.2-2-2008 to the plaintiff?
- What relief?



4. During the course of trial plaintiff and her husband are examined as Pws 1 and 2 respectively. Exs.A1 to A9 are exhibited. On the other hand D5 alone is examined as DW1 and Exs.B1 to B5 are exhibited on behalf of defendants.

5. Heard both sides.

6. Issue No.2.

It is an admitted fact that date of agreement between parties was 28-12-2006. Suit was filed on 12-11-2010. It is mentioned in the para regarding limitation that defendants promised to get the cloud over their title cleared and that promise was made on 31-1-2008 but failed to keep the promise. As such cause of action for the suit for refund of the advance paid by the plaintiff arises on that day. In the affidavit of PW1 the averments in the plaint are copied. But the date of compromise said to be made by the defendants with the plaintiff was not mentioned in para No. 9. In para No. 10 some dates are mentioned but no meaning can be derived as to what those dates referred to. It is an admitted fact that plaintiff got issued Exs.A3 notice to the defendants demanding them to perform their part of the agreement, but no reply was received from the defendants. So it can be held that defendants refused to perform their part of the agreement after receipt of Ex.A3 which is dt.13-7-2009 and suit is filed within 3 years from the said date. As such the suit claim is within limitation though suit was not filed within 3 years from the date of Ex.A1 agreement which is admitted by the both the parties. Hence issue No. 2 is held in the affirmative.

7. Issue nos.1 to 3

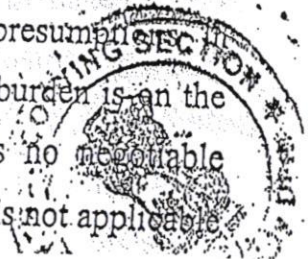
It is pleaded in the plaint that plaintiff paid Rs.42,00,000/- before executing Ex.A1 agreement and the same matter was copied in the affidavit of PWs 1 and 2. But in the cross examination PW2 admitted that by the date of Ex.A1 only Rs.12,00,000/- was paid. Plaintiff relied upon Ex.A2 document styled as "Sambandam" which is denied by the defendant.

on Ex.A2. But none of them are examined. Ex.A2 reads that Rs.42,00,000/- was paid by that date and there was defect in the document of the defendants, so it could not be proceeded and that defendants agreed to clear the said defect by the end of January 2008 failing which they undertook to repay the amount with interest @ 36% per annum and if the said defect is cleared plaintiff should pay the balance and should get sale deed registered. PW 1 pleaded ignorance about execution of any document with her husband and pleaded that her husband PW 2 knows better.

8. PW 2 also filed the affidavit copying the averments in the plaint and though there are number of receipts filed on behalf of plaintiff showing that some amount paid to the defendants they are not exhibited and no explanation is given as to why they are not exhibited. As already stated supra though there are two attestors on Ex.A2 none of them are examined PW2 did not refer to Ex.A2 document and so he was not cross examined on that aspect. Except making claim in the notice to the defendants that Rs.42,00,000/- was paid by plaintiff there is no evidence adduced on behalf of plaintiff to support the same.

9. The learned counsel for the plaintiff relied upon a decision of our High Court between N.Saibaba Naidu Vs. P.Lakshmibayamma reported in ALD-2005-5-21 (Cri.) 261 (AP) which is a case based on pro note in which Sec.118 of NI Act was considered. There is no pro note or other negotiable instruments in this case. It is not understandable as to how Sec.118 of N.I.Act is applicable to the facts of the case and how it helps the case of plaintiff.

10. The learned counsel for the plaintiff relied upon a decision of our High Court between P.Venkatamma Vs. D.Sulochana reported in ALD-2005: 6-211 which is also U/Sec.118 of N.I. Act wherein the presumption in favour of the holder of the document is available and the burden is on the party to rebut the same. But in this case on hand there is no negotiable instrument exhibited by the plaintiff. As such the said decision is not applicable.



to the case on hand. The only undisputed document is Ex. A1, according to which Rs.12,00,000/- paid to the defendants. Though no reply was issued on behalf of the defendants for the notice issued by the plaintiff, Pws 1 and 2 did not choose to exhibit and prove them. Similarly Ex.A2 is not proved by PW1 and not referred by PW2. As such except Ex.A1 no other document is proved by the plaintiff. It is clear from Ex.A1 only Rs.12,00,000/- was paid by the plaintiff to the defendants.

11. DW1 admitted in cross examination that there was a suit pending between defendants and one Bangaraiah but pleaded ignorance about result of the suit. It shows that there was of dispute about the title of the property sought to be sold by defendants to the plaintiff. So plaintiff is justified in demanding the defendants either to clear the title and execute sale deed or refund the amount received by them. Defendants relied upon a document styled as settlement deed but the said document is not exhibited. It appears that both parties either intentionally or unintentionally did not exhibit all the documents filed by them into the court, particularly crucial documents relied upon by them. Though the affidavit of DW1 reads that there was settlement according to which Rs.10,00,000/- was refunded to the husband of plaintiff in presence of some mediators said to be present at the time of execution of the said document none of them are examined. As such the evidence adduced by the defendants does not establish that they repaid any amount to the plaintiff towards settlement of the dispute as claimed by them. As such with the material on record what is proved is only Ex.A1 according to which Rs.12,00,000/- was received by the defendants and as there are disputes regarding the title of the property which defendants failed to clear, plaintiff is justified to claim refund of amount paid by her and defendants are bound to refund the same. As they failed to prove any settlement regarding the same defendants are liable to refund and they are also liable to pay reasonable interest from the date of demand of refund under Ex.A5 dt.9-10-2010. The claim of the plaintiff that they paid Rs.42,00,000/- is not proved. As such plaintiff is entitled to part decree in view of the aforesaid discussion.



Hence issue No. 3 is held in the negative. So far as issue No.1 is concerned it is held plaintiff is entitled to refund of Rs.12,00,000/- with interest at the rate of 18% per annum from 19-10-2010 till the date of suit which comes to Rs.12,18,000/- and with further interest on the said amount @ 12% per annum from the date of suit till the date of realization.

12 Issue No.4

In the result suit is decreed for a sum of Rs.12,18,000/- with interest 12% per annum on the said amount from the date of suit till the date of realization. Since plaintiff made excess claim than what she is entitled she is not entitled to costs even for the amount for which decree is passed as the claim which is not granted is more than the claim granted. Rest of the claim of the plaintiff is dismissed.

Dictated to Personal Assistant transcribed by him, corrected and pronounced by me in the open court on this the 27th day of April, 2015.

X Addl. District & Sessions Judge (F.T.C.),
Ranga Reddy District
Ranga Reddy Dist.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR PLAINTIFF

PW1: B.Dhana Lakshmi

PW2: V.Raj Kumar

FOR DEFENDANT



EXHIBITS MARKEDFOR PLAINTIFF

Ex.A1: Agreement of Sale dt.28-12-2006 executed by D1 to D5
 Ex.A2: Oppandam
 Ex.A3: O/c. Of the legal notice
 Ex.A4: Set of postal receipts
 Ex.A5: Another legal notice dt.9-10-2010
 Ex.A6 to A9: Postal Acknowledgment of A1, A2, A3, A4 and A5

FOR DEFENDANT

Ex.B1: Reply notice
 Ex.B2: Postal receipt
 Ex.B3: Acknowledgment
 Ex.B4: Reply notice
 Ex.B5: Acknowledgment



X Addl. District Sessions Judge (ETC),
 Ranga Reddy District.
 Ranga Reddy Dist.

**COURT OF THE DISTRICT &
 SESSIONS JUDGE
 RANGA REDDY DISTRICT**

C.A. No. 9853 of 15-20

Application Filed on: 28/11/15

Charges Called on: 16/12/15

Charges Deposited on: 17/12/15

Receipt No: 6536 Rs: 36/-

Copy made ready on: 23/12/15

Copy delivered on: 24/12/15

Superintendent
 Central Copying Section
 Ranga Reddy District.

READY BY:

COMPARED BY: neg

CERTIFIED TRUE PHOTO COPY

Copying Superintendent

