

Andhra High Court

Desi Kedari vs Huzurabad Co-Operative ... on 24 March, 1994

Equivalent citations: AIR 1994 AP 301, 1994 (2) ALT 539

Author: J E Prasad

Bench: Y B Rao, J E Prasad

ORDER J. Eswara Prasad, J.

1. This appeal is filed against the judgment of the learned single Judge allowing the appeal and remanding the suit for fresh disposal in accordance with law.

2. The brief facts of the case are as follows: The appellant is the plaintiff in the suit laid for specific performance of the agreement of sale dated 26-12-1977, executed by the first respondent-first defendant, Huzurabad Co-operative Marketing Society Limited, whereby the first respondent agreed to execute a sale deed conveying the plaintiff 'A' schedule vacant site owned by it and measuring 165' x 12' situated at Jammigunta Road, with the boundaries mentioned in the schedule, for a consideration of Rs. 90,000/- . The 2nd defendant in the suit was the President of the first respondent first defendant Society. The first respondent filed a written statement on 10-8-1981 admitted that the 2nd defendant was authorised to sell its properties, particularly, the suit site by the resolution of the general body of the society dated 27-12-1974 and the managing committee of the society by the resolution dated 25-2-1975 had also authorised the President to sell the plaintiff schedule property. It is further stated that the 2nd defendant executed the agreement of sale dated 26-12-1977 agreeing to sell the suit site to the plaintiff for a consideration of Rs. 90,000/- and that the Society is ready to perform its part of the contract, based on the admissions contained in the written statements, the learned Subordinate Judge, Kari-mnagar, decreed the suit on 1-9-1981 observing that the averments made in the plaintiff are deemed to have been proved. The first defendant filed in appeal against the decree and judgment which came up before the learned single Judge. The plaintiff took an objection with regard to the maintainability of the appeal relying on Section 96(3) of the Civil Procedure Code. The learned single Judge held that no inference can be drawn to the effect that the first respondent has ever agreed to suffer a decree and held that the appeal is maintainable. The learned Judge allowed the appeal and remanded the matter for fresh disposal.

3. Sri Pratap Reddy, learned Counsel for the appellant contended that the appeal before the learned single Judge was not maintainable, as the decree under appeal amounted to a consent decree and that no appeal lies under Section 96(3) of the Civil Procedure Code. He further contended that the suit agreement was admitted by the defendants in the written statement and there was no dispute with regard to the identity of the site agreed to be sold and the amount of consideration, and the trial court was justified in passing the judgment under order 15, Rule I, C.P.C. His further contention was that when the parties were not at issue on any question of law or of fact, the court was justified in pronouncing the judgment in accordance with Order 15, Rule 1, C.P.C., and that there was no justification for remanding-the matter, as so other questions were raised in the written statement and there was no need to decide upon other matters, which were not pleaded.

4. Sri P. V. Narayanarao, learned Counsel for the respondents 1 to 5 strenuously contended that fraud was played on the Court and the trial court should not have decreed the suit without framing necessary issues and without the parties adducing evidence. He contended that there was no consent decree within the meaning of sub-section (3) of Section 96, C.P.C. and the appeal was maintainable. He argued that the suit agreement was not executed by the person authorised on behalf of the society and that the agreement could not be specifically enforced. He contends that the suit notice itself was addressed to a wrong person, namely the Deputy Registrar of Co-operative Societies, whereas it is required to be issued to the Registrar of Co-operative Societies under Section 126 of the A. P. Co-operative Societies Act. He argued that the averment contained in the plaint should not be taken as proved without adducing evidence and no decree could be passed without evidence. His further contention is that the Secretary of the Society is the proper person to sue or to be sued on behalf of the society under bye-law 33(D) of the bye-laws of the society; that the agreement was entered in breach of the said bye-law, that the agreement did not bear the common seal of the society; that the permission of the Registrar; as required under Rule 42 of the Rules, was not obtained, and the suit transaction was invalid.

5. In view of the rival contentions of the learned Counsel, the questions for consideration are: (1) whether the trial court was justified in decreeing the suit without framing the issues and without holding the trial ? (2) whether the suit agreement was properly executed by the competent person?

6. The suit is based on an agreement of sale dated 27-12-1977 executed on behalf of the first defendant-society in favour of the appellant, agreeing to convey vacant site of an extent of 165 ft. X 11 ft. situated at Jammigunta road within specified boundaries for a total consideration of Rupees 90,000/-. The first defendant-society filed a written statement admitting the execution of the agreement of sale dated 27-12-77 by the 2nd defendant agreeing to convey the plaint schedule vacant site. The first defendant took the plea that the society is ready to perform its part of the contract soon after orders are received from the Registrar under the suit notice. The 2nd defendant filed a written statement admitting the averments contained in the plaint and further stating that he ceased to hold the Office as President of the society and a Person-in-charge was appointed. It was prayed in the written statement that the suit may be decreed without costs. The contention of the plaintiff that the first defendants refused to perform its part of the contract, was denied. When the matter came up before the trial court on 1-9-1981, the trial court pronounced the judgment in the presence of both the Counsel based on the consented written statement and after hearing the Counsel decreed the suit without costs, it was observed that the defendants have admitted in their written statements the material averments in the plaint and that the averments in the plaint must be deemed to have been proved. In that view of the matter, the suit was decreed.

7. The learned single Judge rejected the contention of the plaintiff that the appeal was not maintainable and remanded the matter to the trial court for disposal according to law. Sri Pratap Reddy firstly contended that the appeal was not maintainable as it was barred under sub-section (3) of Section 96, C.P.C. which reads as follows:

"Section 96(1): Save where otherwise expressly provided in the body of this Code or by any other law of the time being in force, an appeal shall lie from every decree passed by any Court exercising

original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

(2)

(3) No appeal shall lie from a decree passed by the Court with the consent of parties."

Under sub-section (3), no appeal shall lie from a decree passed by the Court with the consent of the parties. The contention of the learned Counsel is that the defendants have consented for passing of the decree in favour of the plaintiff, as they have admitted all the material averments in the plaint and that there was no defence worth the name. A reading of the written statements of defendants 1 and 2 would show that the execution of the agreement dated 27-12-1977 was admitted. There is no dispute with regard to the identity of the vacant site sought to be conveyed under the said agreement. There is also no dispute with regard to the consideration payable under the agreement. Sri Narayanarao contended that in the prayed portion of the plaint, the plaintiff prayed for passing the decree for specific performance of the contract of sale dated 26-12-1977, and therefore, there was a discrepancy with regard to the date of agreement. He elaborated his argument by saying that in the body of the plaint, the agreement referred to was dated 27-12-1977 and in the prayer portion the date of agreement is 26-12-1977 and therefore, no decree could be passed. He further contended that in the written statement referred to the agreement dated 27-12-1977 was only mentioned and there was no admission regarding the agreement dated 26-12-1977.

8. It is to be noticed that in the plaint, the identity of the vacant site, which was sought to be conveyed under the agreement, was clear, as the extent of the site and the boundaries were delineated. In the written statements, the defendants did not question the identity of the vacant site which was sought to be conveyed under the agreement of sale. No dispute is raised with regard to the consideration payable by the plaintiff. When there was no dispute with regard to the identity of the land and the consideration payable, mere wrong mention of the date did not make any difference as to the identity of the property sought to be conveyed. It is to be noticed that under the decree of the trial court, the first defendant was directed to execute a registered conveyance in favour of the plaintiff, conveying the land shown in plaint 'A' schedule annexed to the decree. The contention of Sri Narayanarao on this aspect is without substance.

9. It was vehemently contended by Sri Narayanarao that the first defendant took a specific plea that it was ready to perform its part of the contract soon after the orders are received from the Registrar under the suit notice and therefore, the consent was qualified and was subject to the orders to be passed by the Registrar and the first defendant requested the court to decide the matters on merits and therefore, the trial court was bound to frame an issue on that aspect. In support of his contention, he relied on Rule 42 of A.P. Co-operative Societies Rules, 1964. This rule prohibits transactions with non-members which can only be carried with the permission of the Registrar. This rule relates to business transactions between the members of the society and does not deal with sale of properties of the society. Section 9 of the A. P. Co-operative Societies Act, 1964 enables the Co-operative Societies, which are body-corporates, to acquire and dispose of the properties. Section 22 of the Act deals with service to be rendered by the society to the members of the society. There is no requirement of obtaining permission from the Registrar for disposal of the properties of

Cooperative Societies. It is asserted in the plaint that the general body in its meeting dated 27-12-1974 resolved to sell the plaint schedule vacant site. The Managing Committee of the society authorised the 2nd defendant, who was its President at that time, to sell vacant sites, including the plaint schedule site, for consideration through its resolution dated 27-2-1975. In the written statement of the first defendant the passing of the resolutions by the general body and the managing committee were admitted. The contention of Sri Narayanarao that the site cannot be sold without the permission of the Registrar in those circumstances, is without substance. The sale was authorised by the general body as well as the managing committee. It was, therefore, not necessary for the trial court to frame an issue whether the site can be sold without the permission of the Registrar. It is to be noted that both the counsel for the plaintiff as well as the defendants were present and after hearing them the judgment was pronounced, as there was no need to frame any issue. In the said circumstances, the decree of the trial court amounted to a consent decree and sub-sec. (3) of S. 96, C.P.C. was a bar and the appeal was not maintainable.

10. Sri Narayanarao raised several other contentions and cited a number of decisions. Relying on bye-law 33(D) of the society he contended that the Secretary of the Society alone was competent to execute the sale deed and not the President. This was not the plea raised in the written statement and so cannot be permitted to be raised now. He next submitted that the procedure laid down under O.14, R. 5, C.P.C. was not followed. The question of framing issues would arise only when material proposition of fact or law is affirmed by one party and denied by the other. In other situations, there was no need to frame issues when there is no dispute with regard to material averments in the plaint. This contention of the learned counsel is, therefore, rejected.

11. It was next contended by Sri Narayanarao that the judgment of the trial court is not in conformity with O.20, R. 6, C.P.C. It is to be noted that the judgment was pronounced by the learned Judge under O. 15, R.1, C.P.C. at the first hearing of the suit, as he was convinced that the parties were not at issue on any question of law or of fact. The court was competent to pronounce at once the judgment. It was therefore not 'necessary to conform to the procedure laid down under O. 20. When a judgment is pronounced under O.15, R. 1, C.P.C., there was no necessity to conform to the procedure laid down under O.20, C.P.C. We are unable to accept the contention of the learned counsel based on *Swaran Lata v. Harendra Kumar*, , in which the pleadings of parties raised questions of fact and law and the suit was fully tried on questions of law and facts which arose out of the issues.

12. It was further contended by the learned counsel for the respondent that even if the decree of the trial court was a consent decree, the consent was not given by the authorised person and the appeal was maintainable under S.96, C.P.C. and that there was no bar under sub-sec. (3). In support of the said proposition, the learned counsel relied on *Sohan Lal v. Union of India*, . The said decision is not applicable to the facts of the case, as the decree in that case was not a consent decree as in the case on hand.

13. It is to be noticed that defendant in a suit has to make specific denials of the allegations contained in the plaint, if he does not admit the truth of the allegations under O.8, R. 3, C.P.C. The defendant must raise by his pleadings all matters which show that the suit is not maintainable or

that the transaction is either void or voidable in point of law and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, under R. 2 of O.8. In the present case, the plaintiff (defendant) did not take any other plea except to state that the sale deed will be executed on receipt of orders from the Registrar. None of the allegations contained in the plaint were denied and on the other hand, they were all specifically admitted. Under such circumstances, it was open to the Court to proceed under R. 1 of O.10 and on the admission of facts, either from the party or his counsel and to proceed further in the matter; and issues have to be framed under O.14, R. 1, C.P.C. only when material proposition of fact or law is affirmed by one party and denied by the other. When there was no such denial, the Court was competent to pronounce judgment at once under R. 1 of O.15, C.P.C.

14. The contention of Sri Narayanarao that the plaintiff is bound to prove the averments contained in the plaint before judgment could be pronounced, cannot be accepted. Section 58 of the Evidence Act lays down that facts, which are admitted, need not be proved.

15. From the above mentioned facts, it is clear that there was no contest between the parties either on facts or on law. None of the pleas now raised by Sri Narayanarao were raised in the written statements of the defendants. It is well established that no contentions, which are not based on the pleadings, can be permitted to be raised either at the trial stage or at the appellate stage. We have only to proceed on the basis of the pleadings of the parties and not on the possible contentions that can be raised, as are now sought to be raised. Even though we have come to the conclusion that the appeal was not maintainable, we have considered the merits of the other averments made by the learned counsel for the respondents and see no reasons for upholding the judgment under appeal.

16. The trial court was justified in pronouncing the judgment based on pleadings. Even assuming that the averments in the written statement to the effect that the defendants are prepared to execute the sale deed on obtaining orders from the Registrar is considered, we have already taken the view that such a permission is not necessary. There are no questions to be considered in the suit and the learned single Judge, therefore, erred in allowing the appeal and remaining the suit for fresh trial. The judgment under appeal is set aside and the decree of the trial court is confirmed. The appeal is allowed. No costs.

17. The learned counsel for the respondents made an oral application for grant of leave to appeal to the Supreme Court. We see no reason to grant leave to appeal to the Supreme Court as no substantial question of law involving of public importance arises in the appeal. The leave is, therefore, rejected.

18. Appeal allowed.