



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 6TH DAY OF NOVEMBER, 2024

PRESENT

**THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA**

REGULAR FIRST APPEAL NO.100416 OF 2022 (SP)

BETWEEN:

SMT. BANGAREVVA W/O SIDDAPPA MARANUR
SINCE DECEASED R/BY. HER LR'S.

1(A) SRI BASAPPA S/O SIDDAPPA MARANUR
AGE: 55 YEARS, OOC: AGRICULTURE,
R/O. HANDIGUND, TQ: RAIBAG,
DIST: BAGALKOT, PIN: 591317.

- APPELLANTS

(BY MS. SANJANA S. MUDHOL FOR
SRI SHIVARAJ P. MUDHOL, ADVOCATES)

AND:

SRI MAHALINGAPPA S/O SATYAPPA MARANUR
AGE: 35 YEARS, OCC: AGRICULTURE,
R/O. HANDIGUND, TQ: RAIBAG,
DIST: BAGALKOT, PIN: 591317.

- RESPONDENT

(BY SRI MALLIKARJUNSWAMY B. HIREMATH FOR
SRI SANGAMESH S. GHULAPPANAVAR, ADVOCATES)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF
CIVIL PROCEDURE CODE, 1908 AGAINST THE JUDGMENT AND
DECREE DATED 05.04.2022 PASSED IN O.S.NO.12/2019 ON THE
FILE OF THE SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE
FIRST CLASS AT RAIBAG, PARTLY DECREERING THE SUIT FILED FOR
SPECIFIC PERFORMANCE OF CONTRACT.



THIS REGULAR FIRST APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE
GOWDA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

The defendant in O.S.no.12/2019 on the file of Senior Civil Judge Raibag is the appellant.

2. The respondent being the plaintiff instituted a suit for specific performance on the basis of an agreement of sale dated 27.11.2015 said to have been executed by the defendant agreeing to sell agricultural land to an extent of 2.04 acres out of 6 acres 34 guntas in Sy.No.162/2 situate at Handigund village, Raibag taluk, Belagavi district.

2.1 According to the plaintiff defendant was the absolute owner of the property and she agreed to sell it to him for a total sale consideration of Rs.16,00,000/- and received Rs.15,00,000/- from him on the date of agreement and further agreed to execute the sale deed after receiving



the balance of Rs.1,00,000/- and obtaining necessary documents. As she failed to execute the sale deed despite plaintiff's readiness and willingness to buy the property, he was constrained to issue a legal notice to her on 27.11.2018. She failed to perform her part of contract and hence he brought the suit.

3. The defendant denied to have executed any agreement of sale in favour of the plaintiff. She specifically contended that she had filed a suit O.S.No.1216/2013 in respect of the suit property and in the said suit a compromise was reported to the Court on 04.12.2014. In terms of the said compromise the defendant gave up her share in the suit property in favour of Raju Basappa Maranur and his wife namely Rukmavva. In view of this compromise, she ceased to be the owner of the suit property. She also stated that she wanted to effect changes in the revenue records as per the terms of the compromise and therefore she sought the assistance of the plaintiff who was her grandson. The plaintiff assured of lending help and took her to an office where she put her thumb marks under the impression that she was submitting an application for the



purpose of effecting changes in the revenue records of the suit property. She was surprised when she received notice issued on behalf of the plaintiff and then only she came to know the mischief played by him. She denied to have received advance consideration of Rs.15,00,000/- as stated by the plaintiff.

4. Answering the issues the trial court held that the plaintiff was able to prove that the defendant agreed to sell the suit property to the plaintiff and received earnest money of Rs.15,00,000/- leaving a balance of Rs.1,00,000/- and that the plaintiff was able to prove his readiness and willingness to buy the suit property. But instead of granting decree for specific performance, having regard to the facts and circumstances, the trial court directed the defendant to refund earnest money of Rs.15,00,000/- with interest at the rate of 12% p.a., from the date of agreement till realization of the entire amount. The defendant is therefore before the court challenging the decree. It may be noted here that the plaintiff has not preferred any appeal questioning the trial court's decision to deny the relief of specific performance.



5. Ms. Sanjana S.Mudhol learned counsel appearing for Sri Shivaraj P.Mudhol argued that the trial court should not have granted the alternative relief of refund of earnest money in as much as the defendant disputed the very execution of the agreement of sale. Defendant was not the absolute owner of the property and therefore she could not have entered into agreement with the plaintiff. The trial court has referred to compromise dated 04.12.2014 in O.S.No.1216/2013, but according to the plaintiff the agreement is dated 27.11.2015. If according to compromise, the defendant gave up her share in the suit property in favour of Raju Basappa Maranur and his wife Rukmavva, there was no occasion for her to execute agreement of sale on a subsequent date in favour of the plaintiff. Moreover plaintiff is the grandson of the defendant. He took her to the office of the Sub-Registrar stating that her signatures were required for effecting changes in the revenue records and thus her thumb impressions were obtained on blank papers which were misused for creation of agreement of sale. The evidence in this regard has been discarded by the trial court. Therefore the finding should have been that the plaintiff was



not able to prove the agreement of sale in question and when the agreement itself does not get established, refund of earnest money cannot be granted. Thus the appeal deserves to be allowed, she argued.

6. The learned counsel for the respondent counsel argued that the agreement was registered. The plaintiff examined the attesters to the agreement. Their evidence clearly establishes that the defendant executed the agreement and received earnest money of Rs.15,00,000/- out of total sale consideration of Rs.16,00,000/-. If according to the defendant, her presence was required for mutation of revenue records, she should have gone to the office of Tahasildar. She doesn't state like that. It is clear that she voluntarily came to the office of the Sub-Registrar and executed the agreement after receiving Rs.15,00,000/-. The registered instrument has presumptive value. The balance was only Rs.1,00,000/- to be paid by the plaintiff which he was always ready to pay. Though the trial court denied the relief of specific performance, plaintiff did not challenge it and he was satisfied with the alternative relief granted. The appeal is devoid of merits and therefore it is to be dismissed.



7. From the arguments, the point that arises for discussion is whether the trial court is justified in granting the alternative relief.

8. Ex.P.1 is the agreement of sale; it is a registered instrument containing the thumb impression of the defendant. In addition to PW.1 - the plaintiff, two more witnesses PWs.2 and 3 stated that defendant herself executed the agreement in favour of the plaintiff on 27.11.2015. PWs.2 and 3 are the attestors to the said agreement. The cross-examination of PW.1 shows that the defendant failed to discredit him and that she failed to cross-examine PWs.2 and 3. The trial court has rightly believed the testimonies of these two witnesses. Reappreciation of evidence by us also leads to same conclusion.

9. If the evidence of DW.1, the defendant is put to scrutiny it becomes amply clear that she admitted her signature in the form of thumb impression on the agreement of sale and also her photos in the said documents. It appears that her adopted son was behind her in taking the specific defence of denying the agreement of sale. She has clearly admitted in the cross-examination that the relationship



between the plaintiff and her adopted son is not good and that she deposed in the court on his instructions. This makes her testimony unreliable. The conclusion to be drawn is that the execution of agreement of sale has been proved by the plaintiff.

10. The total sale consideration was Rs.16,00,000/-. There is evidence indicating that Rs.15,00,000/- was paid on the date of agreement itself and the balance was only Rs.1,00,000/-. The legal notice issued as per Ex.P.3 on 27.11.2018 shows that plaintiff was ready to pay the balance of sale consideration. In this view the finding of the trial court that the plaintiff was ready to perform his part of contract cannot be said to be incorrect.

11. However, having regard to the other facts and circumstances the trial court in its discretion granted alternative relief even though it was not sought for by the plaintiff. In order to grant the alternative relief the trial court followed judgment of this Court in Basavaraj dead by his LRs., Vs. K.L.Kumaraswamy and others [2018 (3) KCCR 2325]. The trial court has assigned the reasons that in view of compromise reported in O.S.No.1216/2013, the plaintiff



may find it difficult to obtain the possession and moreover what the plaintiff agreed to sell was her 1/3rd share in the suit property in respect of which the boundaries are not mentioned. These factors weighed with the trial court to grant refund of earnest money.

12. On reappraisal of evidence we don't think that the trial court has wrongly exercised its discretionary jurisdiction. Execution of agreement has been proved and payment of earnest money has also been proved. Even if decree for specific performance had been granted, the plaintiff would have found it difficult to take possession as what was agreed was only undivided share of the defendant. Besides, the compromise in the earlier suit would befall hindrance. Being in full agreement with the judgment of the trial court, appeal is dismissed. There is no order as to costs.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE**