



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 21ST DAY OF OCTOBER, 2024
PRESENT
THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

REGULAR FIRST APPEAL NO.100492 OF 2018 (SP)

BETWEEN:

1. SHRI SHANKAR LAXMAN CHALAVETKAR,
AGE: 60 YEARS, OCC: AGRICULTURE,
R/O. H.NO.4, MARUTI GALLI BOLE, SULAGE,
UCHAGAON, BELAGAVI-591108.
2. SMT. SHARADA SHANKAR CHALAVETKAR,
AGE: 53 YEARS, OCC: AGRICULTURE,
R/O. H.NO.4, MARUTI GALLI BOLE, SULAGE,
UCHAGAON, BELAGAVI-591108.

...APPELLANTS

(BY SRI RAMESH N. MISALE, ADVOCATE)

AND:

SHRI MADHUKAR S/O. APPAJI JADHAV
AGE: 53 YEARS, OCCUPATION : AGRICULTURE,
R/O. JADHAV NAGAR, UCHAGAON,
BELAGAVI-591108.

...RESPONDENT

(BY SRI M.N. BIKKANNAVAR AND
SRI SUNIL G. KAKATKAR, ADVOCATES)

THIS RFA IS FILED UNDER SECTION 96 OF THE CODE OF
CIVIL PROCEDURE PRAYING TO, ALLOW THE APPEAL AND SET ASIDE
THE JUDGMENT AND DECREE PASSED BY THE LEARNED J
ADDITIONAL SENIOR CIVIL JUDGE BELAGAVI IN O.S.NO.249/2015
DATED 25.08.2018 BY DECREETING THE SUIT WITH COSTS
THROUGHOUT AND ETC.,

MANJANNA
E



Digitally signed by
MANJANNA E
Location: High Court of
Karnataka, Dharwad Bench
Date: 2024.10.24 16:42:04
+0530



THIS APPEAL, COMING ON FOR DICTATING JUDGMENT, 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)

This appeal is filed by the plaintiffs in O.S.No.249/2015 on the file of I Additional Senior Civil Judge, Belagavi. The plaintiffs' suit is for specific performance in respect of 14 guntas of land out of 2 acres 37 guntas in Sy.No.647 of Uchagaon village, Belagavi (hereinafter referred to as "suit property" for the sake of convenience). Since by judgment dated 25.08.2018 the suit came to be dismissed, the plaintiffs have approached this Court.

2. Briefly stated the material facts are that on 29.12.2011, the plaintiffs entered into an agreement with the defendant for purchasing the suit property for a consideration of Rs.2,00,000/- per gunta i.e., Rs.28,00,000/- for 14 guntas. On the date of agreement the plaintiffs made payment of Rs.10,00,000/- to the defendant. It was agreed between the parties that the balance was to be paid on or



before 15.01.2013 for completion of the sale transaction and that defendant agreed to obtain 11E sketch from the Survey Department and Raitawa conversion, and clear the dues at Karnataka Vikas Grameena Bank ('KVG Bank" for short). Thereafter on 07.06.2012 there came in existence a supplementary agreement for sale in respect of the same property because the defendant wanted a further sum of Rs.5,00,000/- to be paid to him. Plaintiffs made payment of Rs.5,00,000/- by way of two cheques, one for Rs.1,00,000/- and another for Rs.3,00,000/- and cash of Rs.1,00,000/-. Since the defendant did not show any interest to execute the sale deed by obtaining 11E sketch and Raitawa conversion and clearing the dues at KVG Bank, the plaintiffs called upon the defendant by issuing a notice to execute the sale deed. It is stated that defendant approached the plaintiffs and requested them not to take any legal action and he assured that he would complete the formalities of executing the sale deed. The plaintiffs state that defendant demanded a further sum of Rs.60,000/- when he fell ill and that the plaintiffs made payment of that amount also. Even thereafter



defendant did not show any interest and therefore the plaintiffs caused one more legal notice issued to the defendant on 22.07.2015. The defendant received the notice, but did not reply and did not execute the sale deed also. Therefore, the suit came to be filed.

3. In the written statement, the specific defence is that he did not agree to sell the suit property to the plaintiffs, rather it was a document evidencing loan transaction between him and the plaintiffs. He was in need of money to clear his liabilities and therefore sought financial assistance from the 1st plaintiff and at that time, the 1st plaintiff obtained a document from him in the style of an agreement of sale making use of his illiteracy. He stated that since he was in dire need of money, he obliged the plaintiffs and put a signature on a document. In the same way, he denies the supplementary agreement dated 07.06.2012.

4. The 1st plaintiff adduced evidence as PW.1 and examined another witness as PW.2 and produced the documents as per Exs.P.1 to P.5. The defendant did not choose to adduce evidence from his side.



5. Based on the pleadings the Trial Court struck six issues. On appreciating the evidence, the Trial Court dismissed the suit giving the following findings;

- i) The plaintiffs have not produced documents to show that on or about 29.12.2011, they had a sum of Rs.9,50,000/-, so that they could make that payment by way of cash. There is no explanation as to how, they would arrange for that sum.
- ii) No document is produced to show that payment of Rs.50,000/- was made by way of cheque.
- iii) PW.1 only made the payment, it is not understandable as to why the name of the 2nd plaintiff is mentioned in the agreement.
- iv) Plaintiffs did not enquire the defendant about the latter's financial difficulty instead they enquired PW.2, who is the brother of defendant. This appear to be quite strange.



v) Agreement appears to have been executed without meeting of minds of the parties. The evidence of PW.2 is not helpful to hold that the agreement came into existence.

vi) Ex.P.2 is not believable for the reason that in the said document it is written that Rs.5,00,000/- was paid on the date of Ex.P.2 itself but actual payment was not made on that day and in this view Ex.P.2 appears to be a created one. For these reasons both Exs.P.1 and P.2 are not proved.

6. An application as per I.A.No.3/2018 has been filed on behalf of the appellants for producing some documents by way of additional evidence.

7. We have heard the arguments of Sri Ramesh N. Misale learned counsel for the appellants and Sri M.N. Bikkannanavar, learned counsel for the respondent.

8. It is the argument of Sri Ramesh Misale that plaintiffs produced the original agreement of sale dated 29.12.2011 and the supplementary agreement of sale dated



07.06.2012. To prove the execution of agreement, the plaintiffs examined the defendant's brother i.e., PW.2, whose evidence is not at all discredited by the defendant. PW.2 has clearly stated that entire earnest money of Rs.10,00,000/- was paid in his presence to the defendant. Rs.9,50,000/- was paid by way of cash, and a cheque was issued for the balance. This cheque was encashed by the defendant. Similarly when the supplementary agreement was executed on 07.06.2012, Rs.4,00,000/- was paid by two post dated cheques and cash of Rs.1,00,000/- was paid. In the plaint itself, it is clearly stated that these payments were not made on 07.06.2012. For this reason, there was no reason for the Trial Court to opine that Ex.P.2, the supplementary agreement was to be disbelieved for the reason that payment was not made as has been stated in it. These payments have not been denied specifically and when PW.1 was cross-examined, except a suggestion that payments are not made, the evidence of PW.1 is not in any way impeached. Similarly Rs.60,000/- was paid to the defendant when he fell ill. This is also not denied by the defendant.



Moreover in the written statement itself defendant has admitted that he was in dire need of money and therefore he wanted to sell the suit property. Without noticing this admission the Trial Court has given a finding that the plaintiffs have not been able to prove that defendant was in need of money. This itself shows that, the facts are not properly marshaled by the Trial Court.

9. Learned counsel argued that in proof of payments made, certain documents are produced along with application under Order XLI Rule 27 of CPC. The documents are very necessary to establish that the plaintiff made payments and therefore the said application is to be allowed.

10. He further argued that the defendant had to obtain 11E sketch and Raitawa conversion, and clear the dues at KVG Bank. Though the plaintiff was always ready and willing to perform his part of contract, the defendant failed to perform his part of contract. Noticing that the defendant was not interested and he was postponing the execution of the sale deed without any valid reason, the plaintiff got issued two notices, which were not replied by the defendant.



Instead of comprehending this entire evidence in this way, the Trial Court would substitute its own reasons, dehors the evidence and hence this appeal deserves to be allowed and defendant directed to execute the sale deed by receiving balance of sale consideration which the plaintiffs are ready to pay.

11. *Per contra* Sri M.N.Bikkannanavar would argue that the suit property did not belong to the defendant exclusively, it was a joint family property. PW.1 has admitted that the defendant had no exclusive right over the property when he was examined. In this view of the matter, the defendant would not have applied for 11E sketch, unless partition had taken place. The Trial Court has rightly held that there is no proof for making payment of earnest money and for all these reasons the appeal is devoid of merits and therefore it is to be dismissed. In support of his argument, he relied upon a judgment of the Hon'ble Supreme Court in the case of **MORESHAR YADAORAO MAHAJAN VS. VYANKATESH SITARAM BHEDI (D) THR. LRS. AND OTHERS** (Civil Appeal Nos.5755-5756/2011).



12. His further submission is that since defendant did not adduce evidence, the matter may be remanded to the Trial Court to enable the defendant to adduce evidence.

13. We have considered the points of arguments and perused the entire evidence. The points that arise for discussion are:

- 1. Is the finding of the Trial Court that Exs.P.1 and P.2 are not properly executed and they are not valid agreements, correct?*
- 2. Is the plaintiffs entitled to relief of specific performance or alternative relief of refund of earnest money with interest?*

14. **POINT NO.1** : At the outset we may opine that the findings recorded by the Trial Court are incorrect. The Trial Court has failed to comprehend the facts and evidence. It is the clear case of the plaintiffs that the defendant being an absolute owner of the suit property entered into an agreement with them under Ex.P.1 on 29.12.2011 and on the same day they made payment of Rs.10,00,000/-, out of which Rs.9,50,000/- was paid by cash and balance of



Rs.50,000/- was paid by way of a cheque. Then there came into existence a supplementary agreement on 07.06.2012 as per Ex.P.2. The plaintiffs have stated that the defendant was in need of money and that was a reason for his for deciding to sell the suit property to the plaintiffs. This is actually not disputed by the defendant in his written statement. If the written statement is read, in para 3 of the written statement it is clearly stated by defendant that he and his family members were in dire necessity for money due to financial difficulties. When there is a clear admission by defendant in the written statement, ignoring this admission, the Trial Court were to hold that the plaintiffs did not ascertain about the difficulties from defendant and therefore the agreement becomes dis-believable, it is nothing but an erroneous finding. Added to this PW.2 is none other than the brother of defendant and he clearly states that he was very much present at the time when Ex.P.1 came into existence and the earnest money was paid in his presence. PW.1 has stated about Ex.P.2, the supplementary agreement dated 07.06.2012 and about this supplementary agreement also



PW.2 corroborates the evidence of PW.1. The entire cross-examination of PWs.1 and 2 is perused, a clear inference can be drawn that both of them are not discredited, only general suggestions are given to them in regard to payments which are all denied by them. It is to be noted here that in the plaint itself it is stated very clearly in para 4 that the defendant approached the plaintiffs with a request for further payment of Rs.5,00,000/- towards part of sale consideration stating that he wanted money for some reason and he was ready to execute a supplementary deed of agreement. It is also stated that the plaintiffs agreed to make that payment within two months. The supplementary agreement was executed on 07.06.2012 but the payments were made subsequently. On 14.07.2012 plaintiffs issued two post dated cheques drawn on Maratha Co-Operative Bank one for Rs.1,00,000/- and another for Rs.3,00,000/-. On 16.08.2012 plaintiffs made further payment of Rs.1,00,000/-. If this is what is stated in the plaint, the Trial Court would disbelieve this payment giving reason that these payments were not made on the day when Ex.P.2 came into existence. In fact,



there is no specific denial of these payments in the written statement. It is to be noted here that the defendant does not deny execution of Ex.P.1 and Ex.P.2, his contention is that they are documents which would evidence loan transaction. In this event, there was no need for the plaintiff to prove execution of Exs.P.1 and P.2, the burden lay on the defendant in accordance with Section 102 of the Evidence Act to prove that those two documents did not come into existence in connection with sale transaction, instead in relation to a loan transaction. If he failed, the plaintiffs' version is to be accepted. The Trial Court has lost sight of this aspect of the matter. If really Exs.P.1 and P.2 are not agreements of sale, the defendant should have entered the witness box and given evidence, which he failed and this aspect has been ignored by the Trial Court. Now if Exs.P.1 and P.2 are perused, a clear inference can be drawn that actually they were in relation to sale of the suit property in favour of the plaintiffs. If they were not sale agreements there was no need for mentioning obtaining of 11E sketch, Raitawa conversion and clearance of loan at KVG Bank. If



Ex.P.1 contains all these stipulations it means that it was an agreement of sale. It also shows payment of earnest money of Rs.10,00,000/- on the day it came in existence. Ex.P.2 also clearly shows that it was in connection with Ex.P.1 further payment of Rs.5,00,000/- was made. As regards payment of Rs.60,000/- defendant appears to have not disputed specifically. Therefore, the plaintiffs made total payment of Rs.15,60,000/- to the defendant. In view of this finding, it may be stated that it is not necessary to allow I.A.No.3/2018 filed under Order XLI Rule 27 of CPC. So our conclusion is that a contract did come into existence and the defendant agreed to sell the suit property for sale consideration of Rs.2,00,000/- per gunta to the plaintiffs.

15. It is argued vehemently by Sri M.N.Bikkannanavar that defendant was not the absolute owner in view of the fact that there had not taken place partition between the defendant and his brothers and therefore the defendant alone could not have sold the property. It is a well settled principle that in a suit for specific performance, the necessary parties are only parties



to the agreement or their representatives in accordance with Sections 15 and 19 of the Specific Relief Act. If at all defendant is not the absolute owner in view of partition between him and his brothers having not taken place, there is no impediment for one of the brothers selling his undefined share. Moreover the pleadings indicate that defendant was the absolute owner of the suit property. This is fortified by none other than PW.2, the own brother of defendant who has stated very clearly that the suit property belongs to his brother absolutely. Actually in a suit for specific performance filed by the purchaser against the seller, this aspect need not be discussed because if the purchaser is ready to purchase the property from a person having defective title, he runs the risk. Suit for specific performance cannot be converted into a suit for title. For this reason, the judgment of the Supreme Court in **MORESHAR YADAORAO MAHAJAN'S** case cited supra is not applicable in the context.

16. If all these aspects are considered, we have to state unhesitatingly that the conclusions drawn by the Trial



Court that Exs.P.1 and P.2 are not properly executed cannot be accepted at all. In fact by executing Exs.P.1 and P.2, the defendant did agree for selling the suit property in favour of the plaintiffs. The Trial Court has commented as to why plaintiff no.2 should have been made a party when entire payment was made by the 1st plaintiff. If payment is made by one of the parties to the agreement it cannot be a reason for doubting entire document. Payment can be made by any one of the parties to the agreement. Therefore we have to answer point no.1 in the negative.

17. **Point No.2** : The plaintiffs have stated that they were ready and willing to perform their part of contract. The balance payable was only Rs.12,40,000/-. In fact he issued two legal notices as evidenced by Exs.P.3 and 4. It is to be stated that defendant did not reply to these notices. The other requirements, i.e., obtaining of 11E sketch and Raitawa conversion and clearance of loan at KVG Bank were on the defendant and the Plaintiffs had nothing to do with these requirements. Therefore, the evidence actually shows that the plaintiffs were ready and willing to perform their



part of contract. But while arguing it was brought to our notice that the defendant has already sold the property in favour of third party during pendency of the appeal. It is not for the reason that the property has been sold, but for the reason that sale cannot be completed without obtaining 11E sketch, we are of the opinion that the plaintiffs can be granting alternative relief.

18. Sri Ramesh Misale submitted that when execution petition is filed, the Executing Court can give direction to concerned officers to issue 11E sketch and Raitawa conversion and therefore a decree for specific performance can be granted. In this regard it is to be stated that the Court cannot issue such directions to the concerned officers and monitoring those compliances is out of scope of decree. In fact, in such a circumstance appropriate relief can be granted. The plaintiffs have claimed alternative relief in the plaint and for this reason, we can direct the defendant to repay earnest money of Rs.15,60,000/- received by him from the plaintiffs. The plaintiffs are of-course entitled to interest. The Trial Court should have applied its mind to



refund the earnest money having regard to the facts and circumstances of the case. Therefore, we proceed to pass the following:

ORDER

- i. Appeal is allowed.
- ii. The judgment of the Trial Court is set aside and suit is decreed holding that the plaintiffs are entitled refund of Rs.15,60,000/- with interest at the rate of 9% per annum from the date of suit till date of realization. Plaintiffs are also entitled to costs of the suit and the appeal.
- iii. I.A.No.3/2018 consequently stands dismissed.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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