



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 46 OF 2018 (MON)

BETWEEN:

SMT. S. JAYAMMA,
W/O LATE. CHELUVU GOWDA,
SINCE DEAD BY LRS.

1. SRI. C. NARAYANASWAMY,
AGED ABOUT 68 YEARS,
S/O LATE CHANNAPPA,
NO.1855/1796, 3RD CROSS,
MASJID ROAD,
NANJANGUD TOWN
MYSORE DISTRICT – 570 004.
2. SRI. C. SOMANNA,
AGED ABOUT 66 YEARS,
S/O LATE CHANNAPPA,
NO.1946, 2ND CROSS,
MASJID ROAD,
NANJANGUD TOWN,
MYSORE DISTRICT- 570 004.
3. SRI. C. LOKESHA,
AGED ABOUT 60 YEARS,
S/O LATE CHANNAPPA
NO.1946, 2ND CROSS,
MASJID ROAD,
NANJANGUD TOWN,
MYSORE DISTRICT-570 004.



4. SRI. C. BALU,
AGED ABOUT 64 YEARS,
S/O LATE CHANNAPPA,
C/O RAJANNA,
RESIDING AT
NAGANAHALLI VILLAGE & POST,
MYSURU TALUK AND
DISTRICT 570 003.
5. SRI. BHASKAR,
S/O LATE CHANNAPPA,
AGED ABOUT 62 YEARS,
NO.1923, 2ND CROSS,
MASJID ROAD,
NANJANGUD TOWN,
MYSORE DISTRICT-570 004.

...APPELLANTS

(BY SRI. GURURAJ R., ADVOCATE FOR
SRI. SANTHOSH R NELKUDRI, ADVOCATE)

AND:

- SRI. D. JAYAMMA,
D/O DEVE GOWDA,
SINCE DEAD BY HER
LEGAL REPRESENTATIVES
1. SMT. B.S. JAYALAKSHMI,
D/O LATE B. SIDDAIAH,
AGED ABOUT 61 YEARS
R/O NO.2947,
3RD MAIN ROAD,
V.V. MOHALLA,
MYSORE – 570 001.
 2. SMT. B.S. SEETHALAKSHMI,
D/O LATE. B.SIDDAIAH,
AGED ABOUT 58 YEARS,
R/AT NO.2947,
3RD MAIN ROAD,
V.V. MOHALLA,



MYSORE. 570 001.

3. SMT. B.S. DEVAKI,
D/O LATE. MADE GOWDA,
AGED ABOUT 55 YEARS,
R/AT NO.2947,
3RD MAIN ROAD,
V.V. MOHALLA,
MYSORE - 570 001.
4. SMT. B.S. GIRIJA,
D/O LATE. B. SIDDAIAH,
AGED ABOUT 52 YEARS,
R/AT NO.2947,
3RD MAIN ROAD,
V.V. MOHALLA,
MYSORE - 570 001.

RESPONDENTS NOS. 2 TO 4 ARE
REPRESENTED BY THEIR,
GENERAL POWER OF ATTORNEY
HOLDER SMT. B.S. JAYALAKSHMI
AGED ABOUT 58 YEARS
D/O LATE. B. SIDDAIAH,
R/AT NO.2947,
3RD MAIN ROAD, V.V. MOHALLA,
MYSORE - 570 001.

5. SRI. K.V. DINESH KUMAR,
AGED ABOUT 48 YEARS,
S/O LATE J. VEERABHADRE GOWDA
KIRANGURU VILLAGE,
K. SHETTAHALLI HOBLI,
SRIRANGAPATNA TALUK - 570 001.

...RESPONDENTS

(BY SRI. Y. V. PRAKASH, ADVOCATE FOR R1 TO R4,
R5 IS SERVED BUT UNREPRESENTED)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 20.4.2017 PASSED IN OS
NO.903/2008 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE,



MYSURU, PARTLY DECREETING THE SUIT FOR RECOVERY OF MONEY.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

This is defendants appeal against the judgment and decree dated 20.04.2017 passed in O.S.No.903/2008 on the file of the Principal Senior Civil Judge and C.J.M at Mysuru. (for short 'trial court').

2. We refer to the parties as per their ranks before the trial court.

3. Brief facts of the case are that deceased defendant No.1 was the owner of the suit property. She intended to sell the said property. The deceased plaintiff intended to purchase the said property. Both the parties agreed to the said transaction and plaintiff agreed to



purchase the said property for Rs.37,80,000/-. Accordingly, an agreement of sale was executed on 15.02.2007 by defendant No.1. The plaintiff paid advance amount of Rs.17,80,000/-. It was agreed that balance amount of Rs.20,00,000/- would be paid within a period of three months from the date of agreement of sale. Defendant No.2 was the agent of defendant No.1 and he negotiated for the sale of the property. The consideration amount was also paid to defendant No.2 by way of cheque dated 15.02.2007 for Rs.17,80,000/- and defendant No.2 encashed the said cheque.

4. Defendant No.1 failed to comply with the terms of the agreement. Defendant Nos.1 and 2 colluded together and showed different property to the plaintiff at the time of execution of agreement of sale. Later on plaintiff came to know that defendant No.1 was not at all the owner of the said property and defendant Nos.1 and 2 cheated her and gulped the amount given to them. Therefore, plaintiff lodged a complaint against the



defendants in the concerned police station. Defendant No.1 had no valid title to sell the said property. In view of the mischievous act and misrepresentation of the defendants, the plaintiff was constrained to cancel the agreement and requested defendant No.1 to repay the advance amount with interest by issuing legal notice on 12.09.2007. With these reasons, she prayed to decree the suit for Rs.21,53,800/- with interest at the rate of 12% p.a from the date of the suit till realization.

5. Defendant No.1 contended that she was the owner of the property. She purchased the said property through court sale in Ex.No.56/1957 arising from the judgment and decree in O.S.No.148/1954 on the file of the sub-ordinate judge court, Mysuru. Defendant No.1 had entered into an unregistered agreement of sale, to sell the property for Rs.37,80,000/-. But at the time of execution of the agreement of sale, no earnest money was paid to her, though plaintiff assured that she would pay the amount immediately after the execution of the document.



6. Defendant No.1 further stated that defendant No.2 was not her agent and he had no role in the said agreement of sale. It was told to her that defendant No.2 was relative of plaintiff and his presence was secured to sign on the document as a witness. Therefore, if plaintiff had paid amount to defendant No.2, that would not bind rights of defendant No.1. She replied to the notice of plaintiff through her advocate. The plaintiff is not at all entitled for any relief as prayed in the suit. With these reasons, prayed to dismiss the suit.

7. Defendant No.2 has also denied the contention of the plaintiff. According to him, he is known to the plaintiff and whenever plaintiff was in financial needs he used to obtain loan from him and he does not know about the said transaction between plaintiff and defendant No.1 and he denies receipt of Rs.17,80,000/- on behalf of defendant No.1. He denied that defendant Nos.1 and 2 cheated the plaintiff and showed different property at the time of execution of agreement of sale.



8. Defendant No.2 has further contended that he is close relative of plaintiff. He is no way connected with the alleged sale transaction. He was not the agent of deceased defendant No.1. He had not negotiated for sale and in his presence there was no discussion regarding the sale of the property. He signed on the agreement as per the request of the plaintiff and on the trust and good faith over the plaintiff, other than that he had no knowledge about the said transaction. Defendant No.2 has further contended that plaintiff had issued cheque dated 15.02.2007 to him to clear the amount due to him. The said amount was not at all connected with the alleged sale transaction. The plaintiff in collusion with police, filed a false case against him. He is not liable to pay any amount to plaintiff. With these reasons prayed for dismissal of the suit.

9. From the rival contentions of the parties, the trial court framed necessary issues.



10. The plaintiff to prove his case examined herself as PW-1 and got marked Exs.P1 to P11 to prove her case. The defendants examined DW1 and 2 and got marked Exs.D1 to D6.

11. The learned trial judge after hearing both the parties and appreciating the pleadings and evidence on record partly decreed the suit and directed the defendants to pay sum of Rs.17,80,000/- with interest at the rate of 9% p.a from the date of the payment of the amount to the plaintiff till its realization, vide judgment dated 20.04.2017. The same is challenged by defendant No.1, in the present appeal on the grounds stated in appeal memo.

12 We have heard the arguments of learned counsel for both side and perused records.

13 Both side have not disputed the execution of agreement of sale Ex.P1, dated 15/02/2007. It was signed by plaintiff, defendant No.1 and her two sons by



name C. Somanna and Bhaskar, who are appellant Nos.2 and 5 in the present appeal, as well as defendant No.2. The document also reveals that an amount of Rs.17,80,000/- was paid on the date of the sale agreement. The contention of the defendants was that an amount of Rs.17,80,000/- mentioned in Ex.P1 was not at all paid to defendant No.1; The plaintiff assured that at the time of registration of the document, she will pay the said amount. The plaintiff sent notice to defendant No.1 dated 12.09.2007, calling upon the defendant No.1 to refund the earnest money paid to her. Defendant No.1 replied to the said notice as per Ex.P3 dated 03.10.2007. In the said reply notice, for the first time, she had contended that no amount was paid to her under Ex.P1. If it was true then why she did sign on Ex.P-1 wherein payment of amount has been stated. Defendants did not give any explanation about the same. Till sending of Ex.P-3, at no point of time defendant No.1 had sent notice to plaintiff calling upon her to pay the same and indicating that though it was mentioned in Ex.P-1 that amount was



paid but no such amount was paid. Hence, the said contention of defendant No.1 is not tenable.

14 Ex.P1 is the agreement of sale executed between the parties in writing. Defendant No.1 agreed to sell the property and plaintiff intended to purchase the same for sale consideration of Rs.37,80,000/- and earnest money of Rs.17,80,000/- was paid to defendants. When the terms of the contract was reduced to writing, as provided under Sections 91 and 92 of the Indian Evidence Act, defendants are not permitted to take a defence contrary to the said document. On this count also the said defense is not sustainable.

15 It is the case of the plaintiff that the said amount of Rs.17,80,000/- was paid through cheque and which was given to defendant No.2, who was the agent of defendant No.1. Defendant No.2 contended that plaintiff was his relative and he was not at all an agent of defendant No.1. Defendant No.2 has contended that



whenever plaintiff was in need of finance, he was paying to her. In that regard, amount of Rs.17,80,000/- was due to him from the plaintiff and to clear the same, plaintiff had issued cheque, which was encashed by him. Amount of earnest money mentioned in Ex.P1 as well as cheque amount are one and the same. The onus shifts on to defendant No.2 to show that he was financing to the plaintiff and an amount of Rs.17,80,000/- was due from the plaintiff. To clear the dues, the plaintiff had issued the said cheque for Rs.17,80,000/-. Except self serving statement of the defendant, no records are placed before the court to prove his contention. Amount due was not small. No prudent person would pay such huge amount without record. Defendant No.2 has not disclosed his relationship with plaintiff. Even he did not disclose in the oral evidence about loan transactions. Hence, defendant No.2 failed to prove that Rs.17,80,000/- cheque was given to him to clear his dues. The case of plaintiff is more probable.



16 In the cross-examination of DW-2, he has stated that his annual income was Rs.2 to 3 lakhs. Under such circumstances, it is difficult to believe that he was capable of paying Rs.17,80,000/- to the plaintiff.

17 The learned trial judge has considered all these facts. Learned trial judge has also appreciated the pleadings and evidence of both the parties and came to right conclusion. It does not call for any interference. There are no valid grounds to admit the appeal. The appeal is devoid of merits and therefore, deserves to be dismissed at the stage of admission. Accordingly, we pass the following:

ORDER

The appeal is ***dismissed***.

The impugned judgment and decree passed by the learned trial judge in O.S.No.903/2008 dated 20.04.2017 is confirmed.



Registry is directed to send back the trial court records along with the copy of this judgment.

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

**Sd/-
(UMESH M ADIGA)
JUDGE**