



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 2045 OF 2017 (SP)

Between:

1. Smt. Zahira Nasreen,
W/o Late Dr. Nissar Ahamed Siddique,
Major by Age
2. Rehan Ahamed Siddique
S/o Late Dr. Nissar Ahamed Siddique,
Aged about 43 years,
3. Arman Haseeb Siddique,
D/o Late Dr. Nissar Ahamed Siddique,
Aged about 36 years,
4. Bayan Kateeb Siddique,
S/o Late Dr. Nissar Ahamed Siddique,
Aged about 27 years,
5. Emaan Ahamed Siddique,
S/o Late Dr. Nissar Ahamed Siddique,
Aged about 26 years,

Appellants No.1 to 5 are
Residing at D.No.34, 7th Cross,
Shivaji Road, N.R.Mohalla,
Mysuru-570007.

- Appellants

(By Smt. Anandita Srinivasan, Advocate)

And:

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VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



1. Jamshed Jah S/o Late Abdul Lathif,
Major by age, R/at No.16,
New Bannimantap Extension, Mysuru-570015.
And also working as Asst. Engineer,
PWD Revenue Division, Raichur
2. B.S.Puttaraj S/o B.C.Shivanna,
Major by Age, R/at D.No.13, 60 Feet Road,
Amarjyothi Nagar, Bengaluru-560040.
3. Shell India Markets Private Limited,
A Company registered under the
Provisions of the Companies Act 1956
Having its registered office
at No.12(Old No.22), 1st Cross Street,
Ramakrishna Nagar, Chennai-600028.

- Respondents

(By Sri Dilip Kumar, Advocate for R1;
R2 is served and unrepresented;
Smt. Tejaswini B.R. and
Smt. Smitha R.B., Advocates for R3)

This RFA is filed under section 96 of CPC, 1908 against the judgment and decree dated 02.08.2017 passed in O.S.No.286/2008 on the file of the III Additional Senior Civil Judge, Mysuru, dismissing the suit for specific performance and etc.,

Date on which the appeal was reserved for judgment	28.08.2024
Date on which the judgment was pronounced	22.10.2024

This appeal, pertaining to Bengaluru Bench, having been heard and reserved, coming on for pronouncement this day at Dharwad Bench, judgment was delivered therein as under:

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



CAV JUDGMENT

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

The III Additional Senior Civil Judge, Mysuru dismissed the suit for specific performance, O.S.No.286/2008 holding that the plaintiffs failed to prove their readiness and willingness and that the suit was time barred. Hence this appeal by the plaintiffs.

2. Substance of pleaded facts are that the first defendant who was a family friend of the first plaintiff and her husband requested them to buy the suit property that belonged to him as he was in need of money. They agreed for the same, and in this regard an agreement of sale came into existence on 30.03.1995. The total sale consideration agreed was Rs.16,00,000/-. Much before agreement was executed, the first plaintiff's husband had made certain payments to the first defendant on several dates, which amounted to



Rs.12,75,000/-, and this amount was adjusted towards earnest money. It was agreed that upon payment of balance of sale consideration, the first defendant should execute the sale deed and put the plaintiffs in possession.

2.1. The first plaintiff's husband was a doctor. He could not obtain sale deed from the first defendant due to his busy schedule. He died on 22.08.2006. The first plaintiff went into shock because of sudden death of her husband and she could not take any action in that state of mind. But when she met and requested the first defendant to execute the sale deed, he went on postponing. Thereafter the first defendant was transferred to Raichur and his address could not be traced for a long time. After the address was traced, she made a complaint to police who refused to interfere in a civil matter. Resultantly the first plaintiff and her children instituted the



suit. Before the suit was instituted the first defendant had sold the suit property to the second defendant who in turn sold it to the third defendant.

3. The first defendant admitted the agreement and receipt of Rs.12,75,000/-, but contended further that on 30.03.1995, two agreements of sale were executed in respect of suit property. In the agreement drafted in English, sale consideration was shown as Rs.16,00,000/-, and in the other agreement drafted in Kannada language, the sale consideration was shown as Rs.22,00,000/-. In fact the first plaintiff's husband received back entire money from the first defendant and only thereafter the first defendant sold the suit property to the second defendant on 08.06.2005. This sale was known to the first plaintiff and her husband. They did not object for the same. The



first defendant contended that the plaintiffs suppressed these facts. In addition he pleaded that the plaintiffs were not ready and willing to perform their part of contract and that the suit was time barred, as in the agreement drafted in Kannada language, i.e., original agreement, 7 months time was stipulated and the suit having been filed in the year 2008 was time barred.

4. The issues upon which the suit was dismissed were the main issues in the suit.

5. The respondents filed an application under Order 41 Rule 27 of CPC to produce an agreement of sale dated 30.03.1995 by way of additional evidence. This application is ofcourse opposed by the appellants by filing statement of objections.

6. Smt. Anandita Srinivasan, learned advocate for the appellants/plaintiffs contended



that dismissal of the suit was erroneous inasmuch as the balance of sale consideration to be paid by the plaintiffs was not a huge sum when compared to sum of Rs.12,75,000/- which had already been paid by them. Though there was delay in filing the suit, it was for valid reasons that the first plaintiff's husband died and on account of his death, the first plaintiff suffered a shock which she found it difficult to overcome. The first defendant was transferred to Raichur, and the plaintiffs could not trace the address for quite a long time. All these facts are pleaded and proved by the plaintiffs.

6.1. She further argued that no time limit has been stipulated in the agreement, but the trial court has wrongly held that suit was filed beyond prescribed time. The cause of action arose only when the plaintiffs came to know about sale of the suit property to the second defendant; the right to



sue arose after this sale which was nothing but breach of contract. Without appreciating the evidence properly the trial court dismissed the suit erroneously. Hence appeal deserves to be allowed and, specific performance granted in favour of the plaintiffs.

7. The counsel for the first defendant, Sri Dilip Kumar argued that though the agreement of sale is not disputed, the plaintiffs were not ready and willing to perform their part of contract. The agreement was executed on 30.03.1995, the suit was filed in the year 2008. The conduct of the plaintiffs in keeping quiet for about 13 years is sufficient to deny the relief. Two agreements came into existence on the same day. The agreement produced before the court as per Ex.P1 does not depict agreed consideration, it is found in another agreement written in Kannada. Total sale consideration was Rs.22,00,000/-. The plaintiffs



being unable to pay the balance did not come forward. The plaintiffs were aware of property being sold to the second defendant. In fact the first plaintiff's husband while going to his nursing home used to pass through in front of suit property, and he knew developmental activities undertaken by subsequent purchasers. He did not take any objection which showed that he did not want to purchase the suit property. When he requested for refund of earnest money, the first defendant paid a sum of Rs.12,75,000/-, and took back the original agreement drafted in Kannada. This agreement is produced by way of additional evidence and if this document is considered, the defendants' contentions would get probabalised as the agreement would be left with purchaser in normal course and if the first defendant had the original in his possession, it would indicate money being returned to the plaintiffs. Therefore appeal is devoid of merits.



8. The counsel for third defendant argued that he was a bonafide purchaser without knowledge of past transactions. The third defendant having bought the suit property constructed a petrol bunk and is carrying on business. In this kind of a situation if specific performance is granted, the third defendant will face hardship.

9. Smt. Anandita Srinivasan replied that application under Order 41 Rule 27 of CPC cannot be allowed for the reason that the first defendant has not given proper reasons for its non-production during trial. Though the plaintiffs deny another agreement, while PW1 was being cross examined, the first defendant's counsel confronted PW1 with a copy of the agreement in Kannada language and PW1 did not admit it. Therefore production of original does not serve any purpose now.



10. The points to be answered are on the issues which have been held against the plaintiffs as have been noted in the beginning.

11. On the issue of limitation, definitely the trial court's findings are unsustainable. In Ex.P1, the agreement of sale, no time is stipulated for completion of contract. Even if time is fixed, the general rule is that time is not essence of contract with respect to the immovable property unless the parties intended to adhere to time. Limitation period has to be reckoned from the date of knowledge of breach of contract. The plaintiffs state that they came to know of breach only when they came to know of sale of suit property in favour of second defendant. Though an effort is made to prove that the plaintiffs as also the first plaintiff's husband had the knowledge of sale in favour of defendant No.2, the questions to that effect are mere suggestions which do not have any



bearing. PW1 has stated that she came to know of sale in June 2006. If this date is considered, suit filed in the year 2008 was in time. Smt. Anandita Srinivasan has relied on a judgment of Privy Council in ***BOLO V. KOKLAN AND OTHERS***¹ where it is held that suit cannot be filed until accrual of right asserted in the plaint or at least clear and unequivocal threat to infringe that right by the defendant. This principle is aptly applicable here.

12. Despite the fact that suit was not barred by time the other side of the case i.e., delay of 13 years in instituting the suit reflects on the conduct of the plaintiffs. The agreement came into existence on 30.03.1995. The first plaintiff's husband died in the year 2006. There is no explanation as to what the first plaintiff and her husband were doing till 2006. There is no iota of probability in whatever that has been stated in the

¹ MANU/PR/0054/1930



plaint for delay and latches. Then, after the death of the first plaintiff's husband in the year 2006, the plaintiffs appear to have kept quiet. Mere issuance of notice is of no use, the conduct of the plaintiffs must appear to be blemishless from the beginning. While readiness indicates one being ready meet the material aspects, willingness is related to mind; the surrounding circumstances and conduct help assess one's willingness. Balance money to be paid to first defendant being Rs.3,25,000/-, the plaintiffs might be ready when they instituted the suit, but were they ready with balance within a reasonable time after the execution of agreement matters much. It is here the plaintiffs' fail. Therefore finding of the trial court on the issue relating to plaintiff's readiness and willingness cannot be said to be incorrect.

13. The next question is whether the first defendant can be directed to refund the earnest



money. The first defendant has made an application under Order 41 Rule 27 CPC for producing a sale agreement written in Kannada language. The first defendant seeks permission to produce it for two purposes, firstly for the purpose of proving that sale consideration was Rs.22,00,000/- and secondly to prove that since he paid back Rs.12,75,000/- to the plaintiffs, the said agreement was returned to him, and therefore there remains nothing to be repaid.

14. The application cannot be granted. The first purpose cannot be accepted, he might have given some reason for non production of that agreement written in Kannada, but while PW1 was being cross examined, it's copy was confronted to her and she did not admit it. Now even if original agreement is taken on record, it serves no purpose.



15. So far as the second purpose is concerned, if really the first defendant returned Rs.12,75,000/- that he had received from the first plaintiff's husband and for that reason the plaintiffs returned the original agreement drafted in Kannada language, they should have taken back Ex.P1 also at that time. But Ex.P1 was with the plaintiffs. There is no explanation as to why the first defendant left Ex.P1 with the plaintiffs. Therefore no purpose would be served even if application is allowed.

16. Though there is no case for granting the relief of specific performance, the earnest money of Rs.12,75,000/- can be ordered to be refunded to the plaintiffs. When the suit was filed, the plaintiffs had not claimed the alternative relief of refund of earnest money, but in the appeal plaint was permitted to be amended for claiming refund of the earnest money. The first defendant has



admitted that he received Rs.12,75,000/-. Therefore he has to repay that sum to the plaintiffs with interest which can be fixed @ 8%. Usually interest is ordered from the date of suit, but the first defendant sold the suit property on 08.06.2005. It was the date of repudiating the contract and therefore interest can be awarded from 08.06.2005.

17. With the above discussion, appeal is allowed in the following terms.

- (i) Judgment dated 02.08.2017 in O.S.No.286/2008 is modified,*
- (ii) Alternative relief of refund of Rs.12,75,000/- is granted.*
- (iii) The first defendant is hereby directed to refund Rs.12,75,000/- to the plaintiffs with interest at the rate of 8% per annum from 08.06.2005 till date of repayment of entire sum.*



(iv) The plaintiffs/appellants are also entitled to costs of the suit and the appeal.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

KMV/bvv
List No.: 19 Sl No.: 2