



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH 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. 1359 OF 2017 (SP)

BETWEEN:

1. SHRI SIDDAPPA
S/O LATE MADEGOWDA
AGED ABOUT 63 YEARS
2. SHRI S RAVI KUMAR
S/O SIDDAPPA
AGED ABOUT 35 YEARS

BOTH ARE R/AT NO.317
FIRST FLOOR, 1/2ND CROSS
FIRST STAGE, NIVEDITHANAGARA
MYSURU
AND ALSO R/AT NO.2961
NEW NO.CH-8, 8/1
2ND MAIN ROAD, SARASWATHIPURAM
MYSURU-570009

Digitally signed by
VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA

...APPELLANTS

(BY SRI N KUMAR, ADVOCATE)

AND:

1. SHRI BHALARAM PATEL
S/O VEERARAMJI
AGED ABOUT 36 YEARS



2. SHRI MOHANLAL PATEL
S/O VEERARAMJI
AGED ABOUT 33 YEARS
BOTH ARE R/AT NO.46
2ND CROSS, KAMAKSHI HOSPITAL ROAD
K G KOPPAL, MYSURU-570001

...RESPONDENTS

(BY SRI SIDDHARTH B MUCHANDI, ADVOCATE)

THIS RFA FILED UNDER SEC. 96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 09.12.2016 PASSED IN OS.NO.930/2013 ON THE FILE OF THE III ADDITIONAL CIVIL JUDGE (SR.DN.) AT MYSORE, DECREERING THE SUIT FOR SPECIFIC PERFORMANCE.

THIS APPEAL, COMING ON FOR FINAL HEARING, 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 SREENIVAS HARISH KUMAR)

Heard learned counsel for the appellants and the respondents at the time of admission.

2. Defendants No.1 and 2 have preferred this appeal challenging the judgment and decree



dated 09.12.2016 in O.S.No.930/2013, a suit for specific performance filed by the respondents against the appellants.

3. The plaintiffs brought the suit on the basis of an registered agreement of sale dated 07.01.2013. The terms of the agreement are that the defendants agreed to sell the suit property for a total sale consideration of Rs.19,25,000/- as they wanted money to clear the loan at Kannika Parameshwari Co-operative Bank Ltd., Mysuru. On the date of agreement the plaintiffs paid a sum of Rs.12,00,000/- and they also made a further payment of Rs.7,00,000/-. The balance was Rs.25,000/-. Since the defendants did not show interest to execute the sale deed, the plaintiffs issued legal notice to the defendants on 19.08.2013. The defendants sent reply to the notice. Thereafter the plaintiffs brought the suit.



4. The defendants appeared and filed their written statement contending that the total sale consideration was Rs.60,00,000/- and that they executed the agreement believing the words of the plaintiff by receiving the advance amount of Rs.19,00,000/-. The plaintiffs failed to pay the balance consideration of Rs.41,00,000/- and in these circumstances the plaintiffs are not entitled to claim specific performance.

5. The first plaintiff adduced evidence as PW1 and produced documents Ex.P1 to P35. But the defendants did not cross examine PW1. The trial court answered issues 1 to 3 in favour of the plaintiffs and decreed the suit. Hence this appeal by the defendants.

6. It is the argument of Sri N.Kumar that the trial court did not give an opportunity to the defendants to cross examine PW1. Merely for the reason that PW1 was not cross examined, the trial



court should not have decreed the suit on the basis of plaint averments and the evidence produced by PW1. He argued that the agreement stipulated that time was the essence of the contract. The plaintiffs did not come forward within the stipulated time and that he got issued the legal notice seven months after the agreement by which time the time stipulated in agreement had expired. Besides this the plaintiffs actually agreed to pay consideration of Rs.60,00,000/-. Keeping the balance of Rs.41,00,000/-, he claimed specific performance. He was also not ready and willing to perform his part of the contract. For these reasons suit should have been dismissed and hence the appeal deserves to be allowed.

7. Learned counsel for the respondents argued that time was not essence of the contract. The defendants cannot put forth this contention when they failed to cross examine PW1. Actual



balance was only Rs.25,000/-. The plaintiffs executed the decree and obtained the sale deed and also the possession of the suit property through process of court and therefore the appeal has become infructuous.

8. After hearing both sides it may be stated that the defendants have not stated the reasons as to why they did not cross examine PW1. The judgment of the trial court shows that the defendants failed to cross examine PW1 inspite of sufficient opportunities being provided. If the defendants failed to avail the opportunities, they cannot now state that no opportunity was given to them.

9. It is true that just because the plaintiffs' witness is not cross examined, the court need not decree the suit in favour of the plaintiffs. The court must be convinced that the plaintiffs have



been able to place convincing evidence in order that suit can be decreed.

10. In this case the plaintiffs appear to have placed cogent evidence before the court. He has produced the agreement of sale as per Ex.P1. It is not in dispute that the plaintiff has paid major portion of the consideration amount. The impugned judgment shows that in the written statement it is stated that the defendants received the advance amount of Rs.19,25,000/-.

11. Now according to the defendants time was essence of the contract, the whole process of execution of the sale deed should have been completed within one month. According to them the sale consideration was Rs.60,00,000/- and not Rs.19,25,000/-. In regard to this it has to be stated that with respect to the immovable property, the general principle is that time is not the essence of contract. If according to



defendants time was essence of the contract, the burden was on them to establish the same. Merely for the reason that the plaintiffs got issued the legal notice on 19.08.2013, it cannot be said that the plaintiffs were not ready and willing to perform their part of the contract. Such an inference cannot be drawn.

12. Further it has to be stated that the specific contention of the defendants that the consideration was Rs.60,00,000/- is hit by Section 92 of the Indian Evidence Act. The agreement clearly states that consideration was Rs.19,25,000/-. The proviso (2) to Section 92 only permits to prove a separate oral agreement as to a matter on which a document is silent and which is not inconsistent with terms in the document. That means, a party to a suit can prove existence of a separate oral agreement if it is not inconsistent with the terms of contract.



Here Ex.P1 the agreement of sale which states that total sale consideration was Rs.19,25,000/-. If according to defendants the consideration was Rs.60,00,000/-, and about which there is no separate document, it must be inferred that it is an oral agreement which is inconsistent with the terms of the agreement Ex.P1. Therefore defendants cannot take up this contention.

13. Since the plaintiffs have paid major part of the sale consideration amount and that the notice issued by them as per Ex.P8 showed their readiness and willingness there is nothing wrong in decreeing the suit. For any reason grant of specific performance would result in a greater hardship being caused to the defendants, that should have been pleaded and proved by them. In the absence of these aspects, the suit is liable to be decreed which the trial court has rightly



considered. Therefore there is no merit in the appeal. Accordingly it is ***dismissed***.

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

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

KMV
List No.: 1 Sl No.: 13