



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 124 OF 2017 (SP)

BETWEEN:

- 1 . SRI. V. NANJUNDAPPA,
AGED ABOUT 89 YEARS,
S/O LATE VENKATASHAMAPPA,
- 2 . SMT. JAYAMMA,
AGED ABOUT 72 YEARS,
W/O SRI. V NANJUNDAPPA,
1 & 2 ARE RESIDENTS OF
BIJJAVARA VILLAGE,
VIJAYAPURA HOBLI,
DEVANAHALLI TALUK
PIN-562 135.
- 3 . SMT. PADMAMMA,
AGED ABOUT 45 YEARS,
D/O V.NANJUNDAPPA,
W/O CHANDRAPPA A.M.,
R/AT NO.67/1,
AVALAHALLI VILLAGE,
MARALAKUNTE POST,
CHICKABALLAPUR TALUK-562 111.
- 4 . SMT. SUVARNAMMA @ SUVARNA,
AGED ABOUT 50 YEARS,
D/O V.NANJUNDAPPA,
W/O M.G. RAMESH,
R/AT NO.40,
OLD MADRAS ROAD,
INDIRANAGAR,



KADARAINAHAPALYA,
BENGALURU-560 038.

5. SMT. SUJATHAMMA @
SUJATHA,
AGED ABOUT 35 YEARS,
D/O V. NANJUNDAPPA,
W/O MARUTHI KUMAR,
R/AT NO.6, MAIN,
CHANMUNDESHWARI LAYOUT,
DODDABOMMASANDRA,
BENGALURU-560 097.

...APPELLANTS

(BY SRI.C.M. NAGABUSHANA, ADVOCATE)

AND:

SRI. C.R.SRINATH,
AGED ABOUT 53 YEARS,
S/O RACHAIAH SETTY,
R/AT GIRLS SCHOOL ROAD,
CHICKABALLAPUR TOWN,
CHICKABALLAPUR-562 101.

...RESPONDENT

(BY SRI. R.S. RAVI, SENIOR COUNSEL FOR
SRI. AKARSH KUMAR GOWDA, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 27.10.2016 PASSED IN OS NO.238/2006 ON THE FILE OF THE ADDL. SENIOR CIVIL JUDGE AND JMFC., CHICKBALLAPUR, DECREETING THE SUIT FOR SPECIFIC PERFORMANCE.

THIS APPEAL, HAVING BEEN RESERVED FOR JUDGEMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, **UMESH M. ADIGA, J.,** PRONOUNCED THE FOLLOWING:

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



CAV JUDGMENT

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

Defendant Nos.1 to 5 in O.S.No.238/2006, on the file of learned Addl. Senior Civil Judge & J.M.F.C., Chickballapur, (for short 'trial Court'), have preferred this appeal challenging the judgment and decree passed in the said suit dated 27.10.2016.

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

3. Brief facts of the case are that :

Defendant Nos.1 and 2 are owners of suit properties. They executed an agreement of sale dated 17.06.2006, agreeing to sell the suit properties for Rs.35,00,000/- in favour of the plaintiff and received earnest money of Rs.5,05,000/- on the date of agreement of sale. Defendant Nos.1 and 2 gave three months time to the plaintiff to pay the balance sale consideration and get executed the registered sale deed and in case of failure of plaintiff to pay the balance sale consideration within that



period, then whatever earnest money paid by the plaintiff would be forfeited and in case if defendants refuses to execute the sale deed, then plaintiff may deposit the balance amount of sale consideration in the Court and through process of the Court, get executed the sale deed.

4. It was the further case of the plaintiff that he was always ready and willing to perform his part of the contract. He repeatedly requested defendant Nos.1 and 2 to execute the sale deed by receiving the balance amount of sale consideration. When the defendants failed to execute the sale deed, he got issued a legal notice dated 11.09.2006 through his advocate calling upon defendant Nos.1 and 2 to come and execute the registered sale deed in the office of the Sub-Registrar, Chickballapur on 16.09.2006. Defendant Nos.1 and 2 did not respond to the said notice immediately. As per the terms of the notice, on 16.09.2006, plaintiff along with witnesses and balance of sale consideration, went to Sub-Registrar's office at Chickballapur and was waiting till the evening i.e.,



closure of the office, but defendant Nos.1 and 2 did not come to the Sub-Registrar's office to execute the sale deed by receiving the balance amount of sale consideration. Thereafter on 20.09.2006, defendant Nos. 1 and 2 sent a reply to the notice given by the plaintiff with a false contention that they were waiting in the office of the Sub-Registrar, Chickballapur on 16.09.2006 and plaintiff did not come to the said office to pay the balance sale consideration and got executed the sale deed. They also contended that plaintiff was not ready and willing to perform his part of the contract and therefore, he is not entitled for the relief of specific performance. Defendant Nos.1 and 2 had failed to execute the registered sale deed. With these reasons, plaintiff filed the suit on 30.10.2006 before the competent Court praying the relief of specific performance of the contract and also for a direction to defendant Nos.1 and 2 to deliver the actual and physical possession of the suit properties.



5. Initially the suit was filed against defendant Nos.1 and 2. Thereafter, defendant Nos.3 to 5 got impleaded as parties, who are daughters of defendant Nos.1 and 2. The contentions of defendant Nos.1 and 2 are that they admit execution of agreement of sale and their intention to sell the suit properties for Rs.35,00,000/- and also admit receipt of Rs.5,05,000/- on the date of execution of agreement of sale dated 17.06.2006. They further contended that they were ready to execute the sale deed and as per the notice received from the plaintiff, they went to the office of Sub-Registrar, Chickballapur on 16.09.2006 along with two witnesses and waited till the closure of the said office on that day; Plaintiff did not come to the office of Sub-Registrar and paid the balance amount of sale consideration to execute the sale deed; Plaintiff had no money to pay the balance of sale consideration; Plaintiff is a Real Estate dealer; He used to get executed agreement of sale and thereafter search for the purchasers for the said properties and only after getting such purchaser, collecting money from them, he



used to get executed in the name of such purchaser. Therefore, as per the terms of agreement, right of the plaintiff to seek the relief of specific performance was forfeited and he is not entitled for the relief of specific performance of the contract. As per the terms of agreement, if balance amount of sale consideration is not paid within a period of three months, then whatever amount paid by him would be forfeited.

6. Defendant Nos.1 and 2 further contended that during interregnum period of pendency of the suit, daughters of defendant Nos.1 and 2 i.e., defendant Nos.3 to 5 had filed a suit in O.S.No.393/2007, on the file of learned Civil Judge (Sr.Dn.,) and J.M.F.C. at Devanahalli, for the relief of partition and separate possession of the properties belonging to defendant Nos.1 and 2, including the suit properties. It was partly decreed by the said Court and thereafter, defendant Nos.3 to 5 preferred an appeal in R.A.No.218/2008, before the learned Prl. District Judge, Bengaluru Rural District and the said appeal was



allowed. According to the decree passed in O.S.No.393/2007, defendant Nos.3 to 5 in the present suit, who are plaintiffs in O.S.No.393/2007 and another daughter of defendant Nos.1 and 2 by name Pramilamma @ Pramila- defendant No.3 and defendant No.1 in the said O.S.No.393/2007, are entitled for 1/5th share each in the properties and they had also filed FDP proceedings in FDP No.11/2010, which was pending as on the date of the suit. In view of the decree passed in the above said litigation, defendant Nos.1 and 2 are not the absolute owners of the suit properties to execute the registered sale deed in respect of entire extent of the suit properties. Therefore, prayed for dismissal of the suit.

7. Defendant Nos.3 to 5 also contended that defendant Nos.1 and 2 had not executed agreement of sale and they were not the absolute owners of the suit properties and they had no absolute right to execute the alleged agreement of sale; They filed suit in O.S.No.393/2007 and R.A.No.218/2008 and succeeded in



the said litigation; According to the decree passed in the said case, each of defendant Nos.3 to 5 is entitled for 1/5th share in the suit properties. The decree passed in the said suit is binding on defendant Nos.1 and 2 as well as plaintiff, therefore, plaintiff is not entitled for the relief of specific performance of the contract. With these reasons, prayed to dismiss the suit.

8. From the rival contentions of the parties, the trial Court framed necessary issues.

9. To prove his case, plaintiff examined PWs.1 to 3 and got marked Exs.P-1 to P-22. The defendants examined DWs.1 and 2 and got marked Exs.D-1 to D-16.

10. The learned trial Judge after hearing both parties and appreciating the pleadings and evidence on record, held that plaintiff was ready and willing to perform his part of the contract and it was failure on the part of defendant Nos.1 and 2 to execute the sale deed after receiving the balance amount of sale consideration. The trial Court also



held that the decree passed in the earlier litigation would not bind the plaintiff or his right to enforce the agreement of sale and get executed the sale deed. Accordingly, suit was decreed and trial Court directed defendant Nos.1 and 2 to execute the sale deed within three months from the date of judgment and deliver possession of the suit properties in favour of the plaintiff. Aggrieved by the same, defendant Nos.1 to 5 have preferred this appeal.

11. We have heard the arguments of learned counsels for both the parties and perused the materials on record.

12. Learned counsel for the appellants submits that as per the terms of the agreement, it was the duty of the plaintiff to pay the balance amount of sale consideration within a period of three months from the date of execution of agreement of sale, but he had no sufficient source of income to pay the balance of sale consideration. Only for the name sake, he had issued notice to defendant Nos.1 and 2, calling upon them to appear before the office of



Sub-Registrar on 16.09.2006. According to the said notice, defendant Nos.1 and 2 along with witnesses went to the office of Sub-Registrar, Chickballapur, and waited till closure of the said office, but plaintiff did not appear before the office of the Sub-Registrar to get executed the sale deed, therefore, he failed to perform his part of the contract. He was not ready and willing to perform his part of the contract and according to the terms of the agreement, the agreement itself will be forfeited and whatever amount paid by him will also be forfeited and he is not entitled for decree in the case. The learned trial Judge has not considered these points and erroneously held that plaintiff was ready and willing to perform his part of the contract.

13. Learned counsel for the appellants further submits that defendant Nos.3 to 5 filed a suit for partition against defendant Nos.1 and 2 and succeeded in the said case and each of them is entitled for 1/5th share in the suit properties. Defendant Nos.1 and 2 are not the absolute



owners of the suit properties. Therefore, learned trial Judge erred in directing the defendant Nos.1 and 2 to execute the sale deed in respect of entire suit properties.

14. Learned counsel for the appellants further submits that as per the terms of agreement, if defendants failed to execute the sale deed, then plaintiff should have deposited the balance amount of sale consideration in the Court and through process of the Court, got executed the sale deed. But plaintiff did not comply the said conditions of agreement of sale and on the contrary, he deposited the balance amount of sale consideration before the Court on 04.10.2016 i.e., after lapse of 10 years from the date of filing of the suit. It also indicates that plaintiff had no sufficient source of income to pay the balance sale consideration. Hence he is not entitled for discretionary relief of specific performance.

15. Learned counsel for the appellants further submits that, according to the terms of the agreement of sale if the amount is not paid within a period of three



months, the agreement of sale stands cancelled and whatever amount paid will be forfeited. As per the said clause, granting the relief of specific performance was erroneous. Moreover, defendant Nos.1 and 2 are senior citizens. The suit properties are the only source of income for them and if the suit properties are ordered to be sold to plaintiff, then they will be put to hardship. Moreover, due to inflation, the value of the suit properties has increased multiple times. At this juncture, if they are asked to execute the sale deed, then they would be put to irreparable loss and damage. Therefore, prayed to allow the appeal by setting aside the impugned judgment.

16. Learned counsel for the respondent/plaintiff submits that agreement of sale was admitted by defendant Nos.1 and 2 and they also admitted that plaintiff paid Rs.5,05,000/- on the date of agreement of sale. During the evidence of defendants, they have not disputed that plaintiff is a jewellery merchant, having very good business in Chickballapur. He was always ready and



willing to perform his part of the contract. It was also the duty of the defendants to call upon the plaintiff before the period of three months showing their interest to execute the sale deed, but they failed to do so. Plaintiff was repeatedly requesting defendant Nos.1 and 2 to receive the balance amount of sale consideration and execute the sale deed. When they did not respond to it, he issued notice to show his *bona fides* that he was ready and willing to perform his part of the contract.

As per the said notice, he went to the office of Sub-Registrar, unfortunately defendant Nos.1 and 2 did not come to the Sub-Registrar's office to receive the balance amount of sale consideration and to execute the sale deed. They did not turn up before the Sub-Registrar on that day with a *mala fide* intention to see that the sale transaction should not complete within a period of three months as per the terms of the agreement. They also intended that if the sale deed is not executed within a period of three months, then agreement of sale stands



cancelled and whatever amount received by defendant Nos.1 and 2 would be forfeited. Therefore, only after the period of three months, they replied to the notice on 20.09.2006. Hence, the sale transaction was not completed due to the failure of defendant Nos.1 and 2 in receiving the balance amount of sale consideration and sale deed was not executed.

17. Learned counsel for the respondent further submits that defendant Nos.1 and 2 thereafter colluding with their daughters i.e., defendant Nos.3 to 5, filed a suit for partition before the competent Court without impleading the plaintiff as a party in the said case. The defendant Nos.1 and 2 though appeared, but did not contest the said suit to enable the daughters to get decree in the said case. The agreement of sale itself indicated as to how defendant Nos.1 and 2 acquired the suit properties. They purchased the suit properties from their vendors by paying the sale consideration. It *prima facie* shows that it was a self-acquired property of defendant Nos.1 and 2 and



in the agreement of sale, they themselves instructed the scribe and got it written that it was their self-acquired property. Now only to avoid the execution of the sale deed, they got filed the suit and got *ex parte* decree wherein plaintiff was not at all a party. Therefore, the said decree does not bind the rights of the plaintiff. The learned trial Judge in detail discussed these facts and granted the relief. There are no reasons to interfere in the said findings.

18. Learned counsel for the respondent further submitted that sale transaction was not completed due to default of defendant Nos.1 and 2. Therefore, now they cannot contend that in view of inflation, price of the suit property has been increased and if a direction is given to defendant Nos.1 and 2 to execute the sale deed, then it will seriously affect them and they will be put to irreparable loss, such a contention cannot hold any water. The properties are sold for the legal necessities and benefit of the family. For the sake of discussion, even if it



is treated that it was a joint family property, then it was not the case of defendant Nos.3 to 5 that the properties were sold for immoral purpose. The decree passed in the said case to which the plaintiff was not a party is not binding on his rights. Therefore, there is no hurdle for the trial Court to direct defendant Nos.1 and 2 to execute the sale deed. With these reasons, he submits that appeal is devoid of merits and it may be dismissed with cost. The period given by the trial Court i.e., three months from the date of decree they had to execute the sale deed, since they did not execute the sale deed, the said period may be extended and a direction may be given to defendant Nos.1 and 2 to comply the directions given by the trial Court.

19. The following questions arise for our determination:

(1) Whether the learned trial Judge has erred in holding that respondent was always ready and willing to perform his part of the contract?

(2) Whether learned trial Judge has erred in granting the relief of specific performance



overruling the contentions of the appellants regarding hardship?

20. Our answer to the above said questions are in the negative, for the following reasons:

In the written statement, defendant Nos.1 and 2 admitted the execution of agreement of sale and receipt of Rs.5,05,000/- on the date of agreement of sale. The original agreement of sale is placed on record as per Ex.P-6 and xerox copy of the same is produced at Ex.P-7. During the trial of the case, the defendants ignoring their pleadings, contended that it was not executed by the defendant Nos.1 and 2; and the plaintiff obtained the agreement by playing fraud and misrepresenting them. Apart from the said contentions, they had also deviated from their pleadings and made out a new case. It is settled trite of law that contentions of the parties without pleadings cannot be considered. Therefore, other contentions raised during trial of the case are ignored.



21. The learned trial Judge in detail discussed the evidence led by both the parties, repetition of the said evidence is not required.

22. The contents of Ex.P-6 shows that the sale transactions should be completed within a period of three months. Plaintiff shall pay the balance amount of sale consideration within a period of three months and get executed the sale deed. If he failed to do so, then agreement of sale stands cancelled and whatever earnest money paid will be forfeited. There is also contention that if defendant Nos.1 and 2 failed to execute the sale deed, then plaintiff shall deposit the balance amount of sale consideration in the Court and take appropriate legal action against defendant Nos.1 and 2 to get executed the sale deed. The repeated contention of the learned counsel for the appellants that as per the notice given by the plaintiff, defendant Nos.1 and 2 and their witnesses were present in the office of Sub-Registrar, Chickballapur till the end of office timings on that day, but plaintiff did not turn



up. He had no sufficient amount to pay the amount to defendant Nos.1 and 2, therefore, he did not turn up to the office of the Sub-Registrar. Only to shirk from his responsibilities, he issued nominal notice to defendant Nos.1 and 2 without an intention to get executed the sale deed.

23. On re-appreciating the evidence of PW-1, as well as DWs.1 and 2, one can infer that the contentions of learned counsel for the appellants is not tenable. Undisputedly, defendant Nos.1 and 2 had not issued notice before completion of period of three months from the date of execution of Ex.P-6, calling upon the plaintiff to pay the balance amount of sale consideration and get executed the registered sale deed. Undisputedly, plaintiff issued such a notice on 11.09.2006. Normally no person tries to invite trouble from his own hands. If plaintiff had no money, then why he would issue notice calling upon defendant Nos.1 and 2 to execute the sale deed?



24. In the cross-examination of DW-1, she admits that plaintiff was having a big jewellery shop at Chickballapur and is having a good business. In the cross-examination of PW-1, nothing was brought out to show that he had no money as on 16.09.2006 when he called upon the defendant Nos.1 and 2 to come to the office of Sub-Registrar, Chickballapur to execute the sale deed. Plaintiff in the pleading as well as in the evidence repeatedly stated that he had sufficient money to pay the balance amount of sale consideration. There are no reasons to disbelieve his evidence.

25. Learned counsel for the appellants submitted that suit was filed in the month of October 2006, but deposit was made in the year 2016. On that basis, he contends that, it clearly indicates that he had no money to pay the balance amount of sale consideration. The learned trial Judge in the impugned judgment at Para-16 has correctly observed that in view of Section 16(c) of Specific Relief Act, there is no need to deposit the balance amount of sale



consideration before the Court to prove that he was ready and willing to perform his part of the contract. Therefore, the said contention of learned counsel for the appellants is not tenable.

26. We have to consider whether the conduct of defendant Nos.1 and 2 shows that they were ready and willing to execute the sale deed by receiving the balance amount of sale consideration. Plaintiff issued notice calling upon defendant Nos.1 and 2 to attend the office of Sub-Registrar on 16.09.2006 and execute the sale deed. Plaintiff in his evidence stated that he along with one of the witnesses came to the office of Sub-Registrar holding hard cash to pay balance amount of sale consideration. He was waiting in the office of the Sub-Registrar, Chickballapur till closure of the office on that day, but defendant Nos.1 and 2 did not appear. DW-1 in her evidence made a contrary statement to the same and she contends that she and her husband and two witnesses went to the office of the Sub-Registrar, Chickballapur, and



they were waiting till the closure of office on that day, but plaintiff did not turn up, hence they came back.

27. During cross-examination of DW-1, she stated that on that day, she met plaintiff in his jewellery shop and plaintiff asked her to sign on the documents. She and her husband refused to sign the documents at the shop of the plaintiff and she told him to come to the office of the Sub-Registrar, where they would sign the documents. Plaintiff sent them to go to the office of the Sub-Registrar and he would follow them, however he did not come to the office of the Sub-Registrar.

The said evidence is contrary to the pleadings of the defendants. There is evidence and counter evidence regarding the said fact. It is worth to note that DW-1 in her cross-examination has not stated that plaintiff had no money to pay the balance amount of sale consideration, therefore he did not come with them to the office of the Sub-Registrar to execute the sale deed.



28. In the detailed cross-examination of DW-1, she stated that after execution of agreement of sale, they thought that their children would not get any property from them and she also further thought that her children may quarrel with her in respect of their decision of sale of the property, therefore she was reluctant to sell the properties. She also stated that she and her husband helped their daughters to file a suit for partition. It is worth to note that both defendant Nos.1 and 2 though appeared before the Court at Devenahalli, where suit for partition was filed, but they did not contest the matter. DW-1 also says that she was not interested in executing the sale deed. These facts indicate that they were not willing and ready to execute the sale deed.

29. Defendant Nos.1 and 2 in their written statement filed prior to the amendment have stated that they were the absolute owners of the suit properties. The recitals of Ex.P-6 shows that both of them had purchased suit properties. Thereafter, defendant Nos.1 and 2 got



amended the written statement and started contending that suit properties are joint family properties and their daughters are entitled for share in the suit properties. From the contentions of defendant Nos.1 and 2, any prudent person can infer that the suit for partition filed by defendant Nos.3 to 5 in O.S.No.393/2007 and R.A.No.218/2008, was a collusive suit just to avoid execution of the sale deed. On scanning of evidence of both parties in this regard, any prudent man can come to a conclusion that due to failure of defendant Nos.1 and 2, sale transaction as per Ex.P-6 was not concluded. There are no reasons to interfere in the findings of the trial Court on this point.

30. Defendant Nos.1 and 2 prior to amending the written statement or prior to filing of O.S.No.393/2007, unequivocally admitted that they were the absolute owners of suit properties and thereafter they started contending that it was the joint family property. How the suit properties became joint family properties are not



explained by them in the pleadings, as well as in the evidence. DW-1 in her cross-examination stated that they had sold another property prior to execution of Ex.P-6. It is not clear as to whether the said property is the subject matter of suit in O.S.No.393/2007. When Ex.P-6 clearly indicates that the suit properties are self-acquired properties and they were purchased from their vendors, how it would become joint family properties, is not disclosed by them.

31. After execution of Ex.P-6, it appears that defendant Nos.3 to 5 started claiming share in the suit properties may be with an intention to avoid execution of the sale deed. In O.S.No.393/2007, plaintiff in the present case was not a party. Therefore, finding in the said suit will not bind the rights of the plaintiff. As already stated above, defendant Nos.1 and 2 herein did not prosecute the said case though they had appeared. The said fact, as well as the evidence given by DW-1 in the cross-examination shows that it was a collusive suit just to



shirk the responsibility from executing the sale deed. Therefore, even if the said suit is decreed by the competent Court, it will not affect the rights of the plaintiff to get executed the registered sale deed in respect of the very same properties.

32. As rightly submitted by the learned counsel for the defendants, even if we accept that the said suit properties are joint family properties and defendant Nos.3 to 5 are entitled for 1/5th share in the property, then they can claim 1/5th share in the sale consideration amount payable by the plaintiff. It is worth to note that defendant Nos.3 to 5 have not contended in O.S.No.393/2007 that defendant Nos.1 and 2 were intending to sell the property for immoral/illegal purpose. The contents of Ex.P-6 shows that they intended to sell the properties to clear-off the debt obtained by defendant Nos.1 and 2. Hence, merely O.S.No.393/2007 is decreed, it cannot be a ground to refuse the relief of specific performance.



33. Moreover, in a suit for the relief of specific performance, it is suffice to consider whether an agreement of sale was executed, if so, whether plaintiff was ready and willing to perform his part of the contract and ready to pay the sale consideration and whether said agreement of sale is illegal. Both the parties to the agreement after considering the materials on record, must have come to a conclusion for selling and buying of the properties. In this case also, plaintiff agreed to purchase the property and in spite of passing of decree in O.S.No.393/2007, plaintiff is trying to enforce the said agreement and seeking for a direction to defendant Nos.1 and 2 to execute the sale deed. Therefore, even if there is any defective title in defendant Nos.1 and 2, that has to be sorted out by the plaintiff before appropriate forum. Only on that ground, the suit for specific performance cannot be dismissed and relief cannot be rejected.

34. The learned trial Judge discussed in detail about the suit filed by defendants *inter se* in O.S.No.393/2007



and held that it was a collusive suit to defeat the rights of the plaintiff. There is no need for considering that point here. As on the date of agreement of sale, defendant Nos.1 and 2 declared that it was their self-acquired properties and both of them had purchased the properties from its vendors. The said fact *prima facie* reveals that the suit properties are self-acquired properties of defendant Nos.1 and 2. Satisfying the title of defendant Nos.1 and 2, plaintiff had agreed to purchase the same. Therefore, remaining facts need not be considered in detail by the Court in which relief of specific performance is sought.

35. Defendant Nos.1 and 2 after amendment to the written statement contended that if specific performance is ordered, then they would be put to hardship and loss. They contend that the suit properties are the only properties belonging to them. They are surviving by the income earned from the said properties. If it is ordered to be sold, they would be put to loss and hardship.



36. The said contention is not completely correct. Ex.D-10 shows that apart from the suit properties, defendant Nos.1 and 2 have got other seven properties. Out of them, one appears to be an agricultural land and other six appears to be house properties. Defendant Nos.1 and 2 voluntarily agreed to sell the properties and not for a throw-away process. They had taken earnest money of Rs.5,05,000/- on the date of execution of Ex.P-6. They have been utilizing the said amount for last 18 to 19 years and they had been in possession of the suit properties. On the contrary, plaintiff who had paid the earnest money is unable to get executed the sale deed and get possession of the same. His hard earned money is held up with defendant Nos.1 and 2. Had defendant Nos.1 and 2 not agreed to sell the property, plaintiff could have purchased some other property by investing the said amount. Due to inflation, the price of the lands is increasing multiple times. If the specific performance is rejected, then he would be put to irreparable loss and injury.



37. The contention of the defendants also indicates that they do not deserve any sympathy. When the notice was issued to defendant Nos.1 and 2 within a period of three months from the date of execution of Ex.P-6, they should have requested the plaintiff to cancel the said agreement of sale since they had no intention to sell the properties. On the contrary, they made all exercises to avoid execution of the document and after fighting this litigation for the last 18 to 19 years, if the relief of specific performance is rejected, then plaintiff would be put to irreparable loss. Considering these facts, the learned trial Judge rightly decreed the suit for the relief of specific performance. We do not find any reasons to interfere in the said findings.

38. For the above said discussions, we proceed to pass the following:

ORDER

The Appeal is ***dismissed***, with costs.



The impugned judgment and decree dated 27.10.2016, passed by the learned Addl. Senior Civil Judge & J.M.F.C., Chickballapur, in O.S.No.238/2006, is confirmed. Since the time given by the trial Court to execute the sale deed has expired, three more months time from today is granted to the defendant Nos.1 and 2 to execute the registered sale deed in favour of the plaintiff as ordered by the trial Court, by receiving balance amount of sale consideration.

Registry to transmit the records along with copy of this judgment to the concerned trial court without delay.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

bk/
List No.: 19 Sl No.: 2