HC-KAR

NC: 2026:KHC:17354
RFA No. 962 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR FIRST APPEAL NO. 962 OF 2019 (SP)

BETWEEN:

SRI S MANJUNATHA,
SON OF LATE SIDDALINGAPPA,
AGED ABOUT 53 YEARS,
RESIDING AT CHAMUNDIGUDDA,
SIDDAPURA VILLAGE,
NEELAGONDANAHALLI GRAMA PANCHAYATH,
KOLALA HOBLI, KORATAGERE,
TALUK TUMKUR DISTRICT - 572129,
ALSO AT
NO.52, IST MAIN ROAD,
NANJUNDESWARANAGARA, NANDHINI LAYOUT,
BENGALURU-560096.

...APPELLANT

(BY MISS ARCHANA T V, ADVOCATE FOR
SRI T N VISWANATHA, ADVOCATE)

Digitally signed by C HONNUR SAB
Location: HIGH COURT OF KARNATAKA

AND:

1. SMT GANGAMMA,
   DAUGHTER OF LATE CHANNAPPA,
   AGED ABOUT 58 YEARS,
   RESIDING AT IRAKASANDRA COLONY POST,
   KOLALA HOBLI, KORATAGERE TALUK,
   TUMKUR DISTRICT - 572129.

2. SRI JAYARUDRAPPA,
   S/O LATE CHANNAPPA,
   AGED ABOUT 48 YEARS,
   RESIDING AT IRKASADRA COLONY POST,

KOLALA HOBLI, KORATAGERE TALUK,
TUMKUR DISTRICT - 572129.

...RESPONDENTS

(BY SRI THONTADHARYA R K, ADVOCATE FOR
SRI P B AJIT, ADVOCATE FOR R1 AND R2)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER 41 RULE 1 OF THE CPC, AGAINST THE JUDGMENT DATED 7.03.2019 PASSED IN O.S.NO.7/2013 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND JMFC, MADHUGIRI, DISMISSING THE SUIT FOR SPECIFIC PERFORMANCE AND PERMANENT INJUNCTION.

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

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

2. The present appeal is against a judgment and decree dated 07.03.2019 passed in O.S. No.7/2013 by the Principal Senior Civil Judge, Madhugiri, a suit for specific performance, wherein the Trial Court has dismissed the suit. The plaintiff is before this Court.

3. The suit for specific performance is based on the alleged agreement for sale dated 09.11.2012. The execution of the agreement is disputed by the defendants. In addition, the defendants have raised the following two contentions:

a) The agreement is not properly stamped.

b) The agreement is not duly registered.

4. Learned counsel for the plaintiff/appellant would submit that the document is duly stamped on 01.02.2013 by submitting the same before the jurisdictional Sub-Registrar. It is urged that, the agreement for sale though not registered and required to be registered because of the clause in the agreement which recorded delivery of possession in favour of the plaintiff, is nevertheless admissible in evidence in a suit for specific performance under Section 49 of the Indian Registration Act, 1908.

5. Learned counsel for the plaintiff would urge that, the defendants have not cross-examined the plaintiff

or his witnesses and have not led the evidence. And this being the factual position, the Trial Court could not have held that agreement for sale is not proved and that readiness and willingness is not established.

6. The statement relating to readiness and willingness in the examination-in-chief is not controverted by the defendants. Thus, urged that the appeal be allowed and judgment and decree passed by the Trial Court be set aside.

7. Learned counsel for the defendants would urge that the defendant filed an application to impound the document i.e. agreement for sale on the premise that the agreement for sale is not sufficiently stamped and said application was rejected and the document is marked in evidence and said orders were called in question by filing Writ Petition No.8280/2017 and W.P. No.57827/2016.

8. It is further submitted that in one writ petition there was an interim order of stay and the

defendants/respondents carried the impression that, the stay order is until further orders and thereafter did not participate in the proceedings before the Trial Court.

9. However, it later transpired that the stay order was only for 8 weeks and the Trial Court proceeded to hear the plaintiff, as such, there was no contest by the defendants and in this background, the judgment and decree came to be passed. Nevertheless, the Trial Court has held that the plaintiff has not established the agreement for sale and has not established the readiness and willingness to perform his part of the contract. Thus, urged that the appeal be dismissed.

10. In addition, learned counsel for the defendants would urge that agreement for sale is not adequately stamped, the stamp duty paid is subsequent to the agreement before filing of the suit and that deficit stamp duty is collected by the Sub-Registrar and not by the District Registrar as contemplated under the Karnataka

Stamp Act, 1957 and Sub-Registrar has no jurisdiction to collect the deficit stamp duty. That being the position, the document has to be construed as inadequately stamped and inadmissible in evidence, is the submission.

11. In addition, it is also urged that there is a recital in the agreement for sale stating that the possession of property is delivered and in that event, the document requires registration and without registration of the agreement for sale, the decree for specific performance cannot be granted.

12. The Court has considered the contentions raised at the Bar and perused the records.

13. The Court has framed the following point for consideration:

(i) Whether the appellant has made out a case for decree for specific performance.

14. It is an admitted position that, when the Writ Petition No.8280/2017 was filed, the Court granted the interim stay order, staying the further proceedings before the Trial Court. However, it was only for 8 weeks. It appears that the defendants carried the impression that the stay order is until further order and thereafter, did not participate in the proceedings.

15. Apart from that, it is also noticed that when the agreement was entered into between the parties, reciting the delivery of possession, the stamp duty as required for such agreement for sale was not paid. Thereafter, it appears that the deficit stamp duty is paid before the Sub-Registrar and Sub-Registrar has accepted the additional stamp duty. It is urged out from Section 41 of the Karnataka Stamp Act, 1957 that the authority to collect deficit stamp duty lies with the Deputy Commissioner/the District Register of Stamps and not with the Sub-Registrar. This aspect is not considered by the Trial Court.

16. The Trial Court has to consider, whether the whether the Sub-Registrar has the jurisdiction to collect the deficit stamp duty and if so whether the stamp duty collected by the Sub-Registrar is in accordance with law and.

17. Apart from that, the Trial Court has come to the conclusion that agreement for sale is not proved on the premise that the plaintiff has not proved the signature of the defendants on the agreement for sale.

18. It is to be noticed that an expert's opinion is not sought and signatures on the documents namely the vakalath and the written statement are compared. What is required to be noticed is the signatures on the documents prior to the suit should have been looked into for the purpose of comparison, if the Court is of the view that such comparison is necessary.

19. That being the position the judgment and decree passed by the Trial Court are not sustainable and

accordingly, are set aside and mater needs reconsideration and opportunity is to be granted to the defendants to contest the matter.

20. Hence the following:-

ORDER

(i) The appeal is ***allowed in part.***

(ii) The judgment and decree dated 07.03.2019 passed in O.S. No.7/2013 by the Principal Senior Civil Judge, Madhugiri are set aside.

(iii) The matter is remitted to the Trial Court for fresh consideration.

(iv) The Trial Court shall permit the defendants to cross-examine the plaintiff and plaintiff's witnesses and should permit the defendants to lead evidence.

(v) The Trial Court shall also examine whether the Sub-Registrar is competent to collect the deficit

stamp duty and if so, whether the stamp duty collected is adequate.

(vi) Since the objection is raised relating to the deficit stamp duty, same has to be considered as the preliminary point before recording further evidence.

(vii) Since, the Court has noticed the defendants are not diligent in defending the matter and defendants not contesting the matter is one of the reasons for remanding the matter, the defendant shall pay a cost of ₹20,000/- to the plaintiff which is the condition precedent to cross-examine the plaintiff.

(viii) The Court fee paid in appeal is to be refunded to the plaintiff/appellant.

(ix) It is made clear that this Court has not expressed anything on the merits of the matter and the contentions raised by either of the parties.

(x) All contentions kept out.

(xi) The parties shall appear before the Trial Court on **16.04.2026** without any further notice.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

BRN/CHS
List No.: 1 Sl No.: 47