



CNR: KAHC010396572021

NC: 2026:KHC:43913
W.P. No.19232/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 17TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.19232/2021 (GM-CPC)

BETWEEN:

K.G. FELIX
S/O K.G. VARATHUKUTTY
AGED ABOUT 76 YEARS
R/A KUTTATHYPPARAMBIL HOUSE
KOCHUPALLY ROAD, THOPPUMPADY
KOCHI, KERALA -06.

...PETITIONER

(BY SRI. P.M. MATHEW, ADV.,)

AND:

N.K. FAREED
S/O N.K. ABDUL KHADAR
AGED ABOUT 59 YEARS
R/A NO.3, A.N.COMPLEX
DR. ABDUL KALAM ROAD
A.C.POST, GOVINDANAGAR
BENGALURU-560040.

...RESPONDENT

(BY SRI. P.N. RAJESHWARA, ADV.,
SRI. RAJIV R, ADV.,)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS IN O.S.NO.1271/2008 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT AT BENGALURU. QUASH THE ORDER DATED 09.09.2021 PASSED ON IA FILED BY THE PETITIONER U/S 28(1)(2)(a) AND (b) OF SPECIFIC RELIEF ACT IN O.S.NO.1271/2008 ON THE FILE OF THE III ADDITIONAL

Digitally signed
by RUPA V

Location:
HIGH COURT
OF
KARNATAKA



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SENIOR CIVIL JUDGE, BANGALORE RURAL DISTRICT,
BENGALURU VIDE ANNEXURE-E AND ALLOW THE SAME & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING
IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS
UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed challenging the order dated
09.09.2021 passed in O.S.No.1271/2008 by the III
Additional Senior Civil Judge, Bengaluru District,
Bengaluru (for short, '*the trial Court*').

2. Sri.P.M.Mathew, learned counsel appearing for
the petitioner-respondent submits that the respondent-
plaintiff had filed a suit in O.S.No.1271/2008 for specific
performance of agreement dated 28.09.2006. In the said
suit, the parties entered into compromise and filed a
compromise petition and the decree was drawn. It is
submitted that the compromise decree is of the year 2011
and as per the compromise arrived at between the parties,
the respondent is liable to pay ₹72,00,000/- and he failed



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to make the payment. Hence, the petitioner filed an application under Section 28(1) and (2)(a) & (b) of the Specific Relief Act, 1963, seeking prayer to rescind the agreement dated 28.09.2006. However, the trial Court erroneously rejected the said application. It is further submitted that the respondent had relied on the GPA dated 28.09.2006 stated to have been executed by the petitioner in favour of the respondent and the said GPA is neither a registered instrument nor is it notarised and the said GPA specifically puts a condition that the agent has no authority to sell the property. Despite the same, based on the compromise petition and the GPA, 90 sites have been formed, and the respondent has sold certain sites which has been stalled by this Court by virtue of the interim order. It is also submitted that the petitioner is now residing in the Kochi in the State of Kerala due to his ill-health and taking advantage of the same, the respondent has not come forward to make the payment and get the sale deed executed. Hence, an application for rescinding



the contract was filed. However, the trial Court rejected the said application by recording incorrect findings. Hence, he seeks to allow the petition.

3. Per contra, Sri.P.N.Rajeshwara, learned counsel for Sri.Rajiv R, learned counsel appearing for the respondent supports the order of the trial Court and submits that in the compromise petition, the respondent-plaintiff has agreed to pay additional sum of ₹2,80,000/- and accordingly compromise was drawn and the trial Court accepted the said compromise. As per the compromise petition, there is a reciprocal obligation on both the parties, and the petitioner herein has failed to come forward to execute the sale deed by handing over the title and revenue documents to the respondent and once the petitioner is ready to do that, the respondent would make the balance payment and get the sale deed executed. It is submitted that in the objection filed to the application for rescinding the contract, the respondent has specifically



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stated that the respondent was always ready and willing to pay the balance sale consideration once the documents were handed over and the sale deed was executed. It is further submitted that trial Court taking note of these aspects has rejected the application which does not call for any interference. It is also submitted that the respondent had filed execution petition seeking execution of sale deed through the process of the Court; however, on the last date of hearing, for non-appearance of the counsel representing the respondent, it was dismissed for non-prosecution and steps are being taken to restore the execution petition. It is contended that the respondent would deposit the amount in the execution Court and get the sale deed executed or in the alternate, if the petitioner comes forward to execute the sale deed, the respondent is ready to pay the balance amount as agreed in the compromise petition. Hence, he seeks to dismiss the petition.



4. I have heard the learned counsel for the petitioner, learned counsel for the respondent and meticulously perused the material available on record.

5. The respondent herein filed the suit in O.S.1271/2008 seeking the relief of specific performance of the agreement of sale dated 28.09.2006. In the said suit, the plaintiff and defendant have filed memorandum of compromise petition under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, on 30.09.2011. The trial Court decreed the suit by accepting the said compromise petition. The relevant portion of the decree is extracted herein below:

"a.) The defendant has admitted the execution of the agreement dated: 28.09.2006, The defendant has further agreed to execute the registered sale deed in favour of the plaintiff within 3 months from the date of this compromise.

b.) The defendant further admits that, as per the agreement dated: 28.09.2006, the total sale consideration of the suit schedule properties is fixed at



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Rs.1,39,20,000/- (Rupees one crore thirty nine lakhs and twenty thousand) and the defendant hereby acknowledge the receipt of total advance amount of Rs.70,00,000/- (Rupees Seventy lakhs only) as mentioned in the agreement dated: 28.09.2006. {Rs.50,00,000/- through cheques as well as Rs.9,00,000/- (Rupees nine lakhs only) through endorsements dated: 25.01.2007 and Rs.11,00,000/- (Rupees Eleven lakhs only) on 28.06.2008}

c.) Further the plaintiff has agreed to pay the balance sale consideration of Rs.69,20,000/- and additional amount of Rs.2,80,000/- (Rupees two lakhs eighty thousand) totally Rs.72,00,000/- (Seventy-two lakhs) on the date of execution registered sale deed before the sub-register.

d.) The plaintiff has agreed that the balance of sale consideration shall be tendered by the plaintiff on the date of execution of the registered sale deed before the sub-register. Failing which, the defendant is at liberty to initiate appropriate legal action against the plaintiff.

e.) The plaintiff shall continue to be in possession of the plaint schedule property and the additional amount of Rs.2,80,000/- (Rupees two lakhs eighty thousand) is being paid specifically upon the demand of the defendant,



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f.) The defendant shall execute absolute sale deed within 3 months from the date of entering into this compromise, failing which the plaintiff is entitle to execute this compromise and the defendant have no any legal right to object the same. Both the parties hereby agree to take steps to withdraw/compound/quash the criminal proceedings initiated against each other."

6. It is to be noticed that the petitioner-defendant filed an application under Section 28(1) and (2)(a) & (b) of the Specific Relief Act, 1963, seeking prayer to rescind the agreement of sale dated 28.09.2006. The said application was filed on 16.02.2016. The application is accompanied with an affidavit of the defendant. In the said affidavit, the defendant has agreed that the parties have arrived at a settlement and they have filed a compromise petition and subsequently, decree was drawn based on such compromise petition. The deponent in the said affidavit has stated that as per the decree dated 30.09.2011, the defendant was ordered to execute a registered sale deed in favour of the plaintiff and simultaneously the plaintiff



was directed to pay the balance sale consideration failing which the defendant would be at liberty to initiate appropriate legal action against the plaintiff. The defendant has further deposed that the plaintiff has failed to pay the balance sale consideration of ₹69,20,000/- and has agreed to pay additional sum of ₹2,80,000/- inspite of repeated request via phone call and personal meetings. The said application was opposed by the respondent-plaintiff by filing the objections, wherein at paragraph No.11 of the said objections it is clearly stated that the respondent-plaintiff as on today is ready to pay the balance sale consideration, provided the defendant produce the original agreement of sale along with the documents which are necessary for the registration of sale deed before the Court. The trial Court considering the rival submissions and taking note of the averments made in the application as well as the objections and by considering Section 52 of the Indian Contract Act, 1872, recorded the reasons that there is a Compromise decree between the



parties and as per the compromise decree there is a reciprocal obligation on both the parties to perform their part of the contract and in the case on hand the defendant has not come forward to execute the sale deed and rejected the application.

7. It is to be noticed from the clauses of the compromise decree, that there is an obligation on the petitioner-defendant to execute the sale deed within a period of three (03) months from the date of compromise. However, nothing is placed on record to indicate that within the period of three months, the defendant has approached the plaintiff and requested to get the sale deed executed and demanded the payment of balance sale consideration. Be that as it may, the clauses of the compromise petition further makes it clear that there is an obligation on the plaintiff to make the balance payment of ₹72,00,000/- at the time of registration of sale deed before the Sub-Registrar and there is no obligation on the



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respondent to make the payment within a stipulated time and the obligation is to make the payment only at the time of registration of sale deed before the Sub-Registrar.

8. Considering the aforesaid aspects and taking note of the reciprocal obligations created in the decree, the trial Court, by a well-reasoned order, rejected the application. I do not find any good grounds to interfere with the impugned order of the trial Court in the present petition. Hence, the writ petition is devoid of merits and the same is ***rejected***.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE