

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated the 1st day of April 2010

: P R E S E N T :

THE HON'BLE MR.JUSTICE : N.KUMAR

A N D

THE HON'BLE MR.JUSTICE : V.JAGANNATHAN

REGULAR FIRST APPEAL No. 773 / 2005

BETWEEN :

M.G.Manjunath,
Aged about 46 years,
S/o late M.S.Gurulingaiah,
R/o Mayaganahalli, Kasaba Hobli,
Ramanagara Taluk,
Bangalore Rural District,
& also r/a No.24, Outhouse, I Floor,
5th Main, Tata Silk Farm,
Bangalore - 560 004.

...Appellant

(By Smt. Y.Mala for Sri Muniyappa, Sri S.Kalyan
Basavaraj, Sri H.G.Swamy, Advocate.)

A N D :

B.H.Sridhara,
S/o late Hariyanappa,
Aged about 56 years,
R/a No.8/2, Janaki Nivasa,
Bull Temple Road,
Bangalore-560 004.

...Respondent

(By Sri N.Subba Shastry, Advocate.)

Regular First Appeal filed under Section 96 of the C.P.C. against the judgment and decree dated 3.1.2005 passed in O.S.No. 71/1999 on the file of the Addl. Civil Judge (Sr.Dn.), Ramanagara, decreeing the suit for specific performance.

This appeal coming on for hearing this day, Kumar, J, delivered the following :

J U D G M E N T

This is defendant's appeal against the judgment and decree of the trial court while decreeing the suit of the plaintiff for specific performance of the agreement for sale.

2. For the purpose of convenience, the parties are referred to as they are referred in the original suit.
3. The subject matter of the suit is an agricultural land bearing S.No.170 (170/2) situated at Kethohalli, Ramanagara Taluk, Bangalore Rural District, measuring 2 acres 32 guntas, which is hereinafter referred to as

the suit schedule property. The defendant is the absolute owner of the schedule land. There is a mango grove. The defendant acquired the said property under a registered partition deed dated 14.2.1965 effected among the members of his family. Apart from other properties, he got the suit schedule property to his share. He claims to be in possession and enjoyment of the suit schedule property. The property is free from all encumbrances, there are no attachments, claim for maintenance, minor rights, etc. The revenue records and pahanies are all standing in the name of the defendant. He has been paying taxes regularly. The defendant offered to sell the above property to the plaintiff in order to meet his family necessities and other domestic commitments. Negotiations took place in the second week of April 1986. When the offer was made to the plaintiff and when he showed interest, he was shown the property which was to be sold to him. Thereafter, negotiations were concluded. The defendant agreed to sell the suit schedule property to the plaintiff for a consideration of Rs.7,50,000/-. The said

agreement was reduced to writing on 25.4.1996. A sum of Rs.1,00,000/- was paid in part performance of the agreement by way of cheque No. 670802 drawn in favour of the defendant. Six months' time was stipulated for completion of the sale transaction. The defendant had agreed to obtain conversion order in respect of the suit schedule property before the six months period expired. In fact, he undertook to produce the conversion certificate before fifteen days earlier to the six months period. The defendant agreed to handover all the original documents of title at the time of registration of the sale deed. He also agreed to obtain necessary permission and clearances required for completion of the transaction. The plaintiff was expected to pay the balance sale consideration at the time of the defendant executing the sale deed and getting it registered. The plaintiff was ready and willing to perform his part of the contract. In part performance of the contract, the defendant had received the amounts which are set out in paragraph-6 of the plaint in all amounting to Rs.7,78,500/- which is in excess by

Rs.28,500/- than the agreed amount. The defendant has acknowledged the receipt of the said amounts on various dates under his signature. The endorsements are made on the backside of the agreement for sale itself.

4. The plaintiff came to know that the application filed for conversion by the defendant was rejected on the ground that there is no road approach as required. The defendant did not inform the plaintiff. The plaintiff, being a physically handicapped person interested to take up agriculture, applied to the Assistant Commissioner, Ramanagara Sub-Division, Ramanagara, for permission to purchase the suit schedule property under the provisions of the Karnataka Land Reforms Act. The Assistant Commissioner, by his order dated 7.12.1998, issued necessary permission to the plaintiff. The plaintiff continues to be in possession of the property from 6.3.1996 and also taking the usufructs of the mango trees. Nothing remained to be done by the plaintiff under the agreement. He had to purchase necessary stamp papers, pay the registration charges

and get the sale deed executed. The defendant had also obtained draft of the sale deed from the plaintiff to obtain Income Tax clearance in the month of October 1998. In those circumstances, when the defendant did not perform his part of the contract and did not execute the sale deed, the plaintiff was constrained to give a legal notice calling upon the defendant to perform his part of the contract. The notice sent by registered post acknowledgement due and also by certificate of posting were returned with the shara "absent". Second time also, notice issued was returned with the same shara. The plaintiff was ready and willing to perform his part of the contract and, therefore, he was constrained to file the suit for specific performance of the agreement for sale and other consequential reliefs.

5. After service of notice, the defendant entered appearance and filed a detailed written statement contesting the claim of the plaintiff. In paragraph-2 of the written statement, it is categorically stated that the agreement for sale dated 25.4.1996 on the basis of which the suit is filed was never acted upon between the

parties thereto. Therefore, the suit is not maintainable and liable to be dismissed in limine. He admits that the suit schedule property fell to his share in a partition in his family. However, he denied that he agreed to sell the property for family necessities and other domestic commitments. Documents were shown to the plaintiff since the plaintiff insisted the property as security for grant of loan when the defendant approached him for grant of hand loan. The defendant denies that he has executed an agreement for sale agreeing to sell the suit schedule property for a consideration of Rs.7,50,000/-. He denied that he received a sum of Rs.1,00,000/- under the agreement for sale by way of cheque. He further denied that he agreed to obtain conversion order in respect of the land in question. He denied that the plaintiff was ready and willing to perform his part of the contract. He denied receipt of Rs.7,50,000/- and he denied that he had received a sum of Rs.28,500/- in excess of the agreed amount.

6. The defendant's specific case is that the defendant raised loan with the plaintiff as hand loan as mentioned

in paragraph-6 of the plaint and the said payments were received by him towards that hand loan. The said agreement of sale was not executed by the defendant for sale but only a document intended to be executed as security for lending the hand loan by the plaintiff to the defendant. After traversing the allegations in the plaint, the defendant has set out a case in paragraph-15 onwards in his written statement. It is his case that he and the plaintiff are friends. The plaintiff is a businessman in provisions who does the work of lending money also. Under these circumstances, for the needs of the defendant, the defendant approached the plaintiff for grant of hand loan and several times, the plaintiff had given money to the defendant and the same was returned back by the defendant to the plaintiff. On 25.4.1996, when the defendant requested the plaintiff to give a loan of Rs.1,00,000/-, the plaintiff provided the amount by way of cheque and at that point of time, he took the signatures of the defendant on an agreement for sale by convincing the defendant that it is taken as security and will be returned back after paying back the

same. Further, as and when the further loans were required, the plaintiff used to take the signatures of the defendant on the said papers. On 25.6.1996, the plaintiff approached the defendant and said that he has lost the agreement for sale dated 25.4.1996 and that the defendant shall execute another agreement for sale on the same terms and it shall be given to plaintiff as security since the plaintiff is a good friend of the defendant, there was no reason to disbelieve the plaintiff and the sale agreement dated 25.6.1996 was signed and given to the plaintiff since the sale agreement dated 25.6.1996 is the replica of the sale agreement dated 25.4.1996.

7. Subsequently, by the end of October 1998, the defendant paid back the entire sum of Rs.7,78,500/- in a number of instalments, the details of which are written in a book maintained by the plaintiff. At the time of payment of the last instalment, the plaintiff gave back the original agreement of sale dated 25.6.1996 by cancelling the same. That was the end of the transaction between the plaintiff and the defendant.

The cancelled agreement for sale is also produced along with the written statement. The defendant asserts that he has cleared all the dues and the original agreement for sale is cancelled and was given back, which was taken as security. Now, the plaintiff has misused the earlier agreement for sale which was misplaced by him. Even otherwise, when the subsequent agreement dated 25.6.1996 is executed, the agreement dated 25.4.1996 is novated and the same is again cancelled. Hence, the suit is bad since the plaintiff has approached this court with unclean hands to knock off the property of the defendant illegally. The suit is bad since the plaintiff has not pleaded that he was always ready to perform his part of the transaction at all times from the date of agreement upto date. Therefore, he sought for dismissal of the suit.

8. The trial court, on the aforesaid pleadings framed five issues and one additional issue. The plaintiff, in order to substantiate his claim, has examined himself as P.W.1. He examined one Nanjappa, attesting witness, as P.W.2 and one K.Lokanath, the scribe of the

agreement for sale, as P.W.3. He also produced two documents which are marked as Exs.P-1 to P-20. On behalf of the defendant, he himself was examined as D.W.1 and he has produced two documents which are marked as Exs.D-1 and D-2. The trial court, on appreciation of the aforesaid oral and documentary evidence on record, held that the plaintiff has proved that the defendant had agreed to sell the suit schedule property within six months for Rs.7,50,000/- and received advance sale consideration of Rs.1,00,000/- and executed the agreement for sale dated 25.4.1986. The plaintiff has further proved that he has made payments on various dates as mentioned in paragraph-6 of the plaint to the defendant pursuant to the agreement for sale. The plaintiff has proved that he has always been ready and willing to perform his part of the contract. Therefore, it held that the plaintiff is entitled to the relief of specific performance. On the additional issue, the trial court recorded a finding that the defendant has failed to prove that he has raised hand loan from the plaintiff and the agreement is executed.

duly as a security to the hand loan and thus, it decreed the suit of the plaintiff as prayed for. Aggrieved by the said judgment and decree of the trial court, this appeal is filed.

9. The learned counsel for the appellant-defendant, assailing the judgment and decree of the trial court, contended that though the execution of the agreement for sale and the consideration money therein is admitted, the consideration amount has been repaid. The suit agreement came to be executed only as a document of security for the hand loan borrowed by the defendant from the plaintiff. The trial court has not properly appreciated the evidence on record and came to an erroneous conclusion that the defendant has failed to establish his case of hand loan and the said document being executed as a security and repayment of the said loan. Therefore, he submitted that a case for interference is made out.

10. Per contra, the learned counsel for the respondent-plaintiff submitted that the execution of agreement for

sale is admitted and the entire consideration stipulated in the agreement is paid and admittedly received by the defendant and the possession of the property has been handed over to the plaintiff in part performance of the agreement for sale. The plaintiff applied to the Assistant Commissioner for permission to purchase the agricultural land as the plaintiff is not an agriculturist under the provisions of the Karnataka Land Reforms Act and the Assistant Commissioner granted that permission. Though the defendant has pleaded discharge of the amount borrowed, there is absolutely no evidence to substantiate the said case. Under these circumstances, the trial court was justified in decreeing the suit of the plaintiff for specific performance. As such, no case for interference is made out.

11. In the light of the aforesaid facts and the rival contentions, the point that arises for consideration in this appeal are as under:

- (a) Whether the trial court committed any error in granting the decree for specific performance?

- (b) Whether the defendant has established his case of the suit document being executed as a document of security and that he has repaid the entire loan amount as contended by him?

12. The material on record discloses that the suit schedule property is the ancestral property of the defendant. Under the registered partition deed dated 14.2.1965, the schedule property fell to the share of the defendant along with other properties. Thus, the defendant is the absolute owner of the suit schedule property. He has entered into an agreement for sale of the schedule property with the plaintiff as per the terms of Ex.P-7. The execution of the agreement for sale is not in dispute. It is also not in dispute that the total consideration of Rs.7,50,000/- agreed to be paid under the agreement for sale has been paid by the plaintiff to the defendant and the defendant has acknowledged receipt of the said amount. In fact, paragraph-6 of the plaint has meticulously set out the aforesaid payment made in instalments on various dates. In the written statement, the defendant has categorically admitted

payment of the aforesaid amounts on the dates mentioned. But, he contends that the said payment represents hand loan and not the consideration stipulated under the agreement for sale. Six months is the period stipulated under the agreement for sale. The plaintiff, being not an agriculturist, the land in question being an agricultural land, in view of the prohibition contained in the Land Reforms Act, the defendant undertook to get the land converted for non-agricultural purposes and then to execute the sale deed. He was expected to produce the conversion order 15 days before the expiry of six months period. The evidence on record shows that he did make an application for conversion, but the said application was rejected, which fact he kept away from the plaintiff for the reason best known to him.

13. The plaintiff, after coming to know of the rejection of such request, with an intention of taking up agriculture, made an application to the Assistant Commissioner under the provisions of the Karnataka Land Reforms Act for grant of permission and the

permission has been granted by the Assistant Commissioner. It is at this stage, the defendant, though received the entire consideration mentioned in the agreement, did not perform his part of the contract viz., execution of the registered sale deed. In those circumstances, the plaintiff had no other option except to file the suit. In the light of the aforesaid facts, the execution of agreement for sale, and consideration amount being Rs.7,50,000/- and the receipt of the same are not in dispute. The specific defence of the defendant is that the entire money was paid by the plaintiff to him as hand loan and the suit agreement came to be executed as security. It is in this context, the status of the parties is also to be taken into account. The plaintiff is a physically handicapped person. He was running a provision store on the date of the agreement for sale. The defendant and his father are the customers of the plaintiff. The defendant wanted to dispose of the agricultural land and as there were no buyers, he prevailed upon the plaintiff to purchase the suit property. Now, the specific stand of the defendant

is that he has repaid the said amount of Rs.7,50,000/-.

In support of that contention, he has produced Ex.D-1. Ex.D-1 is yet another agreement of sale on identical terms on different date and the consideration amount is Rs.2,50,000/-, whereas the sale consideration under Ex.P-1 is Rs.7,50,000/-. The explanation offered by the plaintiff is that this agreement came to be created by the defendant in order to obtain Income Tax Clearance certificate by showing lesser consideration. He contends that the trial court on perusal of the said agreements has recorded a categorical finding. Ex.D-2 is said to be executed by consent wherein the parties have agreed to sell the property for a sum of Rs.2,50,000/-. Not a scrap of paper is produced by the defendant to show payments made by him to the plaintiff. On the contrary, the endorsement made on the agreement for sale on various dates in writing shows that whenever the plaintiff made payments, the endorsement is obtained and most of the times, it was in the handwriting of the defendant and his signature is also obtained. Such an endorsement or receipt to show discharge of

Rs.7,50,000/- is not forthcoming from the defendant. Under these circumstances, the case set up by the defendant that the agreement is only entered into as security and he has repaid the entire amount and, therefore, the suit agreement cannot be enforced, cannot be sustained.

14. The trial court, on proper appreciation of the oral and documentary evidence on record has rightly held the suit agreement as proved, the consideration under the agreement is proved and thus the plaintiff has expressed his readiness and willingness to perform his part of the contract and he was ready to pay the necessary stamp duty for registration and, therefore, it was justified in granting the decree for specific performance.

15. Under the above circumstances, no case for interference is made out as the judgment of the trial court is based on legal evidence. The defendant has failed to prove his case. ✓

16. In the result, we pass the following order:

The appeal is dismissed. No costs.

Sd/-
JUDGE

Sd/-
JUDGE

ckc/-