

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 10TH DAY OF JANUARY 2012

BEFORE

THE HON'BLE MR. JUSTICE DILIP B. BHOSALE

REGULAR SECOND APPEAL NO.2403/2008

BETWEEN

P PARAMESHWARAJAH
S/O PUTTA CHANAPPA
AGED ABOUT 57 YRS
RAGIMUDDANAHALLI VILLAGE
KOTTATHI HOBLI
MANDYA DISTRICT -571401

... APPELLANT

(BY SRI JEEVAN K, ADV. FOR SRI P NATARAJAN, ADV.)

AND

1. NINGEGOWDA
S/O RAMEGOWDA
AGED 57 YRS
RAGIMUDDANAHALLI VILLAGE
KOTTATHI HOBLI
MANDYA DISTRICT-57 140 1
2. S VENKATARAMAIAH
SINCE DEAD BY LRS
- a) JAYAMMA
65 YEARS
W/O VENKATARAMAIAH
- b) NAGARAJU
40 YEARS

- c) S/O VENKATARAMAIAH
LOKESH
32 YEARS
S/O VENKATARAMAIAH
- d) VIJAYA
35 YEARS
D/O VENKATARAMAIAH
- e) MADHURA
30 YEARS
D/O VENKATARAMAIAH

ALL ARE RESIDING AT D.NO.5
OFF TO SUGAR FACTORY
PANDAVAPURA - 571401

... RESPONDENTS

(BY SRI D SUNDARESHA, ADV. FOR R1 AND
R2 (a, c, d & e) -SERVED)

RSA FILED U/S 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DATED: 13.11.2008 PASSED IN
R.A.NO.47/2004 ON THE FILE OF THE ADDL.DISTRICT
JUDGE HOLDING C/C OF FAST TRACK COURT-III,
MANDYA, ALLOWING THE APPEAL AS AGAINST 2ND
RESPONDENT THEREIN AND DISMISSING THE SAME AS
AGAINST 1ST RESPONDENT THEREIN FILED AGAINST
THE JUDGEMENT AND DECREE DATED: 30.8.1997
PASSED IN OS.NO. 108/96 ON THE FILE OF THE PRL.CIVIL
JUDGE (JR.DN.), MANDYA.

THIS APPEAL COMING ON FOR ADMISSION THIS
DAY, THE COURT DELIVERED THE FOLLOWING:

P.C

Heard learned counsel appearing for parties.

2. This appeal is directed against the judgment and decree passed by the First Appellate Court in R.A.No.47/2004 allowing the Regular Appeal and setting aside the judgment passed by the Trial Court whereby the suit filed by the respondent No.1-plaintiff was dismissed.

3. The suit was filed for specific performance of an Agreement to Sale dated 29.3.1995. It was in respect of 27 guntas of land owned by defendant No.2-appellant.

4. Learned counsel for the appellant submitted that the agreement to sale was signed by defendant No.1 on behalf of defendant No.2 as his Power of Attorney holder and since the Power of Attorney was not produced on record, the Courts below were wrong in decreeing the suit for specific performance on the basis of such agreement to sale. He then submitted that defendant No.1 denied his

signature on the agreement to sale and since the plaintiff failed to prove signature of defendant No.2 on the agreement to sale, the Appellate Court ought not to have decreed the suit.

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5. I have perused the judgments of the Courts below and in my opinion, the Appellate Court has considered the entire evidence on record in proper perspective and has not committed any error of law in allowing the appeal. Production of General Power of Attorney was not at all necessary in the present case, in view of the admitted fact that defendant No.2 was the sole owner of the suit property and that he had signed the agreement to sale himself. Signature of defendant No.1 was obtained by way of abundant precaution. Similarly, the signature of defendant No.2, which is in dispute was tallied by Appellate Court with the admitted signature and the Appellate Court held that the signature is similar.

6. I do not find any reason to interfere with the findings of fact recorded by the Appellate Court more particularly in view of the fact that defendant No.2 even did not step into the witness box to deny his signature on the agreement. No substantial question of law is either raised or involved in the appeal. Hence, the appeal is dismissed.


Sd/-
JUDGE

DM