

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 7th day of September, 1998

BEFORE

THE HON'BLE MR. JUSTICE T.N. VALLINAYAGAM

R.S.A. NO: 650 OF 1995

BETWEEN:

Moulasab, s/o. Bandigisab Goundi,  
aged about 36 years, Occ: Service,  
R/o. Cheerladinni, Tq. Basavana  
Bagewadi, Dist. Bijapur.

: APPELLANT

(By Sri. Jayakumar S. Patil, Advocate)

AND:

1. Yamanappa, s/o. Ameenappa Hikodi,  
aged about 42 years, Occ: Coolie,  
R/o. Tadalagi.

2. Ittawwa, W/o. Rudrappa Walikar,  
aged 42 years, Occ: Household,

3. Gangawwa, w/o. Parasanna Budhyal,  
aged 36 years, Occ: household,

4. Respondents 1 to 3 are now at  
Khaja-Amin Darga, Bijapur.

4. Basawwa, W/o. Ameenappa Hikodi,  
aged 57 years, Occ: household,  
R/o. Tadalagi, Tq. B. Bagewadi,  
Dist. Bijapur.

5. Basawwa Ningappa Gavandi,  
aged about 30 years, Occ: Agri.,  
Tq. B. Bagewadi, Dist. Bijapur.

: RESPONDENTS

(By Sri. S. B. Hebbali, Advocate  
for R-5)

This regular second appeal filed U/S. 100 of  
CPC against the Judgment and decree dated.  
6-1-1995, passed by the II Additional District Judge,  
Bijapur, confirming the Judgment and decree dated.  
17-12-1987, passed by the Additional Civil Judge  
in O.S. NO: 169/1983.

This second appeal, having been reserved for Judgment, coming on for pronouncement of Judgment this day, the Court delivered the following:-

J U D G M E N T

The plaintiff is the appellant. The suit for declaration that the 5th defendant has not acquired any right, title or interest by the alleged purchase by sale deed dated, 10-5-1982 executed by Defendants-1 to 4 and consequential injunction restraining the 5th defendant from interfering with the possession of the plaintiff was dismissed by the Trial Court and the dismissal came to be confirmed by the first Appellate Court and hence the plaintiff is before this Court in the second appeal.

2. The facts in brief of the case of the plaintiff is that the suit property bearing C.B. No.81 measuring 31 acres 10 guntas situated at Tadalagi village originally owned by defendant-1 Yamanappa. The plaintiff has purchased the said property from the defendant for consideration of Rs.10,000/- under registered/<sup>sale deed</sup>dated.. 30-7-1979 and was put in possession of the same on the same day. Defendants-1 to 4 represented that defendants 2 and 3 are minors and defendants has executed the sale deed on behalf of those minors also. A mutation was effected in favour of the plaintiff accordingly. It is now found that on

10-5-1982, the defendants- 1 to 4 have executed a fresh sale deed in favour of defendant-5 for alleged sum of Rs. 10,500/-. This sale deed was registered at Bijapur to avoid refusal by the registration authorities at Basavana Rageswadi wherein the plaintiffs sale deed is registered. The revenue proceedings were initiated by the parties <sup>and</sup> are referred to a Civil Court and hence the present suit came to be filed for injunction and alternately for possession.

3. Defendants- 1 to 3 remained ex parte and defendants 4 and 5 contested the suit. 5th defendant alone filed written statement contending that on 17-5-1977 the defendants entered into an agreement of sale with him in respect of the suit land and received Rs. 6000/- as earnest money on that day and remaining amount was to be paid at the time of registration, on the same day he was given possession and he is in possession and enjoyment of the suit land. He further contended that Defendants 1 to 3 with a view to cause loss to him created false sale deed in favour of the plaintiff and such sale deed and such sale deed could not have been executed in respect of agricultural land in favour of the plaintiff as he was not an agriculturist. The sale is therefore void, the plaintiff has no right to challenge the sale deed in favour of the defendant and consequently, the suit was resisted.

4. The Trial Court held that despite the purchase, the title did not pass to the plaintiff and negated the declaration. The question whether the plaintiff was an agriculturist, where the sale transaction between the plaintiff on one side and defendants-1 to 3 on the other as void ab-initio, whether the plaintiff is entitled to a prayer of cancellation of the sale deed executed in favour of the defendant-5 are the issues held to be - does not arise for consideration by the Trial Court. The trial Court found that the plaintiff has not prayed for cancellation of the sale deed in favour of the defendant and that is why the issue does not arise. So far as the plaintiff's sale deed is concerned, the trial Court held that as there was an agreement in favour of the defendant, the sale in favour of the plaintiff is not valid. On these grounds, the suit was dismissed. The first Appellate Court also holding that the plaintiff is not a bonafide purchaser and therefore the sale is bad..

5. The question of law that was sought to be raised for consideration in this second appeal is as follows:-

1. That whether the Courts below were right in holding that plaintiff has not proved the purchase of the suit land and title has passed to him.

2. Whether both the Courts below were right in rejecting the prayer of declaration admittedly when the sale deed in favour of appellant being earlier one and which has not been challenged by defendant. ?

6. It is not in dispute that there are two sale deeds. One in favour of the plaintiff which is earlier in point of time, later in favour of the defendant which is in later point of time. It is further claimed that because of the defendant's sale deed is in pursuance of an agreement of sale, it should be given preference thereto than the actual sale deed entered into by the plaintiff. Now the sale in favour of the plaintiff is admittedly under a registered sale deed executed by the defendants themselves. On the otherhand, mere agreement of sale does not create or confer a right to the <sup>im</sup>moveable properties and it would have been open to the defendant to file a suit for specific performance and sought for setting aside the sale in favour of the plaintiff. But that was not been done. ~~The~~ the sale deed of the defendant is in pursuance of mere agreement of sale, which <sup>agreement</sup> ~~is~~ does not create any right over the moveable property, nor create any right on the defendant over the property in dispute; <sup>the agreement of the</sup> therefore, whether the plaintiff is bonafide purchaser or not, does not arise. So long as the agreement <sup>has been</sup> ~~is~~ not made subject matter of the suit: On the other hand ~~the~~ the defendant should have ~~been~~ also proved that

he is the bonafide purchaser on the date of his registration; Had he made an enquiry with the Registrar office as to whether any encumbrances has been created in respect of the property; he would have been become aware of the sale deed in favour of the plaintiff. If he had verified that he would not gone into the purchase which is not conveyable as on the date of the sale. Therefore, the defendant have no right to pass on title to the property to the plaintiff. This legal and factual aspects has not been considered at all by the Courts below and they have embarked upon consideration of issues which are not germane to the points involved in this suit.

6. In this view, setting aside the Judgment and decree of the Courts below, the second appeal is allowed and the suit is decreed with cost granting the alternative relief of possession also, that is injunction shall be issued and if it is found that the plaintiff is not in possession, the plaintiff shall become entitled to take possession as well from the defendant by executing this decree.

Sd/3  
Judge

/Vge/

.....

Date: 7-9-1998:

At the request of respondent-5, six months time is granted from today for handing over possession.

Sd/-  
Judge

vge/-