

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD.

DATED THIS THE 28<sup>TH</sup> DAY OF SEPTEMBER, 2012

BEFORE

THE HON'BLE MR.JUSTICE N.K.PATIL

REGULAR FIRST APPEAL NO.499/2005 (SP)

BETWEEN:

1. SMT. MAREMMA  
W/O LATE AYODHI ERAPPA  
AGED 75 YEARS,  
R/O KAMPLI, HOSPET TALUK,  
BELLARY DISTRICT 585 132
2. SMT. ERAMMA, W/O JAMBAIAH  
AGED 50 YEARS,  
R/O ITTIGI, NEAR KAMPLI,  
HOSPET TALUK,  
BELLARY DISTRICT 585 132.
3. SMT. LAKSHMAMMA  
W/O ERANNA AGED 45 YEARS,  
R/O VIII WARD, KAMPLI  
HOSPET TALUK  
BELLARY DISTRICT 585 132
4. SMT. MALLAMMA, W/O SANNA ERANNA,  
AGD 42 YEARS, R/O VIII WARD, KAMPLI  
HOSPET TALUK, BELLARY DISTRICT 585 132
5. SMT. THIPPAMMA W/O B. BASAVARAJ,  
AGED 40 YEARS, R/O VIII WARD, KAMPLI  
HOSPET TALUK, BELLARY DISTRICT 585 132.
6. SRI. AYODHI PANDURANGA  
S/O LATE AYODHI ERAPPA  
AGED 42 YEARS,  
R/O IX WARD,KAMPLI

HOSPET TALUK,  
BELLARY DISTRICT 585 132.

7. SRI AYODHI VENKATESH  
S/O LATE AYODI ERAPPA  
AGED 35 YEARS,  
R/O IX WARD, KAMPLI  
HOSPET TALUK,  
BELLARY DISTRICT 585 132.

8. SRI AYODI GANGADHARA,  
S/O LATE AYODI ERAPPA  
AGE 30 YEARS,  
R/O XI WARD, KAMPLI  
HOSPET TALUK,  
BELLARY DISTRICT 585 132.

9. SRI AYODHI THIPPANNA  
S/O AYODI NAGAPPA MAJOR,  
R/O XIV WARD KAMPLI  
HOSPET TALUK,  
BELLARY DISTRICT 585 132.

10.SRI AYODHI HANUMANTHAPPA  
S/O AYODI NAGAPPA, MAJOR,  
R/O XIV WARD KAMPLI  
HOSPET TALUK,  
BELLARY DISTRICT 585 132.

11.SRI AYODHI MALLIKARJUNA  
S/O AYODI NAGAPPA, MAJOR  
RO XIV WARD, KAMPLI  
HOSPET TALUK,  
BELLARY DISTRICT 585 132.

... APPELLANTS

(BY SRI. T.N. RAGHUPATI, ADV. FOR A1 TO A9 AND  
SRI. ANIL KALE, ADV. FOR A10)

AND:

1. SRI. HAGARI MOULA SAB  
S/O HAGARI MOHAMMAD ALI,

MAJOR, MUSLIM,  
R/O BELAGODUHAL VILLAGE 595 132.  
NEAR KAMPLI, HOSPET TALUK,  
BELLARY DISTRICT 585 132.

2. SMT. HAGARI MAHABOOB BI,  
W/O HAGARI MOHAMMAD ALI  
MAJOR, MUSLIM,  
R/O BELAGODUHAL VILLAGE,  
NEAR KAMPLI HOSPET TALUK,  
BELLARY DISTRICT 585 132.

3. SMT. KASIMAVVA  
W/O MOULA SAB  
MAJOR, MUSLIM,  
R/O BELAGODUHAL VILLAGE  
NEAR KAMPLI  
HOSPET TALUK,  
BELLARY DISTRICT 585 132.

... RESPONDENTS

(BY SRI.T.A. CHANNAKESHAVA REDDY, ADV. )

THIS RFA IS FILED UNDER SECTION 95 CPC AGAISNT THE JUDGMENT AND DECREE DATED 13/01/2005 PASSED IN O.S.NO.82/1996 ON THE FILE OF THE ADDL. CIVIL JUDGE(SR.DN) HOSPET DISMISSING THE SUIT FOR SPECIFIC PERFORMANCE OF CONTRACT.

THIS RFA COMING ON FOR HEARING THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

### **JUDGMENT**

This is a plaintiffs' appeal being aggrieved by the impugned judgment and decree dated 13/01/2005 passed in O.S.No.82/1996 on the file of the Additional Civil Judge(Senior Division), Hospet.

2. Brief facts of the case in hand are, the alleged agreement holder had filed O.S.No.82/1996 against the respondent herein for specific performance of contract directing the respondent to execute the sale deed in his favour in respect of the suit schedule properties situate at Belagodhuhal village at Hospet taluk. During the pendency of the suit, the original plaintiff-Ayodhi Nagappa died and his legal representatives who are the appellants herein came on record. They contend that one Hagari Mohammed Ali-father of the first respondent executed an agreement of sale/Ex.P-9 on 29/03/1990 agreeing to sell the land in favour of the deceased Ayodhi Nagappa for a sum of Rs.40,000/- per acre. Respondent No.2 is the wife and 3<sup>rd</sup> respondent is the mother of Hagari Mohammad Ali. It is the case of the appellants that as per the agreement of sale, Ayodhi Nagappa was put in possession of the land. Mohammad Ali died on 25/02/1994 and defendants are the legal representatives of Mohammad Ali. Entire sale consideration was paid to Mohammad Ali by Ayodhi Nagappa. Defendants did not execute the sale deed on the other hand they filed O.S.No.17/1995 on

the file of the Principal Munsiff, Hospet for a decree of permanent injunction. In O.S.No.17/1995, they also prayed for an order of temporary injunction against Ayodhi Nagappa. The said application came to be dismissed. On the other hand the application for an order of injunction came to be allowed. In the meanwhile, Ayodhi Nagappa filed O.S.No.82/1996 for specific performance of the agreement. Both suits O.S.No.17/1995 and O.S.No.82/1996 were clubbed and they were tried by the Civil Judge(Senior Division). At that stage, the plaintiffs in O.S.No.103/2003 filed a memo stating that they were not in possession of the suit lands and therefore sought for dismissal of the suit. Thereafter, the present suit viz., O.S.No.82/1996 was taken up for evidence. The learned Civil Judge framed 8 issues. Appellant No.1 herein got himself examined and 3 other witnesses were examined on his behalf and 19 documents were marked. On behalf of the respondents, 1<sup>st</sup> respondent alone got himself examined. The trial court has come to the conclusion that the agreement has been executed by Hagari Mohammed Ali. It has also come to the conclusion that the possession was handed over to deceased Ayodhi Nagappa. However, the trial

Court has come to the conclusion that there was no evidence to prove that the entire sale consideration has been paid by Ayodhi Nagappa to Hagari Mohammed Ali and dismissed the suit. Being aggrieved by the said judgment and decree the appellants felt necessitated to file this appeal.

3. Learned counsel appearing for the appellants submitted that the trial Court has recorded a finding of fact after appreciation of the oral and documentary evidence and other material on file that the document has been executed by Hagari Mohammed Ali in favour of the deceased Ayodhi Nagappa and it ought to have accepted the document in full by holding that the entire sale consideration had also been received by Hagari Mohammad Ali and has dismissed the suit only on the ground that the appellants have failed to prove that they have paid the entire consideration amount and the said reasoning cannot be sustained and is liable to be set aside. Further, the trial Court at least could have ordered for refund of the amount paid by them with reasonable interest. He further submitted that the land in question is a tenanted land and has been registered in favour of

the deceased Hagari Mohammad Ali subject to certain terms and conditions and without taking into consideration these aspects of the matter, the judgment and decree of the trial Court is liable to be set aside and the relief sought for in the suit may be granted.

4. After careful consideration of the submission of the learned counsel appearing for the appellants and after going through the judgment passed by the trial Court, it is manifest on the face of the judgment that I do not find any error much less material irregularity as such committed by the trial Court. The appellants, except making oral submission, have not produced any credible document nor examined any witnesses to prove that they have paid the entire sale consideration or part of sale consideration. It is significant to note that as per the recital in ExP-9, it is crystal clear that as per the provisions of the Land Reforms Act, without taking prior permission from the jurisdictional competent authority, the deceased-tenant does not have any right, title or interest over the property. It is not the case of the appellants that they have obtained any permission from the jurisdictional competent authority, subject to terms and

condition and after having taking into consideration the aim and object of the Karnataka Land Reforms Act, as on 01/03/1994 the land would vest with the Government. But in the case on hand, the plaintiffs have been in possession and cultivating the said land and they were bound to surrender the said land to the Government. It is not in dispute that the said alleged agreement of sale has been instituted subject to certain conditions in order not to alienate the suit property which has been granted under Section 77 of the Act and as per Section 77 of the Act, a person who does not have any right, title and interest over the property has no right to execute the agreement of sale and the trial Court was justified in holding that he has failed to substantiate by producing any credible document to prove that he has paid the entire or part of sale consideration amount. Further the trial Court has rightly observed and opined that the document Ex.p-9 came into existence on the alleged blank paper, which is nothing but fraud.

5. Taking into consideration the facts of the case as referred to above, I do not find any justification or good ground



as such made out by the appellants to interfere with the impugned judgment and decree.

6. The trial Court, after appreciation of the oral and documentary evidence and other materials on file was justified in dismissing the suit filed by the appellants. Therefore, interference by this Court is not called for.

7. Hence, the appeal stands dismissed as devoid of merits. In view of dismissal of the appeal, I.A.2 does not survive for consideration. Hence, it stands disposed off as having become infructuous.

SD/-  
JUDGE

kmv