

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 28TH DAY OF SEPTEMBER, 2012

BEFORE

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

R.S.A.NO.5412/2009
A/W MISC.CVL.105039/2009
C/W R.S.A.NO.5413/2009 (SP)

BETWEEN:

CHINNAPPA S/O BHIMAPPA HONAKUPPI
AGE:68 YRS,OCC:NIL
R/O MALADINNI, TQ:GOKAK
DIST:BELGAUM.

... APPELLANT
(COMMON)

(BY SRI.P.V.GUNJAL FOR
SRI.BAHUBALI N.KANABARGI, ADV)

AND:

1. DUNDAWWA W/O KADAPPA NAVI
AGE:35 YRS, OCC:HOUSEHOLD
R/O GHODAGERI, TQ:GOKAK
DIST:BELGAUM.
2. NEELAWWA W/O RAMAPPA NAVI
AGE:30 YRS, OCC:BUSINESS
R/O NAKA NO.1,ADIBATTI GHANVATHANA
GOKAK, TQ:GOKAK, DIST:BELGAUM.
3. BHIMAPPA S/O SIDDAPPA HONAKUPPI
AGE:64 YRS, OCC:SERVICE
R/O MALADINNI NOW R/O KADAVI SHIVAPUR

TQ:SOUNDATTI
DIST:BELGAUM.

... RESPONDENTS
(COMMON)

(BY SRI.LAKSHMAN B.MANNODDAR, ADV FOR C/R)

R.S.A.NO.5412/2009 IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DT.05.06.2009 PASSED IN R.A.NO.42/2008 ON THE FILE OF THE II ADDL. CIVIL JUDGE (SR.DN), GOKAK AT GOKAK, DISMISSING THE APPEAL FILED AGAINST THE JUDGMENT DT.18.09.2006 AND THE DECREE PASSED IN O.S.NO.413/2000 ON THE FILE OF THE PRL. CIVIL JUDGE (JR.DN), GOKAK, PARTLY DECREERING THE SUIT FILED FOR SPECIFIC PERFORMANCE.

MISC.CVL.105039/2009 IS FILED UNDER ORDER 39 R/W. SEC.1 & 2 OF THE CPC, PRAYING TO GRANT TEMPORARY INJUNCTION THEREBY RESTRAINING THE RESPONDENT HEREIN FROM INTERFERING IN PEACEFUL POSSESSION AND CULTIVATION OF THE SCHEDULE PROPERTY DURING THE PENDANCY OF THE ABOVE APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

R.S.A.NO.5413/2009 IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DT.05.06.2009 PASSED IN R.A.NO.134/2006 ON THE FILE OF THE II ADDL. CIVIL JUDGE (SR.DN), GOKAK AT GOKAK, DISMISSING THE APPEAL FILED AGAINST THE JUDGMENT DT.18.09.2006 AND THE DECREE PASSED IN O.S.NO.413/2000 ON THE FILE OF THE PRL. CIVIL JUDGE (JR.DN), GOKAK, PARTLY DECREERING THE SUIT FILED FOR SPECIFIC PERFORMANCE.

THESE R.S.As. & MISC. CVL. COMING ON FOR ADMISSION, THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

JUDGMENT

These two appeals are filed against the common judgment and decree dated 05.06.2009 passed in R.A.No.134/2006 and R.A.No.42/2008 on the file of the II Addl. Civil Judge (Sr.Dn.), Gokak, which were filed against the judgment and decree dated 18.09.2006 passed in O.S.No.413/2000 on the file of the Prl. Civil Judge (Jr.Dn.), Gokak thereby partly allowing the suit filed by the plaintiffs. Being aggrieved by the judgment and decree passed by the lower Appellate Court, the plaintiffs have presented these two appeals before this Court for considering the following substantial questions of law:

- i) *Whether the trial court was justified in partly decreeing the suit when it has come to conclusion that execution of the agreement of sale is proved?*
- ii) *Whether the lower appellate court is justified in holding that the suit is barred by limitation when time is not essence of the contract?*

- iii) *Whether the trial court is justified in overlooking the fact that respondents have not entered witness box nor produced any documents to prove their case?*

2. The brief facts leading to the filing of these appeals are as follows:

The suit property is an agricultural land bearing Block No.1082 measuring 2 acres 27 guntas situated within the village limits of Maladinni, Taluk Gokak. One Smt.Mallawwa w/o Rudrappa Navalgar was the absolute owner and personal cultivator of the suit land and she entered into an agreement of sale with the plaintiffs and agreed to sell the suit property for valuable consideration of Rs.4,000/- and she has executed an agreement of sale in favour of plaintiffs on 13.05.1975 by receiving an earnest money of Rs.3,000/- and it was registered before the Sub-Registrar, Gokak and said Mallawwa put the plaintiffs in actual possession. Since then the plaintiffs are in actual possession, use and enjoyment of the suit property. In the said agreement, it is mentioned that the suit property was Paragana Watan Inam land and it

is not yet re-granted and it is not yet converted into Raitwa and it is also mentioned that the owner of the property should get the land converted into Raitwa by re-granting the same within one month from the date of conversion of said land into Raitwa and plaintiffs must get executed a registered sale deed from Smt.Mallawwa.

3. Recently, it is learnt that Smt.Mallawwa w/o Rudrappa Navalgar died on 10.05.1979 leaving behind her daughter by name Dundawwa w/o Kadappa Navi i.e., defendant No.1 and a daughter-in-law by name Neelawwa w/o Ramappa Navi i.e., defendant No.2 and the said defendants had given a wardi along with varsa certificate to enter their names in the concerned record of rights of the suit property before the competent authority. Accordingly M.E.No.8810 was certified by the revenue authority on 31.07.1999. This fact came to the knowledge of plaintiffs only on 30.08.2000 when they obtained certified copy of M.E.No.8810. Till the filing of this suit, the plaintiffs did not

know about the death of Smt.Mallawwa Navalagar and entry of defendants' name in the record of rights.

4. After knowing this fact, plaintiffs called upon defendants to execute registered sale deed as per agreement of sale dt.13.05.1975 and plaintiffs issued notice in this regard on 15.09.2000 and in reply the defendants denied the contents of notice. The plaintiffs are ready and willing to perform their part of contract. Hence, the plaintiffs filed O.S.No.413/2000 on the file of the Prl. Civil Judge (Jr.Dn.) and JMFC, Gokak.

5. Upon service of notice, the defendants appeared through their counsel and filed their written statement contending that the suit of the plaintiffs is false, frivolous and vexatious. The description of the suit property is false. Unless the suit property is described with boundaries, the suit is not maintainable in law. It is false to say Smt.Mallawwa was the absolute owner and she entered into an agreement of sale in respect of suit property in favour of plaintiffs to sell the same for Rs.4,000/- by receiving earnest

money of Rs.3,000/- and it was registered one. It is false to say that said Smt.Mallawwa put the plaintiffs in possession of the suit property on the date of agreement of sale dt.13.05.1975 and since then the plaintiffs are in possession and enjoyment of the suit property. It is true that the defendants submitted a wardi along with warsa certificate to enter their names in record of rights. It is true that the names of defendants are appearing in the record of rights. It is false to say that the plaintiffs came to know the death of Smt.Mallawwa only on 30.08.2000.

6. It was further stated in the written statement that there was no agreement of sale between the plaintiffs and deceased Mallawwa and she had not put her LTM on the said agreement of sale. The deceased Mallawwa was not the exclusive owner of the suit land and she has no saleable right in the suit property. The suit property is the ancestral joint family property of the family consisting of Smt.Mallawwa and defendants. Smt.Mallawwa died on 10.05.1979. The plaintiffs and the deceased Smt.Mallawwa being native of

Maladinni village, a small village, they have kept quiet for 22 years and filed the false suit. Hence, suit of plaintiffs is barred by limitation as they have not taken steps since then. The court fee paid by the plaintiffs is not proper. Hence, they prayed to dismiss the suit by awarding compensatory costs.

7. On the basis of the pleadings of the parties, the trial court framed the following issues for consideration:

- i) *Whether the plaintiffs prove that deceased Mallawwa executed a registered agreement of sale in favour of plaintiff and handed over the possession of suit property by receiving an earnest money of Rs.3,000/- on 13.05.1975?*
- ii) *Whether the plaintiffs prove that they were/are ever ready and willing to perform their part of contract?*
- iii) *Whether the defendants prove that deceased Mallawwa has no saleable absolute right in the suit property?*
- iv) *Whether the suit is barred by law of limitation?*
- v) *Whether the court fee paid is not proper?*

vi) *Whether the plaintiff is entitled for the relief as prayed?*

vii) *What decree or order?*

8. In order to prove their case, plaintiff No.1 himself and 3 witnesses have been examined as PW-1 to PW-4 and got marked Ex.P.1 to Ex.P.10. On behalf of the defendants, no oral evidence or documentary evidence was produced.

9. The trial court after hearing the counsel appearing for the plaintiffs and the defendants and after evaluation of the records available on the file considering the oral and documentary evidence, has allowed the suit in part. Being dissatisfied with the judgment and decree of the trial court, the plaintiffs filed R.A.No.42/2008 and the defendants filed R.A.No.134/2006 on the file of the II Addl. Civil Judge (Sr.Dn.), Gokak. The lower appellate court after going through the judgment and decree passed by the trial court and after perusal of the material available on record, framed the following issues in both the appeals for consideration:

- i) *Whether the plaintiffs in O.S.No.413/2000 have proved that deceased Mallawwa has executed registered agreement of sale in favour of the plaintiffs on 13.05.1975 by agreeing to sell the suit property for Rs.4,000/- by receiving earnest money of Rs.3,000/-?*
- ii) *Whether the plaintiffs have proved that they are always ready and willing to perform their part of contract?*
- iii) *Whether the suit is barred by law of limitation?*
- iv) *Whether the judgment and decree passed by the trial court requires to be interfered with?*
- v) *What decree or order?*

10. The lower appellate court after going through the oral and documentary evidence available on the file, by assigning cogent reasons has allowed R.A.No.134/2006 and dismissed R.A.No.42/2008. The judgment and decree passed by the Prl. Civil Judge (Jr.Dn.), Gokak dated 18.09.2006 was set aside and the suit filed by the plaintiffs in O.S.No.413/2000 before the Prl. Civil Judge (Jr.Dn.) Gokak

was dismissed. Being dissatisfied with the impugned judgment and decree of the lower Appellate Court, the plaintiffs have felt necessitated to present these two appeals.

11. The submission of Sri.P.V.Gunjal for Sri.Bahubali N.Kanabargi, learned counsel appearing for the plaintiff No.1/appellant herein is that both the courts below have committed error in proceeding to pass order contrary to the evidence and material available on record. He submitted that time was not the essence of the contract. The trial court has committed an error in partly decreeing the suit when the execution of the agreement of sale is proved and the defendants have not led any evidence nor produced any evidence to disprove the same. The trial court has committed error in not appreciating the fact that the appellant herein is in possession of the suit property since the date of agreement of sale and to substantiate the same he has produced various documents. Both the courts below have committed error in not appreciating the fact that to substantiate their case the defendants have not entered the

witness box nor have they produced any documents. On these grounds, the impugned judgment and decree of both the courts below are liable to be set aside.

12. Per contra, Sri.Lakshman B.Mannoddar, learned counsel appearing for the defendants substantiated that the impugned judgment and decree passed by the courts below are after due appreciation of the oral and other material available on record. He submits that the appellants have failed to prove and establish that they have redressed their grievance within reasonable time and that the suit is filed after a lapse of 21 years. He also submits that after the death of deceased Mallawwa, the defendants are holding the property as joint family property and not in individual capacity and the defendants have filed the application to enter their names in the record of rights which has been certified and mutation has been entered in the record of rights. This aspect of the matter has rightly been looked into and appreciated by the lower Appellate Court and dismissed the suit filed by the plaintiffs. Therefore, interference by this

Court is not called for and submitted that there is no substantial question of law involved in these appeals calling for interference by this Court.

13. After careful consideration of the submissions of learned counsel appearing for the parties and after perusal of the impugned judgment and decree passed by the courts below, what emerges is that in spite of giving sufficient opportunity, the plaintiffs have not only failed to prove their readiness and willingness to perform their part of the contract but have also failed to prove that the suit is well within the limitation period. As per the provisions of the Limitation Act the suit ought to have been filed within 3 years from the death of Mallawwa, as her death is the cause of action for the specific performance. Though there is no time fixed for the enforcement of the agreement, the contention of the plaintiffs that they were not aware of the legal heirs of Mallawwa is also not proved as the daughter and son of Mallawwa were also witnesses to the agreement. The daughter of Mallawwa is defendant No.1 in the suit.

Therefore, the present suit was clearly barred by limitation. Though the plaintiffs are successful in proving the agreement of sale, they have failed to prove their readiness and willingness to perform their part of the contract and have also failed to prove that the suit is well within the period of limitation. Since the suit is clearly barred by limitation, not leading the evidence of the defendants, not cross-examining PW-1 to PW-4 by the defendants will not help the plaintiffs. Finding given by the trial court with regard to the readiness and willingness of the plaintiffs to perform their contract and the bar of limitation is proper and does not require any interference. The trial court even after answering issue No.4 in the affirmative and holding that the suit is barred by law of limitation, has proceeded to partly decree the suit. As per Section 3 of the Limitation Act every suit instituted after the prescribed period shall be dismissed, all though limitation has not been set up as defence. When the Court comes to the conclusion that the suit is barred by limitation, there is no other option but to dismiss the suit. The reasoning given by the lower Appellate Court is strictly in consonance with the

relevant provisions and after due appreciation of the evidence on record. The said reasoning is well founded and interference by this Court is not called for nor I find any substantial question of law involved in these appeals for my consideration.

14. For the foregoing reasons, these two appeals are dismissed as devoid of merits. Ordered accordingly.

In view of disposal of the appeals on merits, Misc.Cvl.105039/2009 is dismissed as having become infructuous.

SD/-
JUDGE

Jm/-