

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 27TH DAY OF APRIL, 2012

BEFORE

THE HON'BLE MR. JUSTICE H.S.KEMPANNA

R.F.A.NO.2635/2007 (SP)

BETWEEN

T. Muniyappa
S/o. Late Hanumanthaiah
@ Thayanna
Aged about 65 years
"Kumsum Church"
75/5, Laggere Main Road
Peenya Post, Laggere
Bangalore – 58.

... Appellant

(By Sri. Ganapathi S. Shastri, Adv.,)

AND

1. Sri. H.Eshwarasa
S/o. Late H.Hanumanthasa
Aged about 62 years
No.81, 5th Main
II Phase, West of Chord Road
Bangalore – 10.

2. Smt. Kuppuyamala
W/o. D.Subramani
Aged about 41 years.

3. P. Muniswamy
S/o. Perumala Reddy
Aged about 39 years
Both are residing at No.804
5th Cross, Church Road, 2nd 'B' Main Road
Rajivgandhinagar, Laggere, Bangalore – 58.

... Respondents

(By Sri.H.B.Keshavamurthy, Adv., for proposed R.2 & 3
Sri. M.V. Raghunathachar, Adv., for R.1)



This RFA is filed under Section 96 of the CPC against the Judgment and Decree dt. 27.9.07 passed in O.S.No.4149/2004 on the file of the XXXIX Addl. City Civil & Sessions Judge, Bangalore City, decreeing the suit for specific performance.

This appeal having been reserved coming on for pronouncement of judgment this day, the Court pronounced the following:-

J U D G M E N T

This is a defendant's appeal challenging the judgment and decree of the trial Court granting decree of specific performance in respect of the agreement dated 30.10.1985.

2. For the sake of convenience the parties in this appeal would be referred to by their rankings as they are arrayed in the suit before the court below.

3. The brief facts of the case are as follows :-

The suit schedule property is a vacant site bearing No.40 formed in S.Nos.74 and 75/5 of Laggare grama, Yeshwanthpura Hobli, Bangalore North Taluk, morefully described in the schedule appended to the plaint (hereinafter referred to as 'Suit Schedule property' for short).



3.1. The plaintiff instituted the suit against the defendant seeking the relief of specific performance of the agreement dated 30.10.1985 and sought for a direction to the defendant to execute the sale deed in favour of him conveying the suit schedule property as per the terms of the agreement dated 30.10.1985 together with all rights appurtenances thereto and for costs.

3.2. It is the case of the plaintiff that an extent of 5 acres and 10 guntas of land in S.Nos.74 and 75/5 of Laggare village belonged to one Hanumanthaiah @ Thayanna, who is the father of the defendant. The said Hanumanthaiah died in the year 1983 leaving behind his wife Rangamma and the defendant as his legal heirs. After the death of Hanumanthaiah the defendant formed sites in the said land and sold it in favour of the prospective purchasers.

3.3. It is his further case that, defendant along with his mother late Smt.Rangamma executed an agreement of sale dated 30.10.1985 in his favour



agreeing to sell the suit schedule property for a consideration of Rs.3,000/-. On the same day, the defendant and Smt.Rangamma delivered the vacant possession of the plaint schedule property to the plaintiff. Since then, he is in possession and enjoyment of the suit schedule property.

3.4. Smt.Rangamma died about 6 years back leaving behind the defendant as the only legal representative. At the time of execution of the sale agreement, there was a legal barrier to execute the absolute sale deed in respect of the schedule property in favour of the plaintiff. Therefore, it was specifically agreed to in the agreement that as and when the legal barrier is lifted and consequently, as and when plaintiff requests for execution and registration of the absolute sale deed, the defendant and his mother would come and execute the sale deed without expecting any additional sale consideration price. In support of the said sale agreement dated 30.10.1985 the defendant and his mother jointly executed an irrevocable GPA along with an affidavit in favour of the plaintiff.



3.5. Now at present as the registration of sale deed in respect of the revenue sites has commenced, the plaintiff has been requesting the defendant to come and execute the sale deed in his favour. The plaintiff has approached the defendant in the first week of January 2004 and requested for registration of the sale deed. In spite of the same defendant has flatly refused the said request of the plaintiff. He has demanded exorbitant money from him on the ground that the present value of the property fetches lakhs together.

3.6. The plaintiff issued legal notice dated 6.2.2004 to the defendant calling upon him to execute the registered sale deed and in spite of the same defendant did not comply with the request made in the legal notice. He has not even replied the notices. Therefore, the plaintiff left with no alternative was constrained to file the suit.

3.7. After service of suit summons the defendant appeared and contested the suit. The defendant in the statement denied the execution of the sale agreement



dated 30.10.1985 by him and his mother in favour of the plaintiff in respect of the suit schedule property. He further contended that his father was the owner of S.Nos.74 and 75/5 which totally measures 5 acres 10 guntas situated in Laggare village. After the death of his father he was in possession and enjoyment of the plaint schedule property along with his mother and other family members. He further contended after the death of his father, he and his mother continued in possession of the suit schedule property and he had sold portion of the property in S.Nos.74 and 75/5 to one P.Muniswamy long back. He further contended the said Muniswamy is in possession and enjoyment of the said portion of the property and he is residing therein by constructing a residential house.

3.8. He further contended that the documents produced by the plaintiff are all concocted and created. He also contended as on the date of the alleged agreement of sale in favour of the plaintiff, Prevention of Fragmentation of Consolidation of Holdings Act (hereinafter referred to as 'the Act' for short) was in

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force and therefore, the alleged agreement is unenforceable under law. The said alleged agreement of sale is opposed to public policy and is hit by provisions of Section 23 of the Indian Contract Act. Accordingly, he prayed for dismissal of the suit.

3.9. On the basis of the basis of the above pleadings, the trial Court framed the following issues :-

1. *Whether the plaintiff proves that the defendant and his late mother, Rangamma, were agreed to sell the schedule property for Rs.3,000/- executed an agreement of sale dated 30.10.85 by receiving the entire sale consideration?*
2. *Whether the plaintiff proves that he was put in possession of the schedule property in part performance of the contract?*
3. *Whether the plaintiff proves that he has been always ready and willing to perform his part of the contract?*

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4. *Whether the suit is barred by limitation?*

5. *Whether the plaintiff is entitled the relief of specific performance of contract?*

6. *What order or decree?*

3.10. The plaintiff in support of his case got himself examined as PW1, produced 7 documents which came to be marked as exhibits P1 to P7. The defendant in support of his case got himself examined as DW1. No documents were marked in support of his case.

3.11. The trial Court thereafter on hearing the learned counsel for the respective parties and on going through the evidence and the documents on record held that the plaintiff has proved that the defendant and his mother Rangamma agreed to sell the suit schedule property for Rs.3,000/- and executed an agreement of sale dated 30.10.1985 by receiving entire sale consideration, plaintiff was put in possession of



the schedule property in part performance of the contract, plaintiff was always ready and willing to perform his part of the contract, suit is not barred by limitation, plaintiff is entitled to the relief of specific performance of contract and accordingly, by its judgment dated 27.9.2007 decreed the suit of the plaintiff and directed the defendant to execute the sale deed in favour of the plaintiff in respect of the plaintiff schedule property within three months from the said date, failing which, the plaintiff is at liberty to get the same executed through the process of court.

3.12. It is the correctness and legality of the said judgment and decree that has been assailed by the appellant/defendant in this appeal.

4. The learned counsel appearing for the appellant /defendant contended the trial Court erred in granting decree of specific performance of the contract though the suit is hopelessly barred by limitation inasmuch as it has been filed 19 years after the execution of the agreement of sale. Nextly, he



contended that in view of the provisions of the Act which was in force, the agreement of sale which is void ab initio could not have been enforced. He further contended as the grant of relief for specific performance is a discretionary power vested in the court, that discretion has to be exercised judiciously well within the time. As the same has not been done in this case, the trial Court has committed an error in decreeing the suit. He further contended the trial Court without appreciating the evidence and the documents placed on record in the right perspective has granted the relief contra to the material on record and therefore, the impugned judgment and decree cannot be sustained, it be set aside by allowing the appeal.

5. Per contra, the learned counsel appearing for the respondent/plaintiff supporting the impugned judgment and decree of the trial Court submitted that the trial Court has not committed any error in decreeing the suit having regard to the legal barriers that were there for the plaintiff to get the sale deed executed till they were cleared. He further contended



the trial Court has also rightly held the suit is not barred by time as there was no stipulation of time in the agreement and as the plaintiff has got issued the legal notice dt. 6.2.2004 to which the defendant has not sent any reply. He also further contended that nothing remained on the part of the plaintiff to express his readiness and willingness to get the sale deed executed as the entire sale consideration had been paid under the agreement. Taking from any angle the impugned judgment and decree does not suffer from any infirmity calling for interference in this appeal. Accordingly, the same be dismissed.

6. Taking the rival contentions into consideration, the evidence and the documents on record, the point that arises for my consideration is:-

‘Whether the impugned judgment and decree of the trial Court calls for interference?’

7. It is the case of the plaintiff that the defendant and his mother late Smt.Rangamma executed the agreement of sale dated 30.10.1985 agreeing to sell the



suit schedule property for a sum of Rs.3,000/-. They also received the entire sale consideration amount on the date of agreement and handed over vacant possession of the same to him. It is also his case that at the time of executing the sale agreement there were legal barriers to execute the absolute sale deed in respect of the suit property and it was specifically agreed in the agreement that as and when the legal barriers are lifted or cleared and consequently as and when the plaintiff requests for execution of the registered sale deed they would execute the sale deed without expecting any additional sale consideration and also they executed irrevocable GPA along with an affidavit duly sworn before the Small causes court. The nature of GPA is irrevocable and is agency coupled with interest. It is also his case that Smt.Rangamma the mother of the defendant died about 6 years prior to filing of the suit leaving behind the defendant as her sole legal heir. It is also his case that as there is registration of the sale deeds in respect of the revenue sites, the defendant being the sole successor requested



him to come and execute the absolute sale deed in his favour. He approached him in the first week of January, 2004 and requested the defendant to execute the sale deed to which he flatly refused and also demanded exorbitant money from him on the ground that the present value of the property fetches lakhs of rupees. It is also his case that in spite of his repeated demands and requests since the defendant did not choose to execute the sale deed he got issued the legal notice dated 6.2.2004 calling upon him to execute the sale deed which was served on him and the defendant has not replied and complied with the same.

8. On the other hand, it is the case of the defendant that he has not executed any of the documents much less agreement of sale and he had never agreed to sell the suit schedule property and had never put the plaintiff in possession under the agreement. The plaintiff by misusing the papers has got created documents for his convenience and has filed the suit. It is also his case that the suit is hopelessly barred by limitation and the terms of the



agreement are unenforceable by the plaintiff as the same is against the public policy and the alleged transaction is hit by the provisions of the Act. Therefore, the agreement is void ab initio. Hence, the suit be dismissed.

9. Ex.P1 is the agreement of sale which is dated 30.10.1985 alleged to have been executed by the defendant and his mother-Rangamma agreeing to sell the suit schedule property for a sum of Rs.3,000/- in favour of the plaintiff. The plaintiff in his evidence has deposed about the execution of Ex.P1 in his favour in respect of the suit schedule property. In his cross-examination it is suggested that the defendant did not execute any sale agreement in respect of the suit schedule property which has been denied. Though Ex.P1 is of the year 1985, the suit is filed in the year 2004. In the cross-examination of PW1 it has been suggested that till 2004, the plaintiff has not filed any suit for the reason that the defendant had not executed any agreement, which is also denied by PW1. Except this suggestion, which has been denied, nothing has

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been elicited in the cross-examination of PW1 to disprove Ex.P1 having been executed by the defendant and his mother in favour of the plaintiff.

10. On the other hand, it is the case of the defendant that Ex.P1 has not been executed at all. Except the denial of execution of Ex.P1 he has not come with any other contention regarding the agreement of sale dated 30.10.1985 which is at Ex.P1. It is his case that after the death of his father a portion of the property in S.Nos.74 and 75/5 was sold in favour of P.Muniswamy and the said Muniswamy is in possession and enjoyment of the portion of S.Nos.74 and 75/5. The defendant in the cross examination has stated that one H.Vannasa who is a witness to Ex.P1 was carrying on money lending business and as he was in need of money he has executed Ex.P1 and also Ex.P2 for availing loan of Rs.3,000/- from him. Ex.P2 and P3 are general POA and affidavit executed by defendant and Smt.Rangamma in favour of the plaintiff. As per Exs.P2 and P3 defendant and his mother Smt.Rangamma have agreed to sell the plaintiff schedule



property to the plaintiff and they had executed GPA and affidavit in favour of the plaintiff in which there is a mention regarding the agreement of sale of the suit schedule property to the plaintiff by them for a consideration of Rs.3,000/-. The recitals in Ex.P3 also reveals the possession of the schedule property was handed over to plaintiff and in view of the Act, as the registration of the sale deed is not possible they are executing the GPA and affidavit i.e. Exs.P2 and P3 in favour of the plaintiff. The defendant in his cross examination has admitted his signature and LTM of his mother –Rangamma on Exs.P1 to P3. It is his case that he has affixed his signature on Exs.P1 to P3 when he availed loan from Vannasa one of the witness to Ex.P1 and at that time Vannasa has taken his signature on some blank papers. This cannot be accepted for the reason that he has never stated that his mother – Rangamma also affixed her LTM on Exs.P1 to P3 on blank paper at the time Vannasa made payment to him. That is also not the stand taken by him in the written statement. Therefore, having regard to the



admission of DW1 in respect of the signatures on Exs.P1 to P3, it is for him to establish that he has not affixed his signatures on Exs.P1 to P3 not with an intention to sell the suit schedule property to the plaintiff for consideration of Rs.3,000/-, but it was for the purpose of availing of loan from Vannasa. The evidence on record does not disclose that the defendant has established the same. Apart from this, the plaintiff has issued legal notice calling upon him to execute the sale deed. Ex.P4 is the copy of the legal notice and Exs.P5 and P6 are the documents to show that the legal notice was served on the defendant. In the cross examination the defendant has admitted his signature in Ex.P6. He has also admitted prior to the institution of the suit, legal notice has been issued calling upon him to execute the sale deed and he has not replied the same. He has not even complied with the demand made in the legal notice Ex.P4. This conduct on the part of the defendant would not show he has executed the sale agreement dated 30.10.1985 along with his mother. If really it was a loan transaction and



if he has put his signature on the blank papers, he would have positively taken the stand in the written statement. In the absence of the same having regard to the evidence on record it has to be held that he has affixed his signature on Exs.P1 to P3 along with his mother. It further establishes that the defendant had executed the agreement Ex.P1 on 30.10.1985 along with his mother agreeing to sell the suit schedule property after receiving the sale consideration of Rs.3,000/- from the plaintiff.

11. Now, it has to be seen as contended by the learned counsel for the appellant whether this agreement of sale dated 30.10.1985 could be held to be a valid agreement enforceable under law. According to the learned as on the date of agreement of sale i.e. 30.10.1985, the provisions of the Act was in force. The Act prevented transfer of property which lead to fragmentation and consolidation of holdings. In view of the same, the agreement itself was unenforceable. In support of his submission he has relied upon the



decision reported in the case of **Smt. Khamarunnisa Vs.**

Mudalappa reported in **ILR 2003 KAR 4535**

(A) CODE OF CIVIL PROCEDURE, 1908
(CENTRAL ACT NO.5/1908) – SECTION 100 –
REGULAR SECOND APPEAL – Finding of fact
cannot be questioned - On facts, Held – Ex.P.1
is not an agreement to sell, But a contract of
sale improperly stamped and unregistered,
are pure findings of fact cannot be questioned
in RSA.

(B) PREVENTION OF FRAGMENTATION
OF CONSOLIDATION OF HOLDING ACT – The
Act prevents transfer of property which may
lead to fragmentation of consolidation of
holding – On facts held – No decree can be
passed by the Court, As the agreement
entered between the parties was
unenforceable.

HELD:


The finding that Ex.P.1 is not an
agreement to sell but a contract of sale
executed on an improperly stamped paper
and is unregistered are pure findings of fact
and cannot be questioned in this second
appeal.

It is not in dispute that the defendant
was incapable of performing his part of the



contract even as on the date of entering into the agreement owing to a statutory bar that was in operation under the provisions of prevention of Fragmentation and Consolidation of Holidays Act. The said act prevented transfer of property which may lead to fragmentation of a holding. Ex.P.1 is dated 1983. The said Act was repealed only on 3.12.1990. Even construing Ex.P.1 as an agreement to sell, no decree could have been passed by the Courts below as the agreement entered into between the parties was unenforceable in law as on the date of agreement. Therefore, the suit filed by plaintiff for specific performance has been rightly rejected by the Courts below and the concurrent findings of the Courts below on this issue does not call for any interference.

Relying on the aforesaid decision, the learned counsel contended that as Ex.P1 was only an agreement of sale as the Act prevented transfer of property which may lead to fragmentation of holdings and as Ex.P1 was dated 30.10.1985 on which date the Act was in force, the said agreement entered into between the parties was unenforceable in law.



Therefore, no decree could have been passed by the court below.

12. On the other hand, the learned counsel appearing for the respondent/plaintiff contended that the principles laid down in the aforementioned decision is not applicable to the facts of this case as in that case, the court was considering the execution of a sale deed and not an agreement of sale.

13. On a perusal of the aforesaid decision, it clearly goes to show Ex.P1 in the said case is an agreement to sell and no decree could have been passed by the courts as the agreement entered into between the parties was unenforceable in law as on the date of the agreement which in that case was in the year 1983. In that view of the matter, I do not find any merit in the contention of the counsel for the respondent/plaintiff. As rightly pointed out by the counsel for the appellant Ex.P1 agreement of sale is dated 30.10.1985. The Act as on that date was in force. The Act has come to be repealed on 3.12.1990. If



that is the case Ex.P1- the agreement of sale executed by the defendant and his mother, by virtue of the provisions of the Act, is unenforceable agreement in law and therefore, the court could not have acted upon the said agreement. The trial Court in its judgment has also rightly observed on this aspect of the case, but by giving reasons on other aspects has come to a different finding holding that the agreement holds field, which cannot be sustained.

14. Nextly, it was contended the suit is hopelessly barred by time. Admittedly, the agreement of sale is dated 30.10.1985. The suit is filed on 16.6.2004 nearly 19 years after the date of execution of the sale deed Ex.P1. It is the case of the plaintiff that it was because of the legal barriers, which were there on the date of execution of Ex.P1, he could not call upon the defendant to execute the sale deed till they were cleared. Therefore, the defendant and his mother executed Exs.P1 and P3 agreeing to execute the sale deed executed after the legal barriers were lifted. It is his case that he got issued the legal notice dt.6.2.2004



after the ban was lifted calling upon the defendant to execute the sale deed. There was no reply to the same by the defendant. The defendant did not execute the sale deed. Therefore, he filed the suit on 16.6.2004 which is in time. In this connection, it is the contention of the defendant that the suit is hopelessly barred by time, as it has been filed 19 years after execution of Ex.P1. It is his case that on 6.2.2004 he sold the property in favour of one Muniswamy. The said Muniswamy is impleaded as respondent No.3 in this appeal.

14.1 The learned counsel appearing for respondent No.3 submits that he has purchased the suit schedule property and has constructed a house and he is living in the said house. Therefore, it is the case of defendant that there was no agreement of sale and possession of the property was not handed over to the plaintiff. In this connection, the learned counsel for the appellant has relied upon the decision in the case of **Manjunath Anandappa Urf. Shivappa Hansi Vs.**




Tammanasa and Others reported in **2003 AIR Kant.**

H.C.R. 1093 (Supreme Court).

(B) Specific Relief Act (47 of 1963),
S.20 – Specific performance of contract for
sale – Discretionary relief – Suit filed almost
after six years from date of entering into
agreement to sell – Mainly when plaintiff
learnt that suit land had been sold by
defendant – owner in favour of appellant –
No material to show that plaintiff ever
approached defendant/owner of property to
execute deed of sale – Time though not
essence of contract plaintiff is required to
approach Court within reasonable time –
Having regard to conduct of plaintiff
discretionary relief refused by lower Courts –
Proper – High Court in second appeal not to
interfere with discretion of lower Courts.

15. In the aforementioned case, the Apex Court
has held, since time was not the essence of contract,
plaintiff is required to approach the court within
reasonable time. Having regard to the conduct of
plaintiff, discretionary relief refused was held to be
proper.



16. Relying on this the learned counsel vehemently contended that since the plaintiff has kept quite for 19 long years without taking any steps calling upon him to execute the sale deed and as he has taken steps for filing the suit after coming to know he having sold the site in favour of Muniswamy, the suit is hopelessly barred by time and no discretionary relief could have been granted.

17. On the other hand, the learned counsel for the respondent/plaintiff contended that in the aforementioned case, there was no material to show that the plaintiff had approached the defendant to execute the sale deed. Hence, the court held that though the time is not the essence of contract, plaintiff is required to approach the court within the reasonable time. In this case, admittedly, there was no stipulation of time in the agreement. The plaintiff has got issued the legal notice calling upon the defendant to execute the sale deed, in that view of the matter the aforementioned decision is not applicable to the facts of this case. He further relying upon a decision of this



Court in the case of H.M.Krishna Reddy Vs. H.C. Narayana Reddy reported in ILR 2001 KAR 3870

Limitation Act, 1963 (Central Act No.36 of 1963 – Article 54 – and Specific Relief Act, 1963 (Central Act No.47 of 1963) – Section 20 – Clause in an Agreement to sell provided that the “Sale Deed to be executed as and when Ban for selling land (on Registration) under Karnataka Prevention of Fragmentation and Consolidation of Holding Act is repealed” and it was repealed in the year 1983 but agreement holder filed a suit in 1993. Land owner contended limitation to file suit under Article 54 expired in 1986 and the sit filed in 1993 was barred by time.

contended that the limitation starts from the date the defendant refused to execute the sale deed after issuing notice. Therefore, as the plaintiff has got issued the legal notice dated 6.2.2004 calling upon the defendant to execute the sale deed, to which no reply has been received and as the suit has been filed on 16.6.2004, it is well within time.

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18. I do not find any merit in the said contention because the Act was repealed in the year 1990 i.e. 3.12.1990. Though the time was not the essence of contract, the plaintiff ought to have taken steps immediately thereafter calling upon the defendant to execute the sale deed. He has done so. He has kept quite till 2004 i.e. about 14 years even after the repealing of the Act dt.03.12.1990. This conduct of the plaintiff in not approaching the court in a reasonable time as held to by the Apex Court is not entitled to the discretionary relief and therefore, it is to be held that the suit is hopelessly barred by time as contended by the defendant. Insofar as the other legal barriers which prevented the plaintiff from getting the sale deed executed, there is no evidence to show when those legal barriers were lifted. In that view of the matter, it has to be held that the suit is hopelessly barred by time.

19. The court below in my view has misdirected itself without appreciating the circumstances that have been brought to its notice. In view of what has been laid down in the aforesaid decisions as the agreement-



Ex.P1 was unenforceable in law by virtue of the provisions of the Act which was in force, no decree could have been granted. Further, the suit has also been filed 19 years after the execution that too after the defendant has sold the property to Muniswamy who is respondent No.3 in this appeal. As such, the suit is hopelessly barred by time and ought to have been dismissed. Therefore, in my view, though the finding of the trial Court in respect of the execution of the agreement does not call for interference, having regard to the provisions of the Act which was in force and as the suit has been filed after 19 years, the court below could not have granted the decree in favour of the plaintiff. In that view of the matter the impugned judgment and decree of the trial Court cannot be sustained and deserves to be set aside.

20. In the result, for the foregoing reasons, I proceed to pass the following:-

ORDER

- (i) The appeal is allowed.



- (ii) The impugned judgment and decree of the trial Court is set aside.
- (iii) The suit of the plaintiff is dismissed.

Parties to bear their own costs.

Sd/-
JUDGE

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