

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 31ST DAY OF JANUARY 2020

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

REGULAR SECOND APPEAL No. 1225 OF 2004 (SP)

BETWEEN

SMT.KALA SARASWATHI
W/O.KALA SATYANARAYANA
AGED 36 YEARS, OCC: AGRICULTURE
R/O. VIDYANAGAR CAMP,
GANGAVATHI.

... APPELLANT

(BY SRI.S G KADADAKATTI, ADVOCATE)

AND

G CHANDRASHEKAR REDDY
S/O. VENKATREDDY
AGED 29 YEARS, OCC: AGRICULTURE
R/O. BAPIREDDY CAMP, GANGAVATHI.

... RESPONDENT

(BY SRI.SHIVARAJ S. BALLOLI AND
SRI. RAMESH I. ZIRALI, ADVOCATES.)

THIS RSA IS FILED U/SEC 100 R/W ORDER 42 RULE 1
CPC AGAINST THE JUDGMENT AND DECREE DATED : 5.10.2004
PASSED IN RA.NO. 5/02, ON THE FILE OF THE CIVIL JUDGE
(SR.DN.), GANGAVATHI, ALLOWING THE APPEAL AND SETTING
ASIDE THE JUDGMENT AND DECREE DATED:24.2.1995 PASSED
IN OS.NO. 129/89, ON THE FILE OF THE MUNSIF,
GANGAVATHI.

THIS APPEAL COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

JUDGMENT

This appeal is filed by the defendant challenging the judgment and decree dated 05.10.2004 passed in R.A. No.5 of 2002 by the learned Civil Judge (Senior Division), Gangavathi.

2. For the purpose of convenience, the parties are referred to as per their ranking before the trial court.

3. Brief facts of the case are that the plaintiff has filed a suit for specific performance of contract contending that the defendant has entered into an agreement of sale on 16.09.1983 with the plaintiff and the defendant has received part consideration amount of Rs.3,050/- as an earnest money and agreed to receive the balance consideration amount at the time of registration of the sale deed. It was agreed that the defendant should execute a registered sale deed

on or before 31.12.1983 and delivered the possession of the suit land to the extent of 2½ acres which was in possession of the defendant to the plaintiff. Remaining land was encroached by one Krishnappa and Fakiramma, the adjoining land owners. It was agreed that defendant should deliver the remaining portion to the plaintiff after Krishnappa delivers the possession. The defendant could not deliver the full extent of land as some portion of the land was encroached by the adjoining land owners. The defendant agreed to get the land surveyed by the competent authority and will deliver the remaining land free from all encroachments. The plaintiff claims that he is in possession of 4 acres 6 guntas as the same is free from encroachments since six months. Since the defendant could not keep all the records ready for registration before 31.12.1983, she has agreed that whenever the records are ready, she will

intimate the plaintiff and thereafter the plaintiff should get the land registered within one week from such intimation. One of condition was got inserted in the original agreement of sale deed on 31.12.1983. Subsequently, the land was got measured on 31.07.1984 by the plaintiff himself. After measurement it was noticed that an area of 1 acre 25 guntas had been encroached by the adjoining land owner and the plaintiff intimated this fact to the defendant by sending a legal notice to her in the month of August calling upon her to get back the encroached portion of land and to execute the registered sale deed of the entire suit land itself from the date of receipt of the notice. The defendant has sent a letter dated 08.08.1984 to the plaintiff calling upon him to make payment of remaining sale consideration amount and to get a registered sale deed completed within a week. The plaintiff insisted

for removal of encroachment before registration of sale deed but the defendant was not yet ready to do so. The plaintiff got issued a legal notice on 06.08.1986 calling upon the defendant to receive the balance consideration amount and to execute a registered sale deed. In spite of service of notice, the defendant has neither replied nor got executed a registered sale deed. Hence, the plaintiff was constrained to file a suit for specific performance of contract.

4. On service of summons, defendant appeared through counsel and filed written statement denying the averments made in the plaint and denied that the defendant has executed an agreement of sale dated 16.09.1983 for consideration of Rs.5,200/- per acre and also denied regarding receiving of Rs.3,050/- towards part consideration amount and also denied regarding delivery of possession. It is further

contended that the plaintiff in collusion with one K. Laxmanreddy has got created an agreement of sale. In fact the defendant had no intention of selling the suit land and denied her signature on the agreement of sale. It is further contended that she has not received any notice from the plaintiff. The signature on the letter dated 08.08.1984 alleged to have been written by the defendant to the plaintiff is a forged one. Hence, submitted that there is no cause of action for initiating a suit. The present suit has been filed only with an intention to harass her. Hence, claim of the plaintiff as alleged in the plaint against the defendant is false and vexatious and sought for dismissal of the suit.

5. The trial Court on the basis of the pleadings framed the following issues:

- 1. Whether the plaintiff proves that the defendant has executed the suit agreement of sale on*

16.09.1983 in respect of the suit land agreeing to sell the same at the rate of Rs.5200/- per acre and has received Rs.3050/- under it and put him in possession of the same?

- 2. Whether he further proves that the defendant has executed subsequent agreement on 31.12.1983?*
- 3. Whether the defendant proves that her husband had received as a hand loan of Rs.3050/- and not as part of the consideration amount under the agreement?*
- 4. Whether the defendant proves that her signature on the suit agreement of sale is forged one as contended in para 4 of the written statement?*
- 5. whether she further proves that the signature on the letter dated 8.8.1984 is a forged one?*
- 6. whether the plaintiff proves his possession over the suit land on the date of suit?*
- 7. whether does he further proves interference by the defendant with the possession of the suit land?*
- 8. whether the defendant proves that she is entitled for the compensatory costs of Rs.5000/-*

9. *Whether the plaintiff is entitled for the specific performance of contract?*

10. *Whether the plaintiff is entitled for the reliefs sought for?*

11. *What order and what decree?*

6. The plaintiff in order to prove his case, examined himself as PW-1 and also examined 3 witnesses as PWs.2 to 4 and got marked documents Exs.P-1 to P-20. On behalf of the defendant, the defendant got herself examined as DW-1 and also examined one witness as DW-2 and got marked documents as Ex.D-1 to D-8.

7. The trial Court after considering the oral and documentary evidence on record held that the plaintiff has failed to prove that the defendant has executed agreement of sale dated 16.09.1983 for consideration of Rs.5,200/- and also failed to prove that the plaintiff has paid Rs.3,050/- towards earnest money and that the plaintiff has failed to prove that

the defendant has put the plaintiff in possession of the suit property. It is further held that the plaintiff has failed to prove that the defendant has executed subsequent agreement on 31.12.1983 and further held that the defendant has proved that her husband has received hand-loan of Rs.3,050/- and not as a part of consideration amount under agreement of sale and further held that the defendant has proved that her signature on the agreement of sale is forged one and further the plaintiff has failed to prove his possession over the suit schedule land and also the interference and consequently, dismissed the suit of the plaintiff.

8. The defendant aggrieved by the judgment and decree passed by the trial Court preferred an appeal in R.A.No.5/2002 before the Civil Judge (Sr.Dn.) Gangavathi. The first appellate Court has framed following points for consideration.

- i) Whether findings of the learned trial Judge on execution of agreement of sale and endorsement given by the defendant on 31.12.1983 is correct?
- ii) Whether the finding of the learned trial judge regarding possession of the suit land by the plaintiff is correct?
- iii) Whether the finding of the learned trial judge about interference in the possession of the plaintiff is correct?
- iv) Whether the judgment and decree of the trial judge calls for my interference?
- v) What order?

9. The first appellate Court after re-appreciating the evidence held that the findings of the learned trial Judge on execution of agreement of sale and endorsement given by the defendant on

31.12.1983 is not correct and further held that the finding of the learned trial Judge regarding possession of the suit land as negative and about the interference in the possession of the plaintiff is also in the negative and held that the judgment and decree passed by the trial Court calls for interference and accordingly, allowed the appeal and decreed the suit of the plaintiff granting the relief of specific performance of contract and directed the defendant to execute the registered sale deed by receiving balance consideration within 60 days and also granted injunction restraining the plaintiff from interfering in the peaceful possession and enjoyment of the suit land. Being aggrieved by the judgment and decree passed by the first appellate Court, the defendant has filed this appeal.

10. This Court while admitting the appeal has framed the following substantial question of law.

"Whether the finding of the first appellate Court reversing the finding of the trial Court, is perverse for non-consideration of the material on record?"

11. Heard the learned counsel for the appellant and respondent.

12. The learned counsel for the appellant submits that defendant has not executed agreement of sale in favour of the plaintiff as alleged by the plaintiff in the plaint and further submits that the defendant has not received any amount from the plaintiff. On the contrary, he submits that the husband of the defendant has received a hand loan of Rs.3,050/- and not a part of consideration amount under the agreement. He further submits that signature on the agreement of sale is forged one and further submits that signature on the letter dated 08.08.1984 is forged. He further submits that the defendant has not delivered the possession of the suit

schedule land to the plaintiff at any point of time. When the defendant has not delivered the suit land to the plaintiff there is no question of interference by defendant. Hence, the first appellate Court has committed an error in allowing the appeal and decreeing the suit. Hence he prays for allowing the appeal and set aside the judgment and decree passed by the first appellate Court.

13. Per contra, the learned counsel for the respondent submits that the defendant has executed an agreement of sale for consideration of Rs.5,200/- per acre and the plaintiff has paid Rs.3,050/- as advance money and the defendant has executed the agreement of sale dated 16.09.1983 and delivered the portion of the land which was in her possession and agreed to deliver remaining portion of the land after taking possession from the adjacent land owner who has encroached the suit land. Subsequently, the

plaintiff has taken possession of the remaining portion of the land from Krishnappa who has encroached the suit land and now the plaintiff is in possession of the entire suit schedule land and submits that the defendant has written a letter dated 08.08.1984 calling upon the plaintiff to pay balance consideration amount and to get the sale deed executed. He further submits that legal notice was issued on 06.08.1986 calling upon the defendant to receive balance consideration amount and to execute the registered sale deed. In spite of service of notice, the defendant neither replied to the said notice nor came forward to receive balance consideration amount and execute a registered sale deed. Hence, the plaintiff has filed a suit for specific performance.

14. The plaintiff in order to prove his case examined himself as P.W.1. He has reiterated the contents of the plaint. In the course of cross-

examination he has clearly admitted that K.Laxman Reddy is the younger brother of his mother, i.e., P.W.2. He further admits that, Krishna Reddy is the elder brother of Laxman Reddy. He further admits that he has not seen the suit property before purchasing the same and he has not seen the ROR of the suit property before purchasing the same. He further admits that he did not know the measurement. He has stated that, as per Ex.P1, it does not contain exact measurement of the property delivered by the defendant to him. On the date of execution of the agreement he know the measurement of the suit property may be about 2½ acres and he has not told the scribe to mention the measurement of the suit property as 2½ acres in Ex.P1. It is further elicited that he had filed suit after taking five crops from the date of execution of Ex.P1. He admits that Exs.P10 to P13 the cultivator's column in ROR is standing in the

name of the defendant. He admits that Ex.P5 does not bear the signature of advocate who issued the notice. He admits that he has not produced any acknowledgement for having received the notice by the defendant as per Ex.P8. He admits that, on 31.07.1984, the survey authorities came to the suit land for survey. At the time of measurement by survey authorities, the defendant was present and survey panchanama was written and one K.Ramakrishna Reddy, K Venkatasatyanarayana Reddy and Lingappa have put their signature on the said panchanama. He admits that on the said date, P.W.1, defendant and her husband Krishtappa were present on the spot, but they have not put their signature on the panchanama. P.W.1 further admits that defendant is paying land revenue. It is elicited from the mouth of P.W.1 that he has not told to G.Laxman Rao to write the Ex.P1(c) contents on

separate document. The said G.Laxman Rao has not put signature for having typed the portion as per Ex.P1(g). On the date of endorsement as per Ex.P1(c), witnesses have not put their signatures.

15. Plaintiff examined P.W.2 who is attesting witness to Ex.P1, i.e., agreement of sale said to have been executed by defendant in favour of the plaintiff wherein P.W.2 stated that, on 16.09.1983 the defendant has agreed to sell the suit land for consideration of Rs.5,200/- per acre and defendant has received a sum of Rs.3,050/- as earnest money and delivered the possession of the suit land and executed agreement of sale which is marked as Ex.P1. He further deposed that, husband of defendant has not obtained any loan from the plaintiff. P.W.2 was examined in order to prove the contents of Ex.P1 as he is attesting witness to Ex.P1. In the course of cross-examination, he admits that, on the date of

execution of Ex.P1, they have not seen the certified copy of the ROR of the suit property and he is unable to say whose name the suit property was standing on the date of execution of Ex.P1. The plaintiff has also not enquired about the holding of the suit property on the date of execution of the suit property on the date of execution of Ex.P1. He is unable to say why Rs.3,050/- only paid to the defendant as earnest money. He admits that he is the brother of plaintiff's mother. He further admits that he has not signed Ex.P1 on 31.12.1983.

16. That the plaintiff in order to prove execution of Ex.P1, one G.Laxman Rao who is scribe of Ex.P1 who was drafted the agreement on the instruction of defendant. Since he was deceased, in order to prove his signature, his son was examined as P.W.3. He identified the signature of his father at Ex.P1(f). He deposed that, his father was having

licence for writing deeds and is able to identify the signature of his father in respect of the deeds written by him and when Ex.P1 was confronted, he admits the signature of his father, which is marked as Ex.P1(f). He admits that his father did not use to put signature on the document for having already putting the signature while writing the main document. In course of cross examination, it has been elicited from the mouth of this witness that, since 1985 his father was working as deed writer and did not maintain any register with regard to drafting of agreements or any other documents. It is further elicited that, in case of agreement for sale, if the party makes some more payment after execution of the agreement, he used to write separate receipt for having made the payments and not on the document. He further states that it is true that though the matter pertains to the same transaction, in view of payment on different date, a

separate receipt will be passed. He further states that, in spite of having any blank space on a document before the signature of the parties, the writing of any matter on the blank space of the document is an irregularity and it is not in accordance with law.

17. P.W.4 was examined and he deposed that plaintiff is in possession of the suit property and defendant tried to interfering in peaceful possession and he intervened the quarrel between plaintiff and defendant and pacify the matter and at that time P.W.2 was present on the spot and he too pacified the quarrel. But in the cross-examination, he admits that sale transaction of the suit property was not taken place in his presence. He cannot say the survey number towards eastern side of the suit property and also total measurement. It is further elicited from the mouth of P.W.4 that, on the date of the incident

nobody came to me for calling but I went to the spot after hearing the sound of altercation.

The defendant was examined as D.W.1 and she denied the execution of agreement of sale. She also denied receiving part consideration amount and delivery of possession. She deposed that her husband has taken loan of Rs.3,050/- from the plaintiff and not part consideration of the amount under agreement of sale.

18. From perusal of the evidence of witnesses, as per the case of the plaintiff, the defendant executed agreement of sale on 16.09.1983. The said document is marked as Ex.P1. As per the contents of Ex.P1, it was agreed that sale deed to be executed on or before 31.12.1983 and a date was fixed for performing contract and plaintiff has not complied his part of contract, but the plaintiff further

contends that defendant has agreed to execute the sale deed when all the documents are kept ready.

19. Per contra, the learned counsel for the defendant denied the alleged signature on Exs.P1(a) and (b). Ex.P1 was forged and created. Upon perusal of Ex.P1-agreement of sale, it is clear that signature of the defendant with signature on Ex.P1(a), (b) and (h) are totally different from the signature of the defendant in her written statement and vakalathnama. The defendant denied her signature on Ex.P1, but in the cross-examination she has denied her signature on the written statement as well as on the vakalathnama. When the defendant denied her signature on Ex.P1, the plaintiff has not taken any steps to send Ex.P1 to the handwriting expert. Further, P.W.2 is close relative of the plaintiff and it is alleged by the defendant that plaintiff has concocted Ex.P1 in collusion with P.W.2. Under such

circumstances, the burden is upon the plaintiff to prove the execution of Ex.P1. Further, Ex.P1 does not disclose about the extent, portion delivered and possession of the suit land.

20. From perusal of the oral and documentary evidence, it does not reveal that defendant has delivered 2½ acres of land in favour of the plaintiff. Except solitary statement of P.W.1 and P.W.2 who is a close relative of P.W.1, the plaintiff has not examined other independent witnesses to prove the execution of agreement of sale. The plaintiff has also not taken steps to prove the signature of the defendant on Ex.P1. Hence, the trial Court after considering the entire material on record has rightly held that the plaintiff has failed to prove execution of agreement of sale. The first appellate Court merely on the admission of D.W.1 in the cross-examination that she denied her signature on vakalathnama and written statement has

held that the plaintiff has proved execution of agreement of sale without properly appreciating the evidence on record and further the plaintiff has also not pleaded nor proved readiness and willingness.

21. According to the case made out by the plaintiff that the date of execution of agreement of sale is 16.09.1983, as per the terms and conditions of agreement of sale the defendant is supposed to execute registered sale deed on or before 31.12.1983. But infact the plaintiff has not produced any material to show that the plaintiff was ready and willing to perform his part of contract on or before 31.12.1983. The plaintiff placed reliance on Ex.P1 stating that defendant has agreed to execute the registered sale deed on or before 31.12.1983 and further had agreed to keep all the records ready, it will be intimated to the plaintiff and after that he would get register the land within one week. The said portion was inserted in

Ex.P1 and which is marked as Ex.P1(h). From perusal of the Ex.P1(h), i.e., alleged signature and the signature of the defendant on Ex.P1(a) and (b) they are totally different.

22. Further, P.W.2 in the cross-examination has admitted that he has not signed Ex.P1 on 31.12.1983. The signature which has been marked as Ex.P1(d), i.e., signature of P.W.2 is not his signature. Further, from perusal of the Ex.P1 there is lot of gap in between signature of the witnesses and also signature of scribe. Therefore, the said document creates a doubt in view of admission of P.W.2 and also space which was left in between signature of the witnesses and the signature of the scribe. According to the contents of the agreement, a date was fixed for performing contract. The plaintiff has failed to prove his part of contract and thereafter defendant wrote a letter dated 08.08.1984. The signature appearing on

Ex.P7 is totally different from Ex.P1. Thereafter, the plaintiff got issued a legal notice on 06.08.1986 calling upon the defendant to receive balance consideration amount and execute the registered sale deed. The documents were ready in the year 1984 as survey was conducted on 31.07.1984 and plaintiff was present at the time of survey. On 09.08.1984, plaintiff got issued a legal notice to the defendant calling upon the defendant to take back the possession to the extent of 1 acre 27 guntas which was encroached by Krishtappa and to execute the registered sale deed in favour of the plaintiff. The said notice is produced by the plaintiff which is marked as Ex.P5. The said notice does not bear the signature of the advocate who has issued it. The defendant has denied regarding receiving the notice dated 09.08.1984. The plaintiff in order to prove that service of legal notice issued on 09.08.1984 he has not examined the advocate nor

produced any records to show that the said notice was issued on 09.08.1984 to the defendant.

23. After survey was conducted and records were prepared, the plaintiff has not taken any steps for more than 2 years to perform his part of contract. After the expiry of more than 2 years, the plaintiff got issued a legal notice dated 06.08.1986 which is marked Ex.P8 calling upon the defendant to execute registered sale deed. The plaintiff has not produced records to show that the said notice was served on the defendant nor acknowledgement has been produced by the plaintiff to show that Ex.P8 was served on the defendant. Even after issuing notice as per Ex.P8, the plaintiff has kept quiet for more than 2½ years and filed a suit on 27.06.1989. The conduct of the plaintiff goes to show that the plaintiff was not ready and willing to perform his part of contract. The agreement

is of the year 1983, legal notice is of the year 1986 and the suit was filed in the year 1989.

24. Hence, the trial Court after appreciating the evidence on record has rightly held that the plaintiff has failed to prove his readiness and willingness. The first appellate Court has committed an error in reversing the finding of the trial Court. Hence, I answer the substantial question of law in affirmative in favour of the appellant. Thus, considering the material on record the plaintiff has failed to prove that he was/is ready and willing to perform his part of contract. Further, the suit filed by the plaintiff is barred by limitation. Thus, the Judgment passed by the First Appellate Court is perverse and arbitrary. Accordingly, I proceed to pass the following:

ORDER

The appeal is allowed. The judgment and decree passed by the first appellate Court is set aside and the suit of the plaintiff is dismissed.

Sd/-
JUDGE

Kmv upto para 6
mbs