



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO.2594 OF 2017 (INJ)

BETWEEN:

PRAKASHA  
S/O D R CHANDRASHEKAR  
AGED ABOUT 40 YEARS  
R/O CHANNAPURA, KUNDUR POST  
ALUR TALUK  
HASSAN DISTRICT  
PRESENTLY R/A  
C/O JYOTHI, NEAR HAMEED HOUSE  
MADANI NAGAR, 3<sup>RD</sup> CROSS  
KUTHAR LAYOUT, MUNNUR POST  
MANGALURU-571408

...APPELLANT

(BY SRI PRAMOD R, ADVOCATE)

AND:

1. MOHAMAD ASHRAF  
S/O AHAMAD  
AGED ABOUT 39 YEARS  
R/O D.NO.2-144-2  
NAZIYA MANZIL  
KUTTAR, SUBHASHNAGARA  
MANGALURU-571408

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by SHARANYA  
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Location:  
HIGH COURT  
OF  
KARNATAKA



2. NUSEEBA K A  
W/O MOHAMAD ASHRAF  
AGED ABOUT 36 YEARS  
R/O D.NO.2-144-2  
NAZIYA MANZIL  
KUTTAR, SUBHASHNAGARA  
MANGALURU-571408

...RESPONDENTS

(BY SRI K RAVISHANKAR, ADVOCATE)

THIS RSA IS FILED U/S. 100 OF CPC. AGAINST THE JUDGEMENT AND DECREE DTD 17.08.2017 PASSED IN R.A.NO.16/2013 ON THE FILE OF THE III ADDL.SENIOR CIVIL JUDGE AND JMFC, MANGALURU, D.K. AND ETC.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

### **J U D G M E N T**

Heard the learned counsel appearing for the respective parties.

2. The factual matrix of the case of the plaintiffs before the Trial Court that they are in possession of 'A' schedule property in pursuance of the agreement of sale 02.12.2008 entered into between the plaintiffs and defendant No.1. It is also the contention that entire sale consideration of Rs.2,80,000/- was paid by the plaintiffs to



defendant No.1 on the date of the execution of agreement of sale and he was also put in possession. The notice issued against the appellant herein was not served on him and hence, paper publication was taken against him but he did not appear before the Trial Court and hence, he placed exparte and the Trial Court considering both oral and documentary evidence placed on record dismissed the suit of the plaintiffs. Being aggrieved by the said judgment and decree of the Trial Court, an appeal was preferred before the First Appellate Court. The First Appellate Court having considered the grounds urged in the appeal, formulated the point that whether the appellants/plaintiffs have proved their settled possession and enjoyment of the suit property as on the date of filing this suit and whether the appellants/plaintiffs proves that the impugned judgment of the Trial Court is against law, fact, evidence and probabilities of the case and liable to be intervened by this Court. The First Appellate Court on re-appreciation of both oral and documentary evidence placed on record comes to the conclusion that the possession is with the



respondents herein considering the document of sale agreement and also other documents and allowed the appeal and granted the relief of permanent injunction and hence, the present appeal is filed before this Court by the appellant/defendant.

3. The counsel appearing for the appellant would vehemently contend that this Court has to frame the substantial questions of law since there is a divergent finding and also contended that when Ex.P7 agreement of sale alleged to have been executed by the appellant and the document have been impounded and ordered for payment of penalty, the plaintiffs failed to comply the order of Trial Court and when such being the position, First Appellate Court was not justified in accepting the inadmissible document and decreeing the suit of the plaintiffs and the very finding of the First Appellate Court is erroneous. The counsel also would vehemently contend that no summons was served on the appellant before the Trial Court and only based on the paper publication, he



was placed exparte and the said fact also not disputed by the respondents counsel.

4. The counsel for the respondents would vehemently contend that there is an agreement of sale dated 02.12.2008 and possession was delivered and rightly pointed out by the counsel for the appellant that the validity of the very agreement has not been considered by both the Courts.

5. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record it discloses that when the defence is also not taken by the appellant herein before the Trial Court since he was placed exparte based on the paper publication, it is a fit case to remand the matter for consideration afresh before the Trial Court in keeping open the grounds which have been urged by both the counsel and hence, it requires interference. Thus, the impugned judgment and decree of the First Appellate Court requires to be set aside and the matter has to be remanded to the Trial Court to



consider the issues involved between the parties afresh since the appellant also claims possession based on the unregistered sale agreement dated 02.12.2008. It is appropriate to direct the Trial Court to expedite the matter since this is a matter of the year 2009.

6. In view of the discussions made above, I pass the following:

**ORDER**

The appeal is allowed.

The judgment and decree dated 17.08.2017 passed in R.A.No.16/2013 is set aside and consequently, when this Court comes to the conclusion that the matter requires to be considered afresh, the judgment and decree dated 04.01.2013 passed by the Trial Court in O.S.No. 823/2009 is also requires to be set aside and the same is also set aside.

The respective parties are directed to appear before the Trial Court on 03.10.2023 without expecting any notice from the Trial Court and thereafter one week time is



granted to file the written statement by the appellant herein and no further time shall be granted to the appellant before the Trial Court to file written statement.

The Trial Court is also directed to dispose of the matter within a period of six months from 03.10.2023y by giving an opportunity to both the parties to lead their evidence to substantiate their case.

**Sd/-**  
**JUDGE**

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