

SUPREME COURT OF INDIA

Dr.Manohar Ganapathi Ravankar

Vs.

H. Gurunanda Raikar

C.A.No.3415 of 2019

(Dr.D.Y.Chandrachud and Hemant Gupta,JJ.,)

15.04.2019

JUDGMENT

Hemant Gupta,J.,

SLP.(C) No. 35553 of 2016

1. Civil Appeal No. 3415 of 2019 is by the Plaintiff aggrieved against the judgment and order dated 17.02.2016 passed by the High Court of Karnataka at Bengaluru declining relief for specific performance of the agreement of sale of the schedule property but granting a decree for recovery of Rs. 7,01,000/- along with interest at the rate of 12 per cent per annum from the date of payment till date of realisation. Civil Appeal No. 3416 of 2019 is by the Defendant aggrieved against the decree for payment of Rs. 6,75,000/- by the same judgment.

2. Hereinafter for facility of reference, the parties will be described as per their status before the trial court. The Defendant is the owner of non-agricultural immovable property situated in Kadri Village, Kadri Ward, Mangalore Taluk, within the Mangalore City Corporation and comprised in Rs. No. 72-11, bearing T.S. No. 1578-11G measuring 7.25 cents or 0.0725 acre with residential buildings bearing Door No. 3-3-2429, 3-30-2430, shop premises bearing Door No. 3-30-2431, which is more particularly described in the schedule to the plaint and hereinafter referred to as "the schedule property".

3. The case of the Plaintiff is that on 21.07.2006, the Defendant entered into a written agreement with him for sale of the schedule property for a total sale consideration of Rs. 30,00,000/-. A sum of Rs. 26,000/- was paid as earnest money. At the time of agreement, the Defendant has a civil dispute (OS No. 196/2005) pending against him filed by his brother. The condition in the agreement was that the Defendant will settle the pending dispute within a period of six months. But if the dispute is not resolved within six months, the time for the execution of the sale deed shall be extended by such time as mutually to be agreed upon by the parties. Some of the terms of the agreement read as under:

"1. That the 2nd PARTY PURCHASER has agreed to pay a total sale consideration

of Rs.30, 00, 000/- (Rupees Thirty Lakhs Only) towards the agreed sale of schedule property by the 1st PARTY VENDOR to the 2nd PARTY PURCHASER and out of above sale consideration, the 2nd PARTY PURCHASER has paid a sum of Rs. 26, 000/- (Rupees Twenty-Six Thousand Only) to the 1st PARTY VENDOR by means of cheque dated 21.07-2006 bearing No. 918333 drawn on Syndicate Bank, Fr. Muller's Charitable Institution Branch, Mangalore, by way of advance sale consideration, the receipt of which the 1st PARTY VENDOR hereby acknowledges. The balance sale consideration of Rs. 29,74,000/- (Rupees Twenty Nine Lakhs Seventy Four Thousand only) is agreed to be paid at the time of execution and registration of the intended Sale Deed.

5. The 1st PARTY VENDOR shall execute the Sale Deed within 6 months (Six Months) from the date of execution of this Agreement, which however can be altered only by mutual consent in writing and signed by both the parties.

6. In case, the 1st PARTY VENDOR fails to perform his part of this agreement, he shall refund the entire advance sale consideration of Rs. 26,000/- (Rupees Twenty Six Thousand Only) along with interest at 12% per annum and in addition to that he shall also pay a further sum of Rs. 5,000/- (Rupees Five Thousand Only) by way of pre-estimated liquidated damages and accordingly in such event, the 2nd PARTY PURCHASER shall be entitled to recover the said amounts from the 1st PARTY VENDOR, including the interest and cost if any incurred, for recovery of the same."

4. The Plaintiff served a notice on 25.12.2006 raising a grievance that the Defendant has not informed him about the position of the civil suit but as per his information, dispute in the family stands settled. It was stated in the notice that he is ready with balance sale consideration of Rs. 29,74,000/-. The relevant extract from the notice is as under:

"I have kept the balance sale consideration Rs.29, 74, 000/- ready and you can execute the sale deed at any time and to receive the balance sale consideration without seeking any further time and to hand over the actual physical possession. I request you to go through the accompanying draft sale deed which is sent for approval and request you to furnish upto date encumbrance certificate, taxes paid receipt, electricity and water consumption bill paid receipts so as to execute the sale deed within this week i.e. on or before 31.12.2006."

5. The Plaintiff later filed a suit OS No. 350/2007 on or about 10.12.2007 praying for the relief of specific performance of the agreement dated 21.07.2006. In the plaint, the Plaintiff pleaded that Defendant has demanded and received a further sum of Rs. 6,75,000/-. However, no date of such payment of said amount was disclosed in the plaint.

6. The Plaintiff filed an affidavit of Chief Examination on 21.01.2010, but again there is no mention of payment of Rs. 6,75,000/-. However, on 18.12.2010 another affidavit was filed by way of an Additional Chief Examination to the effect that sum of Rs. 6,75,000/- was paid but without disclosing any date of payment. It may be noted at this stage that in

the agreement, the parties have agreed to extend the time by mutual consent but there is no endorsement either on the agreement in question or by way of written note separately except, the assertion by the Plaintiff in the plaint that he has paid sum of Rs. 6,75,000/-

7. The learned trial court on 17.09.2012 decreed the suit granting decree of the specific performance of agreement of sale dated 21.07.2006 for a consideration of Rs. 30,00,000/-, and to get Registered Sale Deed executed by paying the balance sale consideration amount of Rs. 29,74,000/-. It is the Defendant who preferred appeal against the decree granted in which, the High Court has passed an order of refund of Rs. 7,01,000/- while declining the relief of specific performance of the agreement.

8. The High Court inter alia held that the Plaintiff has failed to prove that he was ready and willing to perform his part of the agreement. The High Court further held that there is nothing on record to show that as to when and how payment of Rs. 6,75,000/- was made out of balance sale consideration. The High Court then observed that it may be a loan transaction as the original title deeds were handed over to the Plaintiff. Thus, the Court granted a decree for recovery of Rs. 7,01,000/- for the reason that another sum of Rs. 6,75,000/- must have been paid at the time when the original title deed was handed over to the Plaintiff.

9. We find that the High Court erred in law in granting a decree for payment of Rs. 7,01,000/- more so when the High Court has returned a finding that the Plaintiff was not ready and willing to execute the contract merely on the basis that original title deeds might have been handed over to the Plaintiff when sum of Rs. 6,75,000/- is said to have been paid by the Plaintiff.

10. Though in the additional affidavit of Additional Chief Examination, the Plaintiff asserted that original title deeds were handed over when he paid a sum of Rs. 6,75,000/- but in the plaint, there is no such averment. In fact, the Plaintiff has filed earlier suit for injunction which was not pursued to file the suit for specific performance. The Plaintiff has averred to the following effect in the present suit for specific performance:

“2. After the plaintiff having entered into the contract for the sale of the plaintiff 'A' Schedule property, the defendant used to demand and collect money from the plaintiff and the plaintiff having paid in good faith and the defendant had received in all Rs 6,75,000/- from the plaintiff out of the balance sale consideration of Rs. 29,74,000/- and had handed over the original title documents relating to the plaintiff 'A' Schedule property. The plaintiff was and is ready and willing to perform his part of contract, i.e. to pay the balance sale consideration and get the registration of the sale deed in his favour. By letter dtd. 25-12-2006, the plaintiff had even conveyed his readiness and willingness to register the sale deed by paying the balance sale consideration and sent draft sale deed. The defendant received the said notice without demur. The defendant though showed his willingness to execute the sale deed expressed his inability to settle the pending litigation with his brother. As such the plaintiff even approached the brother of the plaintiff so as to have an amicable settlement between them. In furtherance of the said contract for the sale of

plaint 'A Schedule property, the plaintiff had got measured the property and made arrangement for the repair of the building situated in the said property."

11. Still further, in the notice dated 25.12.2006, there is no assertion of handing over of the documents of the title or payment of Rs. 6,75,000/-. In fact, the categorical assertion in the notice served is that the Plaintiff is ready and willing to pay the balance sale consideration amount of Rs. 29,74,000/-. There is no document to prove payment of Rs. 6,75,000/-, except the bald statement of the Plaintiff. There is no any other evidence to prove that sum of Rs. 6,75,000/- was paid by the Plaintiff and on which date. If payment of earnest money of Rs.26,000/- could be made by cheque, then the payment of Rs.6,75,000/- in cash is beyond any comprehension.

12. Therefore, the entire story of payment of Rs. 6,75,000/- at the time of handing over the title documents is wholly unbelievable. The Plaintiff has not asserted such fact in the plaint or in the notice served on 25.12.2006. The High Court erred in law in passing a decree for recovery of the said amount only on the basis of presumptions.

13. In view of the above, we find that the Plaintiff is not entitled to decree for relief of specific performance, in view of the finding recorded by the High Court itself that he was not ready and willing to perform his part of the contract.

14. In view of the above, the appeal filed by the Plaintiff is dismissed whereas, that of the Defendant is allowed. Since the Plaintiff has admittedly paid a sum of Rs. 26,000/-, we order that the Defendant shall pay such amount to the Plaintiff to settle equities along with simple interest at the rate of 9 per cent per annum from the date of payment till the date of realisation. The appeals stand disposed of accordingly.