
(2003) 12 KAR CK 0012

In the Karnataka High Court

Case No : Regular Second Appeal No. 253 of 2000

A.R. Parashuram Rao and Another

APPELLANT

Vs

Kamalamma and Others

RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Citation : (2004) 3 KCCR 1535

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : S.A. Kalagi, for the Appellant; C.N. Kamath, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedhar Rao, J.—The Appellants are defendants 4 and 5 in the suit. The first Respondent-Plaintiff had filed a suit for specific performance of agreement for sale dated 16.3.1987 marked at Ex.P.1. The Respondents 1 to 5 are the legal representatives of the deceased Plaintiff. The first defendant died during the pendency of first appeal. The defendants 2 and 3 who are Respondents 6 and 7 and 8 to 11 are the legal representatives of the first defendant. It is the contention of the Plaintiff that the defendants 1 to 3 executed the agreement of sale at Ex.P.1 afterwards dishonestly colluded with the defendants 4 and 5 and entered into a sale transaction under Ex.P.7. (Copy of the sale deed) the original is marked at Ex.D.5.

2. The defendants 4 and 5 earlier had filed a suit in O.S. 53 of 1987 seeking relief of permanent injunction against the defendants 1 to 3 herein not to alienate the property in favour of Plaintiff herein. The said suit came to be dismissed for default on 2.12.1988. The Plaintiff had filed written statement in OS 53 of 1987 disclosing the execution of Ex.P.1 in his favour by defendants 1 to 3. Thus the defendants 4 and 5 who are the Plaintiffs in O.S. 53 of 1987 despite the knowledge of agreement for sale at Ex.P.1 purchased the property dishonestly under Ex.D.5. The said purchase is an act of fraud and the sale deed

at Ex.D.5 is null and void. Hence, seek relief of specific performance.

3. According to defendants 4 and 5 in the present suit, the defendants 1 to 3 got the original of Ex.D.4, a sale deed drafted but failed to turn up at the time of registration, therefore the suit in O.S. No. 53 of 1987 came to be filed. There was settlement between defendants 4 and 5 on the one part and defendants 1 to 3 on the other part. The defendants 1 to 3 agreed to execute a registered sale deed therefore the suit was abandoned and came to be dismissed. Pursuant to the compromise the sale deed under Ex.D5 came to be executed for valid consideration. The defendants contend that the Plaintiff has no right to seek specific performance and prayed for dismissal.

4. The trial Court holds that the transaction under Ex.D.4 although an unregistered sale transaction, but it is valid and binding on defendants 1 to 3 therefore they could not have entered into an agreement for sale under Ex.P.1 with the Plaintiffs. The trial Court also holds that Plaintiff has failed to prove that defendants 4 and 5 are not bonafide purchasers. With said findings, dismissed the suit of the Plaintiff. The appellate Court reverses the findings of the trial Court on the ground that Ex.D4 relied on by defendants 4 and 5 is an unregistered sale deed, and it does not create any valid legal right in them and cannot come in the way of execution of Ex.P.1. The appellate Court also comes to the conclusion that Ex.D4 is shrouded with suspicious circumstances like absence of reference to Ex.D.4 in Ex.D5 is held to be a strong adverse circumstance to believe the genuineness of Ex.D.4 and Ex.D5, therefore holds that they are concocted and that the Plaintiff would be entitled to relief of specific performance, thus set aside the Judgment and decree of the trial Court and decreed the suit of the Plaintiff. Hence, this second appeal by defendants 4 and 5.

5. The following substantial question of law is framed for consideration.

Whether the appreciation of facts and evidence by the appellate Court is perversely contrary to law and evidence on record and the inferences drawn by the appellate Court is illegal calling for an interference ?

6. Sri Kamath, the Counsel for the Respondents in support of the Judgment of the appellate Court contends that the xerox copy of the unregistered sale deed at Ex.D.4 is concocted to get over the liability under Ex.P.1. The date of transaction of Ex.D.4 is disclosed as 11.2.1987 whereas the date of the signatures of a scribe an Advocate who has drafted Ex.D.4 show the date as 4.3.1987. The transaction of make believe sale under original of Ex.D.4 is concocted, later on the used stamps are surrendered and refund of the value of the used stamps is obtained from the Assistant Commissioner by his order at Ex.D.3, thereby the amount spent for stamps in Ex.D.4 substantially got refunded, and also a documentary evidence is conveniently fabricated. The Counsel with reference to the written statement of the first defendant in O.S. 53 of 1987 contends that the first defendant had categorically denied the transaction referred to in Ex.D4. The alleged compromise between defendants 1 to 3 on the one part and defendants 4

and 5 on the other part in O.S. 53 of 1987 is not reported to Court. The averment in Ex.D.5 that the sale is pursuant to the direction of the Court is an incorrect version and there is no mention of the facts relating to Ex.D.4 in Ex.D.5. Therefore the findings of the appellate Court are well founded and do not call for interference.

7. The case is one of two competing agreements between the Plaintiff on the one side and defendants 4 and 5 on the other side. The contesting parties come to know about the case of each other in O.S. 53 of 1987. The defendants 4 and 5 contend that their agreement in Ex.D.4 is earlier to Ex.P.1. On the contrary Plaintiff contends that Ex.D.4 and Ex.D.5 are concocted to get over the liability. The defendants 4 and 5 purchase under Ex.D.5 with the due notice of Ex.P.1, so also the Plaintiff become aware of Ex.D.4 in O.S. 53 of 1987. Therefore the issue whether defendants 4 and 5 are bonafide purchasers is a non-issue and both the Courts unnecessarily devoted time and attention to probe into that question.

8. The appellate Court grossly erred in holding that the transaction under Ex.D.4 being an unregistered sale deed will have no effect in law and cannot come in the way of executing Ex.P.1. From the legal stand point the transaction in Ex.D.4 all the terms were complete, except the registration of the sale deed. The vendee in Ex.D.4 presented the document for registration but the vendors-defendants 1 to 3 failed to turn up for registering the document. The contents of Ex.D.4 make it explicit that it was the intention of the parties that a regular sale deed is to be executed and registered. If for the default of defendants 1 to 3 the sale deed is not registered the document Ex.D.4 does not become an unregistered sale deed. It was not the intention of the parties that the sale is to be effected by an unregistered deed. The transaction in Ex.D.4 is still in an executory stage and stands on a better footing than a mere agreement for sale where the parties would be at the preliminary stage, but under Ex.D.4 the parties go farther ahead almost to a penultimate stage of completion. Therefore Ex.D.4 is prior in point of time and will prevail over Ex.P.1. The view of the appellate Court that Ex.D.4 is an unregistered sale deed and does not invest any equitable rights and cannot prevail over Ex.P.1 is untenable in law.

9. The fact that the scribe has signed Ex.D.4 on 11.2.1987, which is subsequent to the date of preparation of document on 4.3.1987 and further the non-mention of the circumstances of Ex.D.4 in Ex.D.5 cannot be a reason to suspect that Ex.D.4 is concocted. In that regard the Plaintiff has not placed necessary pleadings and evidence to substantiate the contention. The argument against the credibility of Ex.D.4 and D.5 appears to be based on surmise and conjecture. Therefore the view taken by the appellate Court that Ex.D.3 and D.4 are concocted is an untenable view.

10. In the first instance defendants 4 and 5 become the victims of dishonest action of defendants 1 to 3 and they had to file a suit in O.S. 53 of 1987. Later on the defendants 1 to 3 execute sale deed Ex.D.5 on 4.1.1989 and support the case of defendants 4 and 5 in the present suit regarding the genuineness of

Ex.D.4 and equally admit execution of Ex.P.1 in favour of Plaintiff. the Plaintiff even after coming to know of Ex.D.4 in O.S 53 of 1987 remains inert and does not file any suit for specific performance within the reasonable time despite contending in his written statement that he is contemplating to file a suit for specific performance. It could be that the Plaintiff may not be aware of what transpired between defendants 1 to 3 on one part and defendants 4 and 5 on other part during the pendency of O.S. 53 of 1987 which came to be dismissed on 2.12.1988, but the pendency of O.S. 53 of 1987 was in no way an impediment to Plaintiff to file the suit for specific performance against defendants 1 to 3. The present suit is filed on 27.2.1989 almost more than 2 years after his knowledge of Ex.D.4 and subsequent to execution of Ex.D.5 dated 4.1.1989 in favour of defendants 4 and 5. The Supreme Court in K.S. Vidyanadam and Others Vs. Vairavan, has held that merely because the time is not the essence of contract and that suit is filed within limitation would not necessarily follow that the relief of specific performance should be granted. The inaction and inordinate delay of the Plaintiff in not filing the suit immediately, coupled with steep increase in the prices would also be a relevant factor for rejecting the relief of specific performance. The Plaintiff in this case has not acted diligently and therefore would not be entitled to the relief of specific performance.

11. The interpretation of evidence and inferences drawn by the appellate Court is perversely contrary to law and evidence on record. Accordingly the substantial question of law is answered in affirmative. Appeal is allowed. The Judgment and decree of the appellate Court is set aside. The Judgment and decree of the trial Court is confirmed.