

(2006) 09 KAR CK 0002

In the Karnataka High Court

Case No : Writ petition No. 34648 of 2003

Danappagouda Fakkiragouda Patil

APPELLANT

Vs

Kamalawwa and Another

RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Citation : (2006) 4 KCCR 2439

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : F.V. Patil, for the Appellant; Nadiga Shivanandappa, for Respondents 2, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The Petitioner is the Plaintiff in O.S. No. 70/01 before the Civil Judge (Jr. Dn.), and JMFC., Byadgi. He filed the suit to enforce the agreement dated 11.5.91 and the supplemental agreement dated 18.7.96. Under the agreement dated 11.5.91, the Defendant agreed to sell the suit schedule property for a sum of Rs. 36,000/-. The entire sale consideration of Rs. 36,000/- was paid by the Plaintiff under the agreement and the Plaintiff was in possession of the property prior to the agreement dated 11.5.91. Though the entire sale consideration was paid, sale deed could not be executed since the lands were not re-granted to the Defendant. In the year 1996, the second agreement was executed by the Defendant acknowledging the earlier agreement and sale consideration was enhanced from Rs. 36,000/- to Rs. 41,000/- and out of the enhanced consideration of Rs. 5,000/-, Rs. 2,000/- was paid under the second agreement remaining Rs. 3,000/- was agreed to be paid at the time of registration of the sale deed after the Defendant obtaining permission from the Tahsildar to alienate the suit property. When the Plaintiff was about to mark these documents, the Defendant requested the Court to impound the documents contending that the second agreement is insufficiently stamped and the Plaintiff has to pay the duty and penalty. The trial Court upholding the objection of the

Defendant has directed the Plaintiff to pay the deficit stamp duty of Rs. 44,880/- and has not permitted to make the document in the course of the evidence. This order is challenged in this writ petition.

2. Heard Mr. F.V. Patil, Learned Counsel for the Petitioner and Sri Nadiga Shivanandappa, Learned HCGP for the second respondent. Though the first respondent is served, she is unrepresented.

3. According to Mr. F.V. Patil, the trial Court has committed an error in directing the Petitioner to pay the duty and penalty, even though the second agreement is supplemental agreement and that possession was not delivered to the Plaintiff under the said agreement. According to him, the Petitioner was in possession of the property even prior to the first agreement dated 11.5.91 and he continued to be in possession of the same. Under the second agreement, the sale consideration has been enhanced from Rs. 36,000/- to Rs. 41,000/- only. If the sale consideration is enhanced from Rs. 36,000/- to Rs. 41,000/-, it cannot be presumed that the suit properties were delivered to the Plaintiff under the part performance of the agreement for sale on the date of execution of the second agreement. When possession is not delivered to him under the second agreement, the question of paying the duty and penalty would not arise for consideration. Therefore, he requests this Court to quash the impugned order.

4. According to Mr. Nadiga Shivanandaiah, Learned HCGP, the second agreement cannot be considered as a supplemental agreement and continuation of the earlier agreements. According to him, the second agreement is a separate agreement and a fresh sale consideration arises. Therefore, the Plaintiff has to pay the duty and penalty.

5. Having heard the Learned Counsel for the parties the only point to be considered by this Court in this writ petition is that if the Plaintiff was in possession of the property much earlier to the execution of the second agreement and when no possession was delivered to the Plaintiff under the second agreement, whether, the Plaintiff is required to pay the duty and penalty.

6. The facts of this case are not in dispute. The only point to be considered by this Court, is interpretation of the two documents. If the Plaintiff has put in possession of the property under the second document, the impugned order has to be sustained, failing which, the impugned order is to be quashed.

7. Under the agreement dated 11.5.91, the Defendant has agreed to sell the suit schedule properties for a total sale consideration of Rs. 36,000/-. The entire amount of Rs. 36,000/- has been paid by the Plaintiff before the attesting authority to the document. It is also recited that possession was with the Plaintiff much earlier to the agreement dated 11.5.91 and it is also stated that the Plaintiff is cultivating the suit lands. The circumstances it is to be held that even under the first agreement, the possession is not delivered to the Plaintiff and that the Plaintiff was in possession earlier to the first agreement. The reading of second agreement reveals that except for the sale consideration from Rs. 36,000/- to

Rs. 41,000/- and payment of further sum of Rs. 2,000/- out of the enhanced sale consideration of Rs. 5,000/- nothing is stated. Therefore, it is clear no possession was delivered to the Plaintiff under the second agreement dated 18.7.96. When the possession is not delivered to him under the second agreement dated 18.7.96, it is difficult to hold that the Plaintiff has to pay the duty and penalty contending that he has to pay the duty and penalty on the ground that the possession is delivered to him. The circumstances it has to be held the trial Court has committed an error in directing the Plaintiff to pay the duty and penalty.

8. In the result, the writ petition is allowed. The order passed by the Civil Judge (Jr. Dn.), and JMFC., Byadgi in O.S. No. 70/01 dated 14.2.2003 is hereby quashed. The Rule is made absolute.