

(2015) 02 KAR CK 0057
In the Karnataka High Court
Case No : R.S.A. Nos. 5259 and 5461/2010

Dundappa and Others

APPELLANT

Vs

Hussainsab Dastageersaheb Pinjar and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0057

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : Srinand A. Pachhapure, Advocate, for the Appellant; Sachin S. Magadum, Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J.—The 4th defendant in O.S. No. 14/2008 on the file of Civil Judge (Jr. Dn.), Hukkeri, has come up in second appeal in RSA No. 5259/2010 impugning the concurrent finding of both the Courts below in decreeing the suit of the plaintiff for the relief of specific performance.

2. The brief facts leading to this second appeal are that the plaintiff is an agreement holder for purchase of the suit schedule land bearing Sy. No. 34/1D measuring 1 acre out of 2 acres 23 guntas under agreement of sale dated 28.11.2005 for valuable consideration of Rs. 1,00,000/-. As on the date of agreement it is stated that a sum of Rs. 40,000/- was paid as advance sale consideration and the balance sale consideration was required to be paid by the plaintiff to defendants 1 to 3 at the time of execution of sale deed. It is seen that on 28.11.2007 the plaintiff got issued a legal notice to defendants 1 to 3 calling upon them to execute the sale deed of suit schedule property by receiving balance sale consideration. The said notice is replied by the defendants 1 to 3 on 7.12.2007 contending that they had not agreed to sell the suit schedule property either under agreement of sale dated 28.11.2005 or on any other day. According to them they had borrowed a sum of Rs. 5,000/- from the plaintiff as and by way of security they had executed their signature on blank stamp paper and given

the same to the plaintiff, which the plaintiff has utilized for creating an agreement of sale dated 28.11.2005.

3. It is seen that thereafter original suit is filed for the relief of specific performance by the plaintiff on 4.1.2008. Even before the suit could be filed, the defendant No. 1 had sold suit schedule property in favour of defendant No. 4 under registered sale deed dated 14.12.2007 for sale consideration of Rs. 1,33,000/-. To the said sale deed the defendants 2 and 3 were not parties, though they were parties to the agreement of sale executed in favour of the plaintiff. Hence at the time of filing of the suit, in addition to defendants 1 to 3, the plaintiff had also arraigned defendant No. 4 who had purchased 1 acre in Sy. No. 34/1D.

4. In the said suit defendants filed written statement on the same lines on which they had given reply on 7.12.2007. So far as defendant No. 4 is concerned, the defence is that he is a bona fide purchaser for value without knowledge of the earlier transaction between the parties. After the pleadings were complete, the trial Court framed the following issues.

ISSUES

"1. Whether the plaintiff proves that defendant No. 1 to 3 have agreed to sell the suit property for the consideration amount of Rs. 1,00,000/- and have executed agreement of sale Dt. 28.11.05 in his favour on receipt of earnest money of Rs. 40,000/-?

2. Whether the plaintiff proves that he is ever ready and willing to perform his part of contract?

3. Whether the plaintiff proves that defendant No. 1 in order to cause loss intentionally executed a sale deed in favour of defendant No. 4 in respect of the suit property having full aware that plaintiff has entered into agreement of sale to purchase the suit property and the said sale deed is not binding on the plaintiff?

4. Whether defendants prove that the defendant No. 4 is bona fide purchaser with the knowledge of the plaintiff?

5. Is there no cause of action to the suit?

6. Are defendants entitled for compensatory costs as sought for?

7. Is plaintiff entitled for the suit relief?

8. What order or decree?

Additional issue

1. Whether the defendants prove that plaintiff is liable to pay penalty on unregistered agreement of sale as per the Karnataka Stamp Act?"

5. Thereafter the matter went into trial in which the plaintiff got examined himself as P.W. 1 and he also got examined two other witnesses i.e., scribe of the agreement of sale dated 28.11.2005 which was produced and marked as Ex. P.2 and attesting witness to Ex. P.2 as P.Ws. 2 and 3. Per contra, on behalf of defendants 1 to 3, the 1st defendant got examined himself as D.W. 1 and the 4th defendant the subsequent purchaser got examined himself as D.W. 2 and he also produced in all 4 documents out of which Ex. D.1 is the sale deed dated 14.12.2007 under which he purchased the property which was also produced by the plaintiff as Ex. P.8. In addition to that he also relied upon revenue documents which are Exs. D.2 to D.4.

6. The Court below on appreciation of the oral and documentary evidence available on record answered issues 1 to 3 which were with reference to execution of agreement dated 28.11.2005 agreeing to sell the suit schedule property for a sale consideration of Rs. 1,00,000/- and also paying Rs. 40,000/- as advance sale consideration, readiness and willingness of plaintiff for performing his part of contract and also the fact of 1st defendant executing the sale deed in favour of 4th defendant only with an intention to cause loss to the plaintiff were held in favour of the plaintiff by answering them in affirmative. So far as issues 4 to 6 which were with reference to 4th defendant who is the bona fide purchaser for valuable consideration and that there was no cause of action for filing of the suit and also regarding defendant's right to seek compensatory cost are answered in the negative. In addition to that the additional issue which was framed to consider whether any penalty is required to be paid by the plaintiff for relying upon unregistered agreement of sale under the Karnataka Stamp Act was rightly answered in the negative and consequently issue No. 7 which was related to plaintiff's entitlement in the suit is answered in affirmative. With this the suit of the plaintiff is considered in its totality for the relief, whereas the defence raised by the defendants 1 to 4 was rejected in its totality.

7. As against the finding of the trial Court the defendants 1 to 4 filed appeal in R.A. No. 23/2009 on the file of Civil Judge (Sr. Dn.), Hukkeri, wherein the lower appellate Court considering the grounds urged in the appeal memo with reference to the finding in the judgment and decree dated 16.4.2009 passed in O.S. No. 14/2008, proceeded to frame the following points for consideration.

POINTS

"1. Whether the appellants prove that the trial Court has not framed proper issues?

2. Whether the appellants prove that the judgment of the trial Court is not based on proper appreciation of oral and documentary evidence led by the defendants in the trial Court?

3. Whether the appellants have establish the fact that the trial Court has misconceived the legal principles while granting relief under specific relief act and not exercised its discretionary power judiciously?

4. Whether the appellants establish the fact that the trial Court ought to have granted the alternative relief by considering the comparative hardship caused to the appellant No. 4?

5. Whether the appellants establish the fact that the judgment and decree of the trial Court is illegal, capricious and requires interference by this Court?

6. What order?"

8. The lower appellate Court after hearing the parties answered all the points for consideration in the negative, consequently confirmed the judgment of the trial Court. As against the concurrent finding of both the Courts below the 4th defendant who is subsequent purchaser has come up in second appeal in RSA No. 5259/2010 and defendants 1 to 3 have filed another appeal in RSA No. 5461/2010. In fact, in both the appeals grounds urged are more or less one and the same.

9. In RSA No. 5259/2010 which is filed by the 4th defendant, he tried to substantiate the sale deed dated 14.12.2007 executed in his favour vide Ex. P.8 and as well as Ex. D.1 on the ground that he is a bona fide purchaser of suit property for valuable consideration without the knowledge of prior agreement of sale between plaintiff and defendants 1 to 3.

10. It is seen that the 4th defendant is the owner of land situated adjacent to the land of plaintiff and as well as defendants 1 to 3. The 1st defendant is the brother of plaintiff in the original suit and defendants 2 and 3 are the members of the very same family. The 4th defendant who is appellant in RSA No. 5259/2010 is the subsequent purchaser and as well as adjacent owner known to the plaintiff and defendants 1 to 3 and admittedly the property which is subject matter of this suit is situated in a remote village. Therefore whether to believe that the transaction took place between the plaintiff and defendants 1 to 3 is not known to neighbours is something which does not stand to reason and same cannot be believed.

11. In addition to that if the sequence of events are seen, in the agreement dated 28.11.2005 time stipulated for completion of transaction is three years. Whereas for enforcement of said agreement a legal notice is sent on 28.11.2007 by the plaintiff to defendants 1 to 3. Immediately after service of notice they have come up with a defence that they have not executed the agreement of sale in favour of the plaintiff and that suit property was not intended to be sold to the plaintiff. He is making use of the signature on blank stamp paper which they had executed for borrowing loan is being converted into an agreement of sale.

12. Assuming for a moment that the said defence is correct, what prevented defendants 1 to 3 in filing a complaint for misuse of the letter which was given for the purpose of security is not properly answered by defendants 1 to 3 in both proceedings in the Courts below. So far as the present appeal is concerned, which is filed by the defendant No. 4 who is subsequent purchaser of the

property, he has not produced any evidence to demonstrate that he is bona fide purchaser for value.

13. Admittedly the sale deed dated 14.12.2007 is executed in haste without there being any agreement of sale. The entire sale consideration appears to have been paid on the same day at the time of execution of the sale deed, thereby indicating that there was no agreement and transaction is completed in a hurry. If that is to be looked into in the background of notice dated 28.11.2007 and defendants 1 to 3 giving a reply on 7.12.2007 and subsequently within one week therefrom i.e., on 14.12.2007 the present sale deed Ex. P.8 or D.1 is executed. This clearly gives an indication that the entire transaction which is covered under Ex. P.8 or D.1 which is one and the same is with an intention to hoodwink the legitimate claim of the plaintiff who had entered into an agreement of sale on 28.11.2005 itself.

14. In that view of the matter both the Courts below while considering the pleading and evidence have rightly felt that there is an attempt on the part of defendants 1 to 3 and 4 to hoodwink the right of the plaintiff to seek specific performance. Hence the suit of the plaintiff is decreed by answering the issues framed in the original suit and as well as the points for consideration in the lower appellate Court. As against the concurrent finding in both the proceedings this Court find no grounds are made out to consider admission of these appeals and also for consequential relief.

15. In that view of the matter this Court find no justifiable grounds are made out to admit these appeals in as much as no substantial question of law arises for consideration in these second appeals. Accordingly the same are dismissed.