(2012) 08 KAR CK 0008

In the Karnataka High Court

Case No : Regular First Appeal No. 259 of 2011

M. Bhujangaveni and Others — APPELLANT

Vs

C. Sarasa K.S. Reddy and Others — RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:
Specific Relief Act, 1963 — Section 17, 20

Citation : (2012) 6 KarLJ 453

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : B.K. Manjunath, for the Appellant; P. Krishnappa and Sri Bipin Hegde, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Bopanna, J.—The appellants herein are the defendants 1 to 7 in O.S. No. 3106 of 2003. The said suit was filed by the plaintiff seeking for specific performance of the agreement of sale dated 10-3-1990 and the continuation agreement dated 24-9-1990 and for the consequential relief. The Court below after considering the rival contentions has decreed the suit by its judgment dated 2-11-2010. The defendants 1 to 7 claiming to be aggrieved by the said judgment and decree are before this Court in this appeal. The case of the rival parties in a nutshell is that the suit schedule property bearing No. L-101 in H.S.R. Layout, Bangalore, was allotted in favour of late M. Ananda Rao, the husband of the first defendant and father of defendants 2 to 7 under a letter of allotment dated 30-1-1989. Thereafter a lease-cum-sale agreement dated 3-7-1990 was executed. The possession of the site was handed over to late M. Ananda Rao under the certificate dated 27-7-1990. The plaintiff contends that since the said allottee did not have sufficient funds to pay the allotment price had requested the plaintiff for payment of the amount. Thereafter, he has executed a sale deed dated 10-3-1990 agreeing to sell the site property for the consideration of Rs. 3,05,000/-. In that regard, the plaintiff had paid the sum of Rs. 15,000/- on

15-2-1990 and a further sum of Rs. 50,000/- on 6-3-1990 and a further sum of Rs. 1,00,000/- on 6-3-1990 which in all amounted to Rs. 1,65,000/-. The further sum of Rs. 1,40,000/- was to be paid after delivery of possession certificate and lease-cum-sale agreement by the Bangalore Development Authority (for short, the ''BDA''). Since the site was under lease period, the said late Ananda Rao agreed to execute the sale deed after obtaining permission and therefore, the continuation agreement dated 24-9-1990 was executed in continuation of the earlier agreement and the balance sum of Rs. 1,40,000/- was also paid as per the details indicated in the plaint. Hence, the entire sale consideration had been paid by the plaintiff and the plaintiff was also put in possession of the site and the original allotment papers were handed over to the plaintiff. A registered General Power of Attorney was also executed on 24-9-1990. However, the lease period of ten years with BDA was to expire before the sale deed was to be executed. During the said period, M. Ananda Rao expired, which came to the knowledge of the plaintiff only in the year 2003 when it was confirmed, to the plaintiff by the first defendant. Since the defendants 1 to 7 failed to honour the agreement entered into between the plaintiff and late Ananda Rao and since they were attempting to obtain sale deed in their favour, the plaintiff got issued legal notice and thereafter instituted the suit.

2. The defendants 1 to 7 on entering appearance have filed their written statement. They have raised several contentions to deny the case of the plaintiff. Apart form contending that the Court fee paid is insufficient; suit being bad for mis-joinder of parties and that the suit is barred by limitation since agreement relied on are dated 10-3-1990 and 24-9-1990 and M. Ananda Rao died on 21-8-1994, have also denied the right of the plaintiff to seek for a decree for specific performance. They have denied that late M. Ananda Rao had agreed to sell the property for a sum of Rs. 3,05,000/-. The BDA had only executed the lease-cum-sale agreement and therefore, until completion of the ten years, there was no right to sell the property and as such, the agreement is not sustainable in law as being contrary to the provisions of law. The execution of an irrevocable Power of Attorney is also denied. The defendants contended that the plaintiff by putting forth a false case is attempting to knock off the valuable property of the defendants and the fact that the suit is filed after nine years from the date of death of Ananda Rao would indicate that the plaintiff is taking advantage of the situation. It is their contention that the plaintiff is not entitled to the discretionary relief. In any event, no direction could be sought against the BDA to execute the sale deed is their contention. The agreement even if proved was personal in nature as against M. Ananda Rao and there is no obligation on the part of the said defendants and as such it cannot be enforced against them. The defendants have therefore sought for dismissal of the suit.

3. The defendant 8 has filed a separate written statement and they have also denied the claim of the plaintiff. It is contended that the notice issued under the Act is not in accordance with the requirement. The transaction of the site being allotted in favour of the allottee Sri M. Ananda Rao and execution of the

documents in that regard is admitted. However, it is contended that the alleged agreement dated 10-3-1990 is not valid as it is executed within the period of lease which is not permissible. The allottee would not have the power to transfer during the lease period. Hence, it is contended that the plaintiff cannot claim right under such agreement and the suit is liable to be dismissed.

4. The Court below after noticing the rival contentions has framed four issues for its consideration which read as hereunder:

(i) Whether the plaintiff proves that M. Anand Rao had agreed to sell the schedule property to her?

(ii) Whether the suit is barred by limitation?

(iii) Whether the plaintiff is entitled to the specific performance sought for?

(iv) To what decree or order?

5. The plaintiff, in order to discharge the burden cast on her by the said issues examined herself as P.W. 1 and examined two witnesses as P.W. 2 and P.W. 3 and relied on the documents at Exs. P. 1 to P. 40. The sixth defendant examined himself as D.W. 1 and relied on the GPA as Ex. D. 1. The Court below on analysing the evidence has decreed the suit.

6. Heard Sri B.K. Manjunath, learned Counsel for the defendant, Sri Bhanu Prasad, learned Counsel for the plaintiff and Sri Bipin Hegde, learned Counsel for BDA and perused the appeal papers including the records received from the Court below.

7. In the light of the contentions raised, the following points arise for consideration:

(i) Whether the transaction has been proved by the plaintiff and should the specific performance be denied in view of the document dated 24-8-1990 (Ex. P. 13)?

(ii) Whether in the facts of the present case, the defendants are entitled for exercise of discretion u/s 20 of the Specific Relief Act, 1963 in their favour as contended herein?

(iii) Whether the transaction is contrary to the Site Allotment Rules of BDA giving no right in favour of the plaintiff to seek specific performance?

(iv) Whether the suit should have been dismissed as barred by limitation?

8. The plaintiff has sought for specific performance based on the agreement of sale dated 10-3-1990 and the continuation agreement of sale dated 24-9-1990. The fact that the suit schedule property was allotted to late M. Ananda Rao i.e., the husband of the first defendant and father of defendants 2 to 7 is not in dispute. The plaintiff claims that after allotment, late M. Ananda Rao executed an agreement of sale agreeing to sell the property and under the continuing

agreement received the entire sale consideration but sale deed was agreed to be executed after the lease period. The defendants have however disputed the same. The plaintiff has examined herself as P.W. 1 and has stated with regard to the nature of the transaction, the sale consideration agreed at Rs. 3,05,000/- and the manner in which the payments were made. The entire payment except the last two payments were either by Cheque or Pay order. Hence, the entire sale consideration was paid before 24-9-1990. The sale deed was to be executed after obtaining clearance from the BDA or after the lease period coming to an end. The custody of the documents and the possession of the property was however handed over to the plaintiff. The defendants 1 to 7 were also aware of the transaction as they had sworn to affidavits, this fact was also stated by P.W. 1. Since the demand made was not complied, it is stated that the suit was filed. Though the said P.W. 1 has been cross-examined in detail, except the suggestions being made to deny the transaction and such suggestions being denied, the evidence of P.W. 1 does not stand discredited and has not been pointed out that it is unreliable.

9. Thereafter one Sri V. Srinivasa Rao who is one of the witnesses to the agreement was examined as P.W. 2, who has stated about the transaction and he being a witness to the document dated 24-9-1990 and the balance payment being made in his presence. Sri K.V. Venkatesh, son of the witness to the earlier agreement dated 10-3-1990 has been examined as P.W. 3 and he has identified the signature of his father, since by then his father was no more. He has further stated that he was present along with his father and is aware of the transaction taking place. The witnesses have been cross-examined but nothing has been extracted to discredit the case of the plaintiff which was putforth by them. Though the defendants have suggested that it is not the signature of late M. Ananda Rao and that he was not present, the defendants have not placed any material in their evidence to show the admitted signature of their predecessor is in fact different from what is found in the agreements. In fact, the signature of late Ananda Rao available on the Possession Certificate is similar to what is found in the agreement and as such, the fact that it has been executed by late M. Ananda Rao cannot be disputed.

10. In that light, the documents brought on record will disclose that the suit schedule property is allotted to late M. Ananda Rao on 30-1-1989 (Ex. P. 9). The initial remittance challans are at Exs. P. 10 and P. 11. The Possession Certificate dated 27-7-1990 to indicate that BDA had handed over possession to M. Ananda Rao is at Ex. P. 12 and the Khatha Patra is at Ex. P. 18. The said Ananda Rao who thus became entitled to the property entered into an agreement dated 13-3-1990 (Ex. P. 1) and the fact that the documents came from the custody of the plaintiff shows about the genuineness of the transaction. What is most relevant to be noticed further is that all the defendants 1 to 7 have sworn to independent affidavits dated 17-3-1990 and 21-3-1990 indicating knowledge of the transaction and declaring that it is the absolute property of M. Ananda Rao and they have no objection to the transaction. The said affidavits are at Exs. P. 2

to P. 8. Thereafter, the document at Ex. P. 13 dated 24-9-1990 is entered into. The GPA dated 24-9-1990 (Ex. P. 14) has also been executed in favour of the plaintiff and registered. Further, an affidavit is also sworn to by Ananda Rao as per Ex. P. 15. The document at Ex. P. 16 is a letter addressed by Ananda Rao to BDA authorising the transfer of the site to the plaintiff. The challan-cum-receipt at Ex. P. 17 is to indicate that plaintiff has paid tax on 1-11-1998 and has retained the receipt. The receipts paying the amount by cash are at Exs. P. 31 to P. 36. The claim made with BDA, notice issued to the defendants and the endorsement of BDA are also marked as Exs. P. 19 to P. 27. The above said documents will conclusively prove that the site which was allotted to late M. Ananda Rao was agreed to be sold by him to the plaintiff and the entire sale consideration had been paid as far back as on 24-9-1990.

11. The question however is as to whether the contention of the learned Counsel for the defendants that the document dated 24-9-1990 (Ex. P. 13) is in the nature of a sale deed and therefore specific performance cannot be sought can be accepted in the facts of the case. The learned Counsel has advanced two-fold contentions, one that it amounts to novation of the earlier agreement dated 10-3-1990 and there is no agreement as such. Secondly, the document at Ex. P. 13 is the sale deed and therefore, it required registration u/s 17 after paying necessary stamp duty. From the decisions relied on by the learned Counsel for the defendants in Dina Ji and others Vs. Daddi and others, ; in the case of Suraj Lamp and Industries (P) Ltd. thru. DIR Vs. State of Haryana and Another, and Tulajappa and Others Vs. Subhas and Others, there can be no quarrel with regard to the position of law that a sale deed to convey immovable property, the value of which exceeds Rs. 100/- is to be registered and only such document could be marked in evidence. But, the nature of the document has to be understood by keeping in view the manner in which the parties have understood and acted upon the same in the background of the real transaction between the parties.

12. The plaintiff, both in the pleading and evidence has construed it as a continuation agreement and the relief prayed is also based on Exs. P. 1 and P. 13. The learned Counsel for the defendants no doubt refers to the contents of Ex. P. 13 to point out that it is in the nature of sale deed and as such, it should have been appropriately stamped and registered and only then it could have been received in evidence. However, the fact situation herein cannot be overlooked. The plaintiff is not seeking ownership right under the said document at Ex. P. 13, nor is he seeking a declaration that he be declared the owner based on that document. All the parties to the transaction were clear about the situation that the lease-cum-sale agreement was executed in favour of M. Ananda Rao on 3-7-1990 and the document dated 24-9-1990 (Ex. P. 13) was executed thereafter. However, it was within the knowledge of all the parties that the sale deed cannot be executed and registered at that stage and that the sale deed can be obtained after the lease period without violating the terms of allotment, as at that time the BDA Allotment Rules had not been amended to provide for

condonation on paying 25% of the value. This understanding of the parties is evident from the fact that on the same day, a GPA (Ex. P. 14) was executed and the same was registered and therefore, there was no reason why they would not have registered the sale deed if there was no legal impediment as on that day. In fact, an affidavit also has been sworn to by Ananda Rao to couple the transaction with interest. It was because of such understanding of treating it as a continuing agreement, it has been drawn out on a stamp paper the value of which was not that of a sale deed. The said document would demonstrate that it was to acknowledge the receipt of the entire amount and to show that except for the registration everything else has been completed. The document cannot therefore be construed as a sale deed. Hence, the contention of the learned Counsel for the defendants in that regard cannot be accepted and the point No. (i) raised above is accordingly held against the defendants.

13. The learned Counsel for the defendants further on making reference to Section 20 of the Specific Relief Act, relied on the decisions, in the case of K. Narendra Vs. Riviera Apartments (P) Ltd., in the case of Waheed Baig Vs. Bangi Lakshmamma and Others, and in the case of Mirahul Enterprises and Others Vs. Mrs. Vijaya Sirivastava and Mr. R.R. Sood, and contended that the specific performance should be denied in the instant case. He contends that the predecessor has agreed to sell for a meager price as compared to the sale price. Referring to the evidence, he would contend that the plaintiff is in real estate business and is not in need of the property for personal use. On the other hand, the said M. Ananda Rao has left behind seven survivors and the site would be beneficial to their livelihood as they have no other property in Bangalore.

14. The fact that Section 20 of the Act gives such discretion cannot be in doubt and the decisions referred are also cases where discretion has been exercised in different circumstances keeping in view the facts arising therein. At the outset, the provision itself indicates that the discretion cannot be arbitrary, but should be sound and reasonable, guided by judicial principles. If this is kept in its correct perspective and the instant facts are noticed, the sale consideration agreed is in the year 1990 for the prevailing market price. The property in fact was allotted for Rs. 91.236/- from the BDA and was immediately on its allotment agreed to be sold for Rs. 3,05,000/- and the entire sale consideration was paid before 24-9-1990. The money value at that point needs to be taken into consideration. Even if the avocation of the plaintiff as alleged is accepted to be correct, it is not one such case where agreement has been entered and a nominal advance has been paid and plaintiff was speculating for better price without getting the transaction completed. On the other hand, the entire sale consideration was paid, but, the plaintiff had to wait all these years to secure sale deed and if in the meanwhile, the value has gone up, it cannot be construed as an act of speculation. The plaintiff herself is seeking for specific performance and it is not by any nominee or assignee to show that she has acted as a intermediary. Since at that stage, she had paid the entire sale consideration and in a normal circumstance, but for the legal impediment if she had got the sale deed in her

favour, she would in any case have been entitled to the appreciated value. That apart, it is not as if the defendants were not aware of the transaction. All of them have sworn to affidavits (Exs. P. 2 to P. 8) in the year 1990 itself. Though M. Ananda Rao expired as far back as on 21-8-1994, they have not made any effort to claim right to the property until the plaintiff sought to exercise her right to secure the sale deed in her favour. In a normal circumstance, they should have exercised their right in the year 1994 itself. Hence, the right which has accrued in favour of the plaintiff cannot be denied in the present facts merely because discretion is available to this Court, when it cannot be exercised keeping in view the sound judicial principles. Hence, Point No. (ii) is answered against the defendants.

15. The next question is as to whether the transaction is contrary to Site Allotment Rules of BDA. In this regard, Rule 14 of the Bangalore Development Authority (Allotment of Sites) Rules, 1984, wherein an embargo is placed against sale within the lease period is heavily relied on by the learned Counsel for the defendants. Reliance on the decision in the case of Y.R. Mahadev Vs. K. Dayalan is placed to contend that the agreement of sale cannot be executed during lease period. In that case, the agreement was not only executed, but the sale transaction was also agreed to be completed within three years during the subsistence of the lease period and enforcement was also sought within the lease period. In the instant case, though the agreement is entered, the period agreed for execution of sale deed is after the lease period or after clearance is obtained from BDA and enforcement sought is after lease period. The learned Counsel for the plaintiff has on the other hand relied on the amendment to the said Rule and the decisions in the case of Commissioner, Bangalore Development Authority Vs. S. Vasudeva and Others, and in the case of S. Ravindra Vs. Bangalore Development Authority and Another, to contend that even if there is violation, it can be validated and in the instant case, even that situation has not arisen as the registration would be after the lease period. The learned Counsel contends that the defendants cannot take shelter under the Rule since in any event they are bound by the agreement.

16. In that light, in the instant case, as already noticed, the above document dated 24-9-1990 (Ex. P. 13) cannot be construed as a sale deed. If that is kept in view, there is no alienation made within the period of embargo nor is it agreed to be sold within the period of embargo so as to make it contrary to the Rules. Further, as indicated from the decisions cited by the learned Counsel for the plaintiff on the amendment being made to the said Rule, even such sale made is permitted to be validated subject to the condition stated therein and compliance of such condition contemplated therein. In any event, the plaintiff had agreed to secure the sale deed after the period of embargo and is seeking to enforce the agreement also after the period of lease. Hence, it cannot be said that the Rule has been violated and that question would not arise at all as the specific performance is not being sought during the lease period. Further, the question of denying the relief for want of issue of statutory notice u/s 64 of BDA Act,

notwithstanding the decision relied on by the learned Counsel for the defendant, in the case of K.P. Arvind Vs. Government of Karnataka, does not arise in the instant facts as it is a different set of circumstance. The BDA in their written statement have admitted receipt of notice but have stated only about it not being for the period required. However, it is seen that notice is issued on 13-3-2003 and the suit is filed on 28-4-2003. In any event, the demand for action from BDA is not due to certain inter se right so as to seek compliance. The relief though ultimately is for execution of sale deed, the same is due to the contract between the private parties, the validity of which would be decided by the Court and the direction would be issued thereafter. Insofar as the relief of specific performance, the BDA has clarified that they have no objection if direction is issued and they would comply with the same. Hence, keeping in view the substantive issue, the relief cannot be denied on hyper-technical contention only for the sake of denying the relief. Point No. (iii) is also held against the defendants.

17. In fact on the question relating to limitation, the Court below itself had framed issue No. 2 and has considered the same elaborately. It was agreed between the parties vide Ex. P. 1 that the sale deed would be executed after the lease period or on seeking clearance which was after happening of the event. Hence, time cannot be held as the essence of contract in the instant case, since the right to seek specific performance was only after the lease period of ten years and the cause of action had arisen after the completion of the lease period and the suit was filed on 28-4-2003. Preceding the same, notice was issued and an endorsement dated 5-5-2003 had also come into existence. The discussion made by the Court below on that point indicates that the suit was filed within time. This is also fortified by the decision in the case of Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and Another, and in the case of C. Nazeer Ahmed Vs. S. Jahan Ara, relied on by the learned Counsel for the plaintiff. Hence, Point No. (iv) is also held against the defendants.

That being the position, on having reappreciated the evidence available on record and in that light having perused the discussion made by the Court below, the finding rendered by the Court below is in accordance with law in the backdrop of the factual matrix in the instant case. Hence, I find no error committed by the Court below so as to call for interference with the judgment and decree impugned in this appeal. In the result, the following.-

ORDER

(i) The appeal in RFA No. 259 of 2011 is dismissed.

(ii) The parties shall bear their own costs.

