

(2016) 01 KAR CK 0016
In the Karnataka High Court
Case No : R.S.A. No. 5098/2011 (S.P.)

Ningawwa and Others

APPELLANT

Vs

Pramila Basavaraj Muchandimath and Others

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 77A

Citation : (2016) 01 KAR CK 0016

Hon'ble Judges : B.V. Nagarathna, J.

Bench : Single Bench

Advocate : F.V. Patil, Advocate, for the Appellant; S.G. Kadadakatti, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—1. The plaintiff in O.S. No. 147/1999 has preferred this appeal, assailing judgment and decree passed in R.A. No. 207/2008 by the III Additional District Judge, Belgaum dated 08.11.2010, confirming the judgment and decree passed in O.S. No. 147/1999 dated 05.08.2008 passed by the Principal Civil Judge (Sr. Dn.), Gokak.

2. For the sake of convenience, parties shall be referred to, in terms of their status before the trial Court.

3. The original plaintiff is Adivappa Yallappa Kapashi. He died during the pendency of the suit and has been thereafter represented by his legal representatives. The said plaintiff filed the suit seeking specific performance of agreement to sell dated 10.08.1997 in respect of agricultural land bearing Sy. No. 793/2C, totally measuring 11 acres 29 guntas 0.10 potkarab at Beeranagaddi village, Gokak Taluk, Belgaum District. It is the case of the plaintiff that the deceased defendant, Basayya @ Basavaraj Dundaiah Muchandimath was in service and worked at various places and after retirement settled at Bangalore. He was unable to cultivate the suit land and therefore had tenanted

the said land to the plaintiff since the year 1965 on "Lavani" basis. That the plaintiff has been in possession and cultivation of the suit land which is irrigated land by drawing water from the land owned by him in Sy. No. 793/2B. The defendant intended to sell the suit land on account of family necessity and plaintiff agreed to purchase the land for a sale consideration of Rs. 1,60,000/-. That an advance amount of Rs. 80,000/- was paid to the deceased defendant on 10.08.1997 who executed the agreement to sell on the said date. It was agreed by the parties that the balance sale consideration should be paid at the time of registration of the sale deed. The sale transaction was to be completed by the end of May 1999.

That the plaintiff was already in possession of the suit land as a tenant and continued his possession as a prospective purchaser. As a prospective purchaser he constructed a house bearing V.P.C. No. 932 and has been residing in the said house. That the plaintiff was always ready and willing to perform his part of contract vis-a-vis paying balance sale consideration. But the defendant did not come forward to execute the registered sale deed. Several requests made by the plaintiff to the defendant to perform his part of contract were futile. Therefore, contending that there has been breach of the terms and conditions of the agreement to sell, plaintiff filed a suit for specific performance of the said agreement and in the alternative, for the relief of refund of earnest money of Rs. 80,000/- with interest at 18% p.a.

On receipt of suit summons and notices from the trial Court, the original defendant appeared and filed his written statement, contending that the suit filed was false, frivolous and not tenable in the eye of law. That, he is owner of the suit land; when he was in service, he worked at various places and after retirement was settled at Bangalore and also was at Gokak. That the plaintiff was cultivating the suit land on "Lavani" basis for some years. It was emphatically denied that the suit land was offered for sale to meet family requirements or that the plaintiff had agreed to purchase the same for Rs. 1,60,000/-, that no earnest money was received by the defendant as no agreement to sell was entered into between the parties. The document styled as agreement to sell dated 10.08.1997, was not admitted by the defendant. It was also denied that suit land remained in possession of the plaintiff as a prospective purchaser pursuant to agreement to sell. It was also denied that plaintiff did not irrigate suit land nor had he constructed any house therein and that there was no breach of contract made by the defendant as the defendant was not intending to sell the said land. Therefore no decree for specific performance of the agreement or any alternative relief could be granted to the plaintiff. The defendant further averred that he was in possession and enjoyment of the suit land and was cultivating it through hired labour and that plaintiff had created a false document to knock off the land, that the signature on the agreement to sell was not that of the defendant and the document styled as agreement to sell dated 10.08.1997 was a forged, fabricated and false document. Hence, the defendant sought dismissal of the suit.

4. After institution of the suit, both the original plaintiff as well as the original defendant died. They were represented by their legal representatives before the trial Court.

5. On the basis of the rival pleadings the trial Court framed the following issues for its consideration.

ISSUES

1) Whether the plaintiff proves that the defendant executed an agreement of sale on 10.08.1997 in his favour in respect of the suit property for consideration of Rs. 1,60,000/- and received earnest money of Rs. 80,000/- as alleged?

2) Whether the plaintiff proves that from 1965 to date of execution of agreement of sale he was in possession of the suit property on Lavani basis and after execution of the said agreement of sale his possession is continued from the defendant as prospective purchaser?

3) Whether plaintiff proves that he was and is always ready and willing to perform his part of contract?

4) Whether defendant proves that the alleged agreement of sale is forged, fabricated, concocted and created document only to gulp his suit property?

5) Whether the plaintiff is entitled to the relief of specific performance of contract as sought for?

6) Whether plaintiff alternatively proves that he is entitled for refund of earnest money of Rs. 80,000/- from the defendant together with interest at 18% per annum and damages of Rs. 80,000/-?

7) What decree or order?

In support of his case, the plaintiff examined three witnesses and they produced 71 documents, which were marked as Ex. P. 1 to Ex. P. 71. Defendant examined four witnesses, he produced 74 documents which were marked as Ex. D. 1 to Ex. D. 74. The Court Commissioner was examined as C.W. 1. Through him Ex. C. 1 to Ex. C. 5 were marked in evidence. On the basis of the said evidence the trial Court held issue Nos. 1 to 3 and issue Nos. 5 and 6 in the negative, issue No. 4 in the affirmative and dismissed the suit with costs and awarded compensatory costs of Rs. 3,000/- to the defendant.

6. Being aggrieved by the judgment and decree of trial Court dated 05.08.2008 the legal representatives of plaintiff filed R.A. No. 207/2008 before the first appellate Court, which, on hearing learned counsel for respective parties framed the following point for its consideration.

POINT

Whether the learned trial Judge has grossly erred in properly appreciating the oral and documentary evidence available on record in the light of settled

principles of law and that whether the inference by this Court in the impugned judgment and decree is necessary? ---

The first appellate Court answered the point in the negative and dismissed the appeal.

7. Being aggrieved by the judgment and decree of the first appellate Court, which has affirmed judgment and decree of the trial Court, legal representatives of the plaintiff have filed this regular second appeal.

8. I have heard arguments of learned counsel for appellants and learned counsel for respondents and perused the materials on record and also the original records.

9. It is contended on behalf of the appellants that both the Courts below were not right in holding that the agreement to sell dated 10.08.1997 which is marked as Ex. P. 1 is an agreement which has not been executed by the defendant Basayya. It is contended that the trial Court had referred the matter to a handwriting expert and the signature on Ex. P. 1 and also other signatures were referred to handwriting expert as by then, defendant had died and the handwriting expert opined that signature of original defendant was not consistent. Further, the relationship between the parties, namely, the plaintiff and the defendant was so cordial, therefore, the plaintiff did not seek occupancy rights in respect of the lands in question. As he was a tenant of the suit lands, instead he agreed to purchase the same for a valuable consideration of Rs. 1,60,000/-. Defendant agreed to sell the said land to plaintiff and received advance amount of Rs. 80,000/- but defendant failed to execute the sale deed in favour of the original plaintiff. Therefore, he was constrained to file suit for specific performance.

10. Further, it is contended that the trial Court was not right in holding that there was no valid agreement to sell, which had been executed by the defendant and trial Court and was not right in disbelieving the said document. He contended that the original plaintiff could have filed Form No. 7 seeking grant of occupancy right in respect of land in question as a tenant before the Land Tribunal but plaintiff did not seek grant of such rights as the defendant had offered to sell the land to him. Therefore, learned counsel contended that trial Court as well as the first appellate Court were not right in holding that the agreement to sell was not a valid document and that it was a forged, fabricated and concocted instrument and thereby not granting the decree for specific performance. He contended that at least alternative relief could have been granted as the earnest money had been paid by plaintiff to original defendant but that relief was also negatived. Learned counsel submitted that substantial question of law would arise in this appeal which would call for admission of the matter for a detailed hearing.

11. Per contra, learned counsel for the respondents supporting the concurrent findings and judgments of the Courts below contended that the Courts below have rightly given findings on facts which cannot be assailed in this appeal. That,

both the Courts below have come to concurrent conclusion that the agreement to sell was a fabricated and concocted document. That the extent of land was 11 acres and 29 guntas, the same could not have been agreed to be sold by the defendant for a pittance, namely for a sum of Rs. 1,60,000/- as contended by the plaintiff, that the entire object of the plaintiff was to knock off the suit land as the defendant was not permanently residing in Gokak and taking advantage of the fact that original defendant was in service and was posted in various places and after retirement was at Bangalore, with an oblique motive, Ex. P. 1 was fabricated. He therefore contended that the judgments of the Courts below would not call for any interference and that the appeal may be dismissed as no substantial question of law arises in the matter.

12. Having heard learned counsel for the parties and on perusal of the material on record as well as original records it becomes clear that plaintiff had sought for specific performance of agreement to sell dated 10.08.1997 said to have been executed by defendant in respect of land bearing Sy. No. 793/2C measuring 11 acres 29 guntas 0.10 potkarab, situated at Beeranagudi village, Gokak Taluk, Belgaum district. It is also an admitted fact that the said extent of land was tenanted land and even according to plaintiff since the year 1965 original plaintiff was in possession of the said land as a tenant on "Lavani" basis, i.e., lease basis. Judicial notice would have to be taken note of the fact that, in the state of Karnataka agricultural lands which were tenanted stood vested with the State Government on the amendment made to the Karnataka Land Reforms Act in the year 1974, with effect from 01.03.1974. Any person who was a tenant on 01.03.1974 could have filed Form No. 7 under the provisions of Land Reforms Act, 1961 seeking grant of occupancy rights in respect of tenanted land. The Tribunal would have to then consider such an application and adjudicate on the question of grant of occupancy rights. But, curiously in the instant case plaintiff did not file any such application in Form No. 7 before the Land Tribunal. But the fact remains that by operation of law all tenanted agricultural lands in the State stood vested in the State Government free from all encumbrances. From that day onwards there could not have been any alienation made in respect of vested lands till any adjudication in respect of the said land has taken place in case any application in Form No. 7 had been filed by the tenant. Further, even if application was not filed by a tenant, further opportunity was given to such a tenant to file application in Form No. 7A pursuant to insertion of Sec. 77A of the Karnataka Land Reforms Act, 1961. Admittedly, plaintiff did not file any such application in Form No. 7 or even after enforcement of Sec. 77A of the Act in Form No. 7A. But the fact remains that in the interregnum, i.e., after the last date for filing application in Form No. 7 and prior to insertion of Section 77A in the Land Reforms Act, Ex. P. 1 dated 10.08.1997 is said to have come into existence.

13. It is the case of plaintiff that entire extent of 11 acres 29 guntas was offered for sale for Rs. 1,60,000/- by the defendant to the plaintiff, who was none other than the tenant on "Lavani" basis. This document has been denied by the original

defendant as well as his legal representatives. The Courts below having gone into the question of validity of said document and have come to a conclusion that said document was not valid in the eye of law and the evidence let in by both the sides have been considered and it has been held that the said document is a fabricated and got up document and on that basis, have refused to grant any relief of specific performance of the agreement to sell. These findings are on facts. In view of the Courts below not believing the validity of agreement to sell dated 10.08.1997 and coming to a conclusion that no such document was executed by the original defendant consequently rejected even the alternative relief as the claim for refund of earnest deposit of Rs. 80,000/- with interest at 18% p.a. which stemmed from Ex. P. 10 which was disbelieved by both the Courts below. Therefore, on the validity of the agreement to sell, i.e., on the existence of a valid agreement concurrent, findings of the Courts below have attained finality.

14. That apart, even if for a moment it is assumed that there indeed was an agreement to sell dated 10.08.1997 it is noted that suit schedule lands having vested with the State Government, on coming into force of the Karnataka Land Reforms Amendment Act in the year 1974, nothing prevented the plaintiff from filing Form No. 7 seeking grant of occupancy rights of the said lands. The original plaintiff for reasons best known to him did not file any such application seeking grant of occupancy rights. That apart even after insertion of Section 77A to the Karnataka Land Reforms Act 1961 an opportunity was available to all agricultural tenants such as the plaintiff herein to seek occupancy rights in respect of tenanted lands by filing Form No. 7A. Insertion of Section 77A by amendment came in the year 1998.

15. Even after the amendment made to the aforesaid Act, original plaintiff did not take steps to seek grant of the suit lands. Rather the case of plaintiff is that the defendant agreed to sell the lands in question to plaintiff on 10.08.1997, by then, all agricultural lands which were tenanted had stood vested in the State Government and the said vesting was by operation of law. No transaction in respect of any such vested lands could have been made by either the landlord or the tenant. The tenant could only seek grant of occupancy right in respect of the tenanted land and if occupancy rights of tenanted land was granted to tenant then in that case the landlord could seek compensation. Therefore, even if for a moment it is assumed that Ex. P. 1 was a valid agreement the said agreement cannot be enforced. Even if it is assumed that the agreement in question is a valid agreement, as no transaction in respect of the vested lands could be entered into after the tenanted lands had vested with the State Government, the said agreement cannot be enforced in a Court of law.

In that view of the matter, the Courts below were right in refusing to grant the relief of specific performance of agreement to sell dated 10.08.1997 to the plaintiff. The appeal does not raise any substantial question of law. Hence, the appeal is dismissed. Parties to bear their respective costs.