

(2003) 10 KAR CK 0022

In the Karnataka High Court

Case No : Regular Second Appeal No's. 123 and 124/97

Sharanappa deceased by his LRs. and Others

APPELLANT

Vs

Sumitrabai and Others

RESPONDENT

Date of Decision : 23-10-2003

Acts Referred:

Specific Relief Act, 1963 — Section 20

Citation : (2004) ILR (Kar) 3605 : (2004) 3 KCCR 1476 : (2004) 4 RCR(Civil) 87

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Vigneshwara S. Shastry, for the Appellant; C.S. Prasanna Kumar, for the Respondent

Judgement

K. Sreedhar Rao, J.—The first respondent and the subject matter in these appeals are different but the appellant is the same. The facts and the questions of law involved are similar. Common evidence is let-in in both the cases. Apart from the two appeals now under consideration, the appellant had filed RSA 206/97 and RSA 207/97. All these appeals arise out of the judgment and decree passed in O.S. No. 21/87 and O.S. No. 59/86 on the file of Munsiff Kustagi.

2. For convenient discussion, the respondents hereinafter called plaintiffs and the appellant as defendant.

3. The plaintiffs filed a suit for declaration of title and injunction, in alternative seek relief of possession of the suit property from the appellant/defendant. The plaintiffs claim to be the absolute owners of the suit property and allege that the defendant is illegally interfering with their possession and enjoyment. Hence, the suit.

4. The defendant sets up a counter claim in both the suits seek relief of specific performance on the strength of agreement of sale Ex.D.1 executed by the plaintiff in each of the suit. The Trial Court dismissed the suit of the plaintiffs allowed the counter claim, directed execution of sale deed by receiving balance

of consideration. The plaintiffs aggrieved by the judgments and decrees preferred RA 29/90 and RA 30/90 on the file of Civil Judge, Senior Division, Koppal. The appeals were allowed. The judgment and decree for specific performance granted in favour of the first respondent is set aside. The title of the plaintiffs is declared. The defendant is directed to deliver the possession of the property to the plaintiff. Aggrieved by the said judgments and decree, the defendant filed RSA 124/97 and RSA 206/97 as one set and RSA 123/97 and RSA 207/97 as another set.

5. The four appeals filed by the appellant are in fact duplicated proceedings. All the four appeals came to be dismissed for non-prosecution. Civil Petitions were filed in respect of the present appeals and they came to be restored. The other two appeals RSA 206/97 and RSA 207/97 have not been restored to file because no civil petitions are filed for restoration of the said appeals. Any way the present two appeals filed comprehensively covers the challenge to declaration of title and relief of possession granted in favour of plaintiffs in each suit and also challenge the dismissal of the counter claim.

6. The admission Judge has framed the common questions of law in RSA 124/97 and RSA 207/97 as follows:

1. Whether the first Appellate Court was justified in rejecting the counter claim made by the first defendant when the appeal filed by the plaintiff was only in regard to the dismissal of the suit and not in regard to grant of counter claim?
2. Whether the first Appellate Court was justified in reversing the decision of the Trial Court on the facts and circumstances of the case?

7. The following are the common questions of law framed by the Admission Judge in RSA 123/97 and RSA 206/97:

1. Whether the first Appellate Court was justified in rejecting the counter claim made by the first defendant when the appeal filed by the plaintiff was only in regard to the dismissal of the suit and not in regard to grant of counter claim?
2. Whether the first Appellate Court was justified in reversing the decision of the Trial Court on the facts and circumstances of the case?

8. The additional question of law is formulated as follows:

"Whether the Appellate Court was in error in not formulating a point and considering the facts and evidence relating to the readiness and willing on the part of the defendant to perform his part of the contract. Without a finding thereof the Trial Court failed to consider the tenability of claim for specific performance u/s 20 of the Specific Relief Act? For not doing so, whether it warrants an order of remand?"

9. When the defendant seeks relief of specific performance implicitly admits the title of the plaintiff. Therefore without any sense of demur, the title of the plaintiff has to be declared and there cannot be any doubt about the title of the plaintiffs.

The grant of consequential relief of injunction or alternatively the grant of relief of possession is subject to the result of the counter claim of the defendant. The Courts below have indulged in unnecessary elaborate discussion on the question of title which was totally unwarranted. The plaintiffs does not refer to the agreement of sale in the plaint but as an objection to the counter claim of the defendant denies the execution of agreement of sale marked in each case as Ex.D1 and contend that the document is concocted.

10. The defendant has examined attesting witness to Ex.D.1 in each case but they have turned hostile and do not support the case of the defendant. The specimen signatures of the plaintiffs in each case are obtained by the Trial Court. On comparison of the admitted signature with the specimen signature the Trial Court comes to the conclusion that Ex.D. 1 in each case is executed by the plaintiffs in each suit, despite the fact that the scribe and attesting witnesses have turned hostile. The Trial Court refers to some of the attending circumstances in coming to the conclusion that the plaintiffs have executed Ex.D.1 and delivered possession to the defendant. The sale consideration agreed was Rs. 7,000/- in O.S. No. 21/87 and Rs. 6,000/- in O.S. 15/86. In both the cases an advance of Rs. 5,000/- was paid, the balance was agreed to be payable at the time of registration. Pursuant to the agreement, the defendant has taken mutation of his name in the land revenue records and continued to be in uninterrupted possession and enjoyment.

11. The suits came to be filed almost 10 years after Ex.D.1. The plaintiffs in each case seek declaration of title and recovery of possession. The Trial Court finds that the agreement of sale is lawfully executed, granted the decree of specific performance.

12. The Appellate Court on the other hand found that the agreement of sale Ex.D.1 in each case is not proved since the attesting witness and the scribe have not corroborated and supported the case, only the self serving testimony of the defendant is on record. The evidence of Dws. 5, 6 and 7 in each of the case who are the scribe and the attesting witness indicates that Ex.D.1 was not executed in their presence as stated by defendant and they do not support the case of the defendant. The Appellate Court also finds that the opinion arrived at by the Trial Court by comparing the disputed and admitted signatures without the aid of an expert opinion was improper. In this regard relied on the ruling of the Supreme Court in The State (Delhi Administration) Vs. Pali Ram, . The defendant had not taken steps to get the documents referred to handwriting expert's opinion. For the said reason, the finding that the defendant has failed to prove the execution of agreement of sale is sound and proper and there is no error of law in the appreciating the evidence and drawing legal inference.

13. The Counsel for the respondent relied on the ruling of the Supreme Court in Jaffar Hussain Ebrahim and another Vs. M/s. Taiyabali Dawoodji Rangwala and another, . In para 11, the following observations are made:

"..... . With great respect, we are unable to agree if the said decision is understood as saying that the said factor is not at all to be taken into account while exercising the discretion vested in the Court by law. We cannot be oblivious to the reality and the reality in constant and continuous rise in the values of urban properties-fuelled by larger scale migration of people from rural areas to urban centers and by inflation. Take this very case. The plaintiff had agreed to pay the balance consideration purchase the stamp paper and ask for the execution of sale deed and delivery of possession within six months."

The inflationary phenomenon has equally affected the value of the agricultural lands and there has been a sudden enormous spurt in the asset value of the agricultural lands. The defendant in this case paid part of the consideration amount take possession of the property. The terms of document does not stipulate any time limit for performance therefore taking advantage of the absence of time limit keeps quiet almost for 10 years. The defendant does not take any steps to offer the balance of consideration and seek registration of the sale deed.

14. The unpaid balance in both the cases may be a small amount compared to the total consideration but none the less the defendant takes possession of the property pays only the part of consideration, remains unaccountable for the balance. Only when the plaintiff files a suit, as a counter claim, he seeks relief of specific performance on the strength of agreement of sale. The explanation given by the defendant is only a technical explanation that there is no refusal and that there is no time fixed for performance. There is nothing on record by way of evidence to show what prevented the defendant in not offering the balance of consideration and to obtain the sale deed. The ratio laid down by the Supreme Court AIR 1997 squarely applies to the present case. The defendant has failed to show that he has been ready and willing to perform his part of the contract. The records show that defendant has cultivated the land and has taken the full benefit of possession. For unpaid balance he remains totally unaccountable. There is no stipulation in the agreement to pay interest on the unpaid balance. The defendant has placed himself in an unassailable vantage position without the obligation towards unpaid balance. The conduct of the defendant does not suggest that he has been ready and willing to perform his part of the contract.

15. The first Appellate Court may be wrong in not rendering a finding on the other disputed points like the defendants' right to seek discretionary relief of specific performance u/s 20 of the Specific Relief Act and his readiness and willingness to perform his part of the contract. On the over all assessment of facts and evidence, I find that even in the absence of finding on the said questions by the first Appellate Court, it does not warrant any remand.

16. The conduct of the defendant in remaining silent for ten years in not obtaining the registered sale deed by offering balance of consideration would show that he was not ready and willing to perform his part of the contract. The questions of law are answered in affirmative and the additional question of law is

answered in negative.

17. It is submitted that the decree is executed and plaintiffs have taken possession from the defendant. Sri P. Krishna Bhat, learned Counsel appearing for the respondent undertakes that he will advise the L.Rs of respondent to refund the advance amount of Rs. 5,000/-to the L.Rs of the appellant and undertakes to deposit the same within one month from the date of this order before the Trial Court to enable the appellant to withdraw the said amount. I feel no good reason to persuade Sri Krishnabhat to pay interest on the advance amount since the defendant has enjoyed the possession for over 22 years and should have substantially benefited from cultivating the land. Accordingly, the appeals are dismissed.