

(2013) 10 KAR CK 0180

In the Karnataka High Court

Case No : Regular First Appeal No. 160 of 2006

Smt. K. Lakshmi Devi Since Deceased, Rep. By Her L.Rs.

APPELLANT

Vs

Sri K. Subramanyam and Shri C.M. Thayanna

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Specific Relief Act, 1963 — Section 19(B), 34
Transfer of Property Act, 1882 — Section 3

Citation : (2013) 10 KAR CK 0180

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Jayakumar S. Patil for Sri T. Seshagiri Rao, for the Appellant; S.P. Shankar for Sri M.R. Ravindra, for C/R1, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—This regular first appeal is filed by the defendants 1 (a) to 1 (d) in O.S. 215/1994 challenging the judgment and decree dated 13.12.2005 passed by the I Additional Civil Judge (Sr. Dn.), Bangalore Rural District, Bangalore, thereby decreeing the suit filed by the plaintiff-respondent No. 1 herein declaring that the plaintiff is the absolute owner of the suit schedule property and granting consequential relief of permanent injunction against the appellants herein [defendants 1(a) to 1(d)] from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff. Appellant No. 1 is the husband of late Smt. K. Lakshmi Devi (deceased Defendant No. 1). Appellant Nos. 2 & 4 are her sons and appellant No. 3 is her daughter. Suit O.S. No. 215/1994 was filed by respondent No. 1 herein against these appellants and the 2nd respondent C.M. Thayanna seeking relief of declaration of title and for a decree of permanent injunction. The plaintiff K. Subramanyam contended that the plaintiff schedule property belonged to the 2nd defendant-C.M. Thayanna; under a registered Sale Deed dated 31.10.1990, he sold the same to the plaintiff putting him in possession of the property for a sale consideration of Rs. 1,90,000/-. Since then, he was in lawful possession and enjoyment of the property. The defendants with

their supporters came to the land with a view to plough the same. When questioned, they disclosed that deceased defendant Smt. K. Lakshmi Devi had obtained a decree for specific performance of sale and a Sale Deed in favour of the defendants was got executed through the Court on 28.10.1993. Thereafter, the plaintiff came to know that deceased Lakshmi Devi in collusion with the 2nd defendant had floated certain collusive legal proceedings and the 2nd defendant had encouraged the defendants to file the present suit apart from instigating his own sons to file another suit O.S. No. 180/1992. He alleged that the Sale Deed executed in favour of defendants 1 (a) to 1 (d) was the result of such collusive legal proceedings and the defendants did not derive any title to the suit property under the said Sale Deed as the 2nd defendant had no title to convey it in favour of the defendants. He further contended that as the defendants had held out that Sale Deed was executed by the Court which cast a cloud on the plaintiffs title, he was constrained to file the suit.

2. Defendants 1 (a) to 1 (d) filed written statement and contested the suit. They denied the alleged title and possession of the plaintiff. They asserted that the defendants were in lawful possession and enjoyment of the suit land as its absolute owners. They also alleged that the plaintiff and the 2nd defendant had created false and concocted documents to defeat their rights and for wrongful gains. It was contended by them that the 1st defendant late Lakshmi Devi purchased the suit property under an agreement of sale dated 29.11.1981 for a valuable consideration of Rs. 45,000/- from the 2nd defendant, his father and his uncle. The 1st defendant Lakshmi Devi was put in possession of the property pursuant to the agreement of sale. An advance amount of Rs. 15,000/- was paid on 29.1.1.1981 while executing the agreement of sale and further advance of Rs. 10,000/- was given by Lakshmi Devi on 04.04.1982 and another sum of Rs. 8,000/- was paid on 24.05.1982 and the remaining amount of Rs. 12,000/- was payable at the time of registration of the Sale Deed. Though Lakshmi Devi demanded the vendors to execute a registered Sale Deed in her favour and got issued legal notice dated 23.11.1987 in this regard, the 2nd defendant, his father and his uncle failed to comply with the demand. But, the 2nd defendant and his uncle made attempts to alienate the property and to interfere with Lakshmi Devi's possession and enjoyment. This made Lakshmi Devi to file a suit for permanent injunction against them in O.S. No. 8/1988 which was decreed on 14.06.1989. This was followed by a suit for specific performance filed by Lakshmi Devi against the 2nd defendant and his uncle in O.S. No. 186/1991 which came to be decreed on 23.04.1993. In the Execution Petition No. 8/1993 filed by the L.Rs. of Lakshmi Devi, the court ordered execution of the Sale Deed dated 28.10.1993 in favour of defendants 1 (a) to 1 (d) as Lakshmi Devi had died by then. Thus, they were in possession of the property as its lawful owners.

3. The 2nd defendant filed separate written statement denying the plaint averments. "He also denied the alleged title and possession of deceased Lakshmi Devi. He urged that he was not served with any notice in O.S. No. 186/1991. Upon verification, he found that the court summons issued to him in O.S. No.

186/1991 was returned with a shara "refused" which made the court at Nelamangala to place him ex parte, but at no point of time, he had refused to receive any court summons. He alleged fraud against Lakshmi Devi to grab the valuable land in collusion with the process server. He also contended that he had filed a Miscellaneous Petition in No. 2/1998 to set aside the ex parte decree. He further alleged that he had obtained hand loan from the plaintiff and at his request, he had executed a document for the security of the loan. He also urged that the land in question was granted to his father by the Land Tribunal in the year 1982. There was a condition of non-alienation for a period of 15 years. Though the period of 15 years had not expired, the plaintiff had fraudulently obtained the Sale Deed from the 2nd defendant by misrepresentation. However, the possession of the land had not been delivered to the plaintiff. As the property was the ancestral property of the 2nd defendant, he had no absolute right to transfer the same, because his sons also had share in the property. He admitted the filing of suit O.S. No. 180/1992 by his minor son through his mother Smt. Parvathamma against the 2nd defendant in O.S. No. 180/1992. He claimed that his children were in possession and enjoyment of the suit property and at no point of time, either the plaintiff or the 1st defendant or for that matter defendants 1 (a) to 1 (d) were in possession of the suit property.

4. Based on the above pleadings the Trial Court framed the following issues:

1. Whether the plaintiff proves that the 2nd defendant has executed the sale deed on 31-10-90 in his favour in respect of suit property and put him in possession of the same?
2. Whether the 2nd defendant proves that the plaintiff has obtained the sale deed in his favour by playing fraud and mis-representation as contended in his written statement?
3. Whether the defendants No. 1-A to 1-D prove that the 2nd defendant had executed the agreement of sale on 29-11-81 in favour of deceased 1st defendant in respect of the suit property for a consideration of Rs. 45,000/- and further 2nd defendant put them in possession of the suit property?
4. Whether the plaintiff proves that he was in possession of the suit property as on the date of suit?
5. Whether the 2nd defendant proves that the suit of plaintiff is bad for non joinder of necessary party?
6. Whether the plaintiff acquired valid title to the suit property? 7. Whether the defendant Nos. 1-A to 1-D prove that the suit of the plaintiff is barred by time?
8. Whether the defendant Nos. 1-A to 1-D prove that they have perfected their title to the suit property by adverse possession?
9. Whether the sale deed executed by the Court of Munsiff, Nelamangala by virtue of and decree passed in O.S. No. 186/91 on 28-10-93 in Ex. P. 8/93 on its

file confer valid title on the defendants No. 1-A to 1-D?

10. Whether the 2nd defendant proves that the L.Rs. of 1st defendant obtained decree in O.S. No. 186/91 on the file of Munsiff, Nelamangala by playing fraud and mis-representation?

11. Whether the plaintiffs prove the alleged interference by the defendants?

12. Whether the plaintiff is entitled to decree prayed for?

13. What decree or Order?

5. On behalf of the plaintiff, plaintiff K. Subramanyam examined himself as P.W.1 and produced and marked Exs. P1 to P51. On behalf of the defendants, defendant 1(a) A.R. Krishna Kumar was examined as D.W.1 and defendant No. 2 C.M. Thayanna was examined as D.W.2. Exs. D1 to D21 were produced and marked.

6. On appreciation of oral and documentary evidence, the Trial Court found that the plaintiff proved that the 2nd defendant executed the Sale Deed dated 31.10.1990 in his favour conveying the suit schedule property and putting him in actual possession of the same. It answered in the negative issue No. 2 regarding the assertion of the 2nd defendant that the plaintiff had obtained the Sale Deed in his favour by playing fraud and by misrepresenting the facts. It is held that defendants 1 (a) to 1 (d) had failed to prove the agreement of sale dated 29.1.1.1981 and that the 2nd defendant had put them in possession of the suit property. The Trial Court further held that the Sale Deed executed through the Court at Nelamangala in Ex. P. No. 8/1993 did not convey valid title in favour of defendants 1 (a) to 1 (d). Thus, the Trial Court decreed the suit declaring the title of the plaintiff over the land and granting permanent injunction in his favour. Aggrieved by this judgment and decree, the present appeal is filed.

7. Learned Senior Counsel Sri Jaykumar S. Patil appearing for the appellants has contended that the suit filed by the plaintiff respondent No. 1 seeking the relief of declaration without praying for the relief of possession was not maintainable. His next contention is that the plaintiff had full knowledge of the previous transaction and hence, he was not a bonafide purchaser, therefore, he was not entitled for any relief. Elaborating his contention, he submits that plaintiff could not have been put in possession as per the Sale Deed dated 31.10.1990 because his vendor, the 2nd defendant did not have possession of the property. He draws the attention of the Court to the judgment and decree passed in O.S. No. 8/1988 as per Exs. D5 & D6 restraining C.M. Thayanna, the 2nd defendant from interfering with the possession and enjoyment of Smt. Lakshmi Devi. In this background, he contends that without seeking possession of the property, a suit for declaration could not have been maintained. He has placed reliance on the judgment rendered by this Court in the case of Sri Aralappa Vs. Sri Jagannath and Others, and the judgment of the Supreme Court in the case of Union of India (UOI) Vs. Ibrahim Uddin and Another, .

8. It is his next contention that as the plaintiff did not challenge the judgment and decree passed in favour of the 1st defendant Lakshmi Devi in O.S. No. 8/1988 and O.S. No. 186/1991, the same were binding on the 2nd defendant and as also the plaintiff who purchased from him. He is critical of the reasons assigned by the Trial Court while characterizing the two judgments and decrees passed in favour of the 1st defendant as void and not binding on the plaintiff. He has placed reliance on the following judgments to contend that even void judgments/orders are binding, unless they are challenged and set aside-

1. Krishnadevi Malchand Kamathia and Others Vs. Bombay Environmental Action Group and Others,

2. State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others,

3. Sultan Sadik Vs. Sanjay Raj Subba and Others,

Reliance is also placed on the judgment of this Court in the case of Moulasab Bandgisab Goundi Vs. Yamanappa Ameenappa Hikodi, to contend that the Sale Deed got executed in favour of defendants 1 (a) to 1 (d) through the court was binding on the plaintiff..

9. Sri S.P. Shankar, learned Senior Counsel appearing for plaintiff-respondent No. 1 has contended that at no point of time, 1st defendant came in possession of the property. He points out that under Ex. D4-agreement for sale four months time was stipulated for getting the Sale Deed registered. Admittedly, the 2nd defendant was unwilling to execute the Sale Deed. Therefore, suit for specific performance filed in the year 1991 to enforce the agreement of sale executed on 29.11.1981 was hopelessly barred by time as per Article 54 of the Limitation Act. He has relied on the judgment of the Apex Court in the case of Virgo Industries (Eng.) P. Ltd. Vs. Venturetech Solutions P. Ltd., , to contend that the second suit filed by Lakshmi Devi for specific performance was barred under Order II Rule 2 CPC, as she had failed to seek specific performance of the contract while filing the earlier suit for bare injunction in O.S. No. 8/1988.

10. It is next contended by him that as per Ex. P1-Sale Deed executed in favour of the plaintiff by C.M. Thayanna, there is a specific recital regarding delivery of possession in favour of the plaintiff. He urges that in terms of Section 3 of the Transfer of Property. Act, a registered Sale Deed acts as public notice, therefore, when Lakshmi Devi filed suit for specific performance in 1991, she had notice of prior sale made in favour of the plaintiff and hence, the present plaintiff ought to have been impleaded as a defendant in O.S. No. 186/1991 filed by Lakshmi Devi seeking specific performance of the agreement. It is urged that even the Revenue Records and the Encumbrance Certificate, if verified would have revealed that the plaintiff had purchased the property under a registered Sale Deed dated 31.10.1990. Hence, he contends, the decree for specific performance obtained by Lakshmi Devi in O.S. No. 186/1991 has no effect on the rights of the plaintiff. He has placed reliance on Section 31 of the Specific Relief Act to

contend that since the plaintiff is not a party to the Sale Deed dated 28.10.1993 or to the suit O.S. No. 186/1991, there was no obligation on him to challenge the said Sale Deed or the decree.

11. It is next contended by him that as on the date of agreement of sale executed on 29.11.1981, the vendors of Lakshmi Devi had no right in the property, leave alone the right to convey any interest, to the property inasmuch as the land Tribunal granted occupancy rights in their favour only on 08.07.1982. Placing reliance on the judgment in the case of Rambaran Prosad Vs. Ram Mohit Hazra and Others, , he contends that the agreement of sale did not create any interest in the property. He places reliance on the revenue records such as the khatha extract-Ex. P2, RTC-Ex. P3, Land Revenue Paid Receipts-Ex. P4 and the order of conversion of the land dated 27.05.1993 vide Ex. P5 to contend that plaintiff has proved his possession of the land. He also points out that though the Tahsildar set aside the khatha in the name of the plaintiff on 30.10.1995 pursuant to the Sale Deed executed in favour of the 1st defendant-Lakshmi Devi, the said order of the Tahsildar was challenged in appeal and the same was set aside by the Assistant Commissioner as is evident from Ex. P13 and the revision petition filed against this order before the Deputy Commissioner was dismissed which further made it clear that the plaintiff continued to be in possession of the property. Sri S.P. Shankar, learned Senior Counsel invites the particular attention of this Court to the cross-examination of D.W.1 A.R. Krishna Kumar (defendant No. 1(a)) wherein he has pleaded his ignorance regarding the registered Sale Deed dated 31.10.1990 under which the plaintiff purchased the suit property from the 2nd defendant and about the mutation entries made in his name in the revenue records as per Ex. D2, payment of tax by him and also the new number assigned to the land as No. 146 after its conversion. The admission made by D.W.1 in his cross-examination stating that no public notice regarding the defendants' claim over the suit property was issued and that D.W.1 had no knowledge that the plaintiff-Subramanyam was aware of execution of sale between Lakshmi Devi and the 2nd defendant is emphasized. He points out that averments made in the written statement alleging fraud and collusion against the plaintiff and that the plaintiff had knowledge of the agreement of sale and of the previous litigation is totally belied by this admission. In support of his contention that the judgment and decree passed granting specific performance in favour of Lakshmi Devi without impleading the subsequent purchaser was invalid and did not bind the plaintiff-respondent herein, Sri Shankar has placed reliance on the following judgments:

1. Lala Durga Prasad and Another Vs. Lala Deep Chand and Others,
2. Dwarka Prasad Singh and Others Vs. Harikant Prasad Singh and Others,
3. Vimala Ammal Vs. C. Suseela and others,
4. Vadde Sanna Hulugappa and Others Vs. Vadde Sanna Hulufappa (Deceased) by L.Rs and Others,

12. Contending that the plaintiff need not seek cancellation of the two decrees obtained by Lakshmi Devi, he has placed reliance on the judgments in the case of Sanjay Kaushish Vs. D.C. Kaushish and others, and AIR 2002 215 (SC) . Urging that the decree for specific performance obtained by Lakshmi Devi is non-est and a nullity, he has placed reliance on the judgment of the Apex Court in the case of Virgo Industries (Eng.) P. Ltd. Vs. Venturetech Solutions P. Ltd., .

13. Having heard the learned counsel for both parties, the following points arise for consideration in this Appeal:

1) Whether the suit filed by the 1st respondent seeking the relief of declaration without seeking the relief of possession in the wake of the decree of permanent injunction obtained by 1st defendant Lakshmi Devi in O.S. No. 8/1988 against the 2nd defendant was maintainable?

2) Whether the plaintiff was a bonafide purchaser of the suit property without notice of the agreement for sale dated 29.11.1981 and was in possession of the property as on the date of the suit?

3) Whether the decree of specific performance of the agreement passed in O.S. No. 186/1991 was binding on the plaintiff-subsequent purchaser, though he was not impleaded as a party?

4) Whether the judgment and decree passed by the Trial Court decreeing the suit is otherwise legally sustainable?

5) What order or decree?

POINT Nos. 1 & 2:

14. As these two points are interconnected, they are taken up together for consideration. The first contention urged by the counsel for the appellant is that the suit itself was not maintainable as a mere suit for declaration without seeking possession cannot be maintained in view of the provisions contained in Section 34 of the Specific Relief Act, 1963. It is urged that though the plaintiff has sought for a consequential relief of permanent injunction in the present suit, when the plaintiff was not in possession of the property on the date of the suit, the appropriate consequential relief to the relief of declaration of ownership would be recovery of possession of property and as the plaintiff did not seek such a relief of possession, the suit should be regarded as a mere suit for declaration and hence, not maintainable. Strong reliance is placed in this connection on the judgment in the case of Sri Aralappa Vs. Sri Jagannath and Others, and the judgment in the case of Union of India (UOI) Vs. Ibrahim Uddin and Another, .

15. The Trial Court has found that the plaintiff has proved his actual possession of the suit property on the date of suit. According to the counsel for the appellants, as the vendor of the plaintiff had suffered a decree which permanently restrained him from disturbing the peaceful possession and enjoyment of the suit schedule property by the appellant-defendants, the

plaintiff-purchaser from Thayanna, who had suffered the decree of permanent injunction, could not have been put in possession by the said Thayanna, as he did not have the possession of the property.

16. It is relevant to notice here that the decree of permanent injunction obtained by Lakshmi Devi against Thayanna is an ex parte decree. No doubt the said decree is not under challenge in these proceedings. But, in the said judgment, as per the agreement of sale of the year 1981, the 2nd defendant-Thayanna is said to have put Lakshmi Devi in possession. The present plaintiff is not a party to the said proceedings. He claims to be a bonafide purchaser from Thayanna under a registered Sale Deed dated 31.10.1990 for a valuable consideration of Rs. 1,90,000/-. There is nothing to show that either before the decree or after the said decree, Lakshmi Devi was in possession of the property. The revenue records of the land were not in the name of Lakshmidevi, either pursuant to the agreement of sale or pursuant to the decree of permanent injunction obtained by her. On the other hand, as per the registered Sale Deed executed in the year 1990, the plaintiff was put in possession of the property and his name was entered in the revenue records, by virtue of a mutation entry effected in respect of the land in question. As on the date of suit, the khatha of the land, the revenue records and the land revenue paid receipts, were in the name of the plaintiff. This is clear from the certified copy of the mutation entry-Ex. P2, the record of rights-Ex. P3, the land revenue paid receipts-Ex. P4 which disclose that prior to the filing of the present suit, the name of the plaintiff is found in the revenue records. After purchasing the property, he has got the land converted as per the order of the Deputy Commissioner dated 27.06.1993 produced at Ex. P5. After conversion, the property was given new No. 146, as is evident from the extract of the Tax Demand Register produced at Ex. P6 dated 06.01.1998. It also evidences the assessment and payment of tax in a sum of Rs. 7,250/- by the Gram Panchayat, Yentaganur of Nelamangala Taluk. It is thus evident from these documents that the plaintiff had proved his possession of the land in question as on the date of suit and continued to be in possession thereof, which is also evident from the other documents such as the order passed by the Assistant Commissioner, Doddaballapur in R.A. No. 191/2001-02 as per Ex. P13 and the Panchayat Receipt dated 10.05.2001-Ex. P11 towards general license fee and Ex. P9 dated 13.02.2001, which is the notice issued by the Secretary Gram Panchayat, Yentaganahalli, demanding a sum of Rs. 14,246.25 and a receipt-Ex. P10 dated 09.03.2001 for having paid tax in a sum of Rs. 14,246/- including the other documents such as revenue records and tax paid receipts for having paid revenue for different years.

17. Per contra, there is absolutely no material produced by the appellant-defendants to show that they had come in possession of property. The Trial Court has held that as on the date the agreement of sale was executed in favor of Lakshmidevi on 29.11.1981, the vendors had no transferable right in the property in as much as the Inam land was granted by conferring occupancy rights on them only on 8.7.1982. The above said factual position cannot be

disputed. The ex parte decree of permanent injunction obtained by Lakshmi Devi against Thayanna cannot have the effect of debarring the plaintiff from establishing his actual possession of the property as on the date of suit. Had he been a party to the proceeding in O.S. No. 8/1988 and had he not been able to establish that he was a bonafide purchaser without notice of the alleged prior agreement and without knowledge of the decree of permanent injunction things would have been different. He would not then be entitled to assert his possession. In the present case, if he is found to be a bonafide purchaser for valuable consideration from his vendor without knowledge of the decree and if it is shown that he was indeed put in possession of the property as on the date of the suit, the mere fact that his vendor had suffered an ex parte decree cannot result in a deeming fiction that for all purposes and intent, the decree holder in O.S. No. 8/1988 should be regarded as a person in possession whatever may be the actual factual position. At least such presumption is unnecessary if the plaintiff establishes that he was a bonafide purchaser for valuable consideration and has been put in possession of the property on the date of the registered Sale Deed executed in his favour, for the purpose of holding that, without seeking the relief of possession the plaintiff could not have sought for declaration of his title. He has, therefore, rightly filed the suit for declaration of his title based on the Sale Deed and has sought for protection of his possession by a decree of permanent injunction. He cannot be deemed to be out of possession for the purpose of the present suit and be forced to file the suit for possession, when, in fact, he is in actual possession. Hence, Section 34 of the Specific Relief Act or for that matter, the judgments relied upon by the counsel for the appellants in the case of Sri Aralappa Vs. Sri Jagannath and Others, and the judgment in the case of Union of India (UOI) Vs. Ibrahim Uddin and Another, have no application to the facts of the present case.

18. In addition to the above, it is necessary to notice here that based on the agreement of sale dated 29.11.1981, Lakshmi Devi issued a legal notice in the year 1987 calling upon the 2nd defendant to execute the Sale Deed. The suit O.S. No. 8/1988 is filed after seven years from the date of agreement seeking only the relief of permanent injunction and not seeking for specific performance. After obtaining an ex parte decree of permanent injunction, she keeps quiet for more than three years and files O.S. 186/1991 only on 25.11.1991. Neither on the basis of the agreement for sale, nor on the basis of decree of permanent injunction Lakshmi Devi exercised any rights over the land including that of getting her names entered in the revenue records. It is in this context that the Trial Court has held that there was collusion between Lakshmidēvi and Thayanna. There are no materials to show that it was Lakshmi Devi who was in possession and not the plaintiff.

19. The plaint averments disclose that the plaintiff has alleged collusion between defendants 1 & 2. He has contended that the 2nd defendant had made obvious plans to hold the plaintiff to ransom and had instigated his sons to file a suit O.S. No. 186/1991 apart from encouraging and instigating the 1st defendant Lakshmi

Devi to make an attempt to disturb the plaintiff's peaceful possession. Whereas, the 2nd defendant in his written statement contended that the plaintiff had obtained the Sale Deed in his favour by playing fraud and by way of misrepresentation. In support of his case, the plaintiff-P.W.1 has stated in his evidence that he had no knowledge about any agreement of sale stated to have taken place between defendants 1 & 2. He has specifically deposed in his examination-in-chief that at no point of time the 1st defendant obstructed his possession and enjoyment of the suit property and prevented execution of Sale Deed in his favour, nor took steps to object for conversion of the land from agriculture to non-agriculture purpose. He has further deposed that the 2nd defendant was habitual litigant and he intended to cheat the plaintiff. He has further stated that after the revenue entries were changed in the name of the plaintiff, defendant No. 1(a) filed his objections before the Tahsildar. Only in the month of December, 1993 he came to know about the decree passed in O.S. No. 8/1988. He has specifically denied the suggestion that at the time when the Sale Deed was executed in his favour, he had knowledge of the agreement of sale executed by Thayanna and Sarpaiah in favour of Lakshmi Devi.

20. D.W.1 in his evidence, in the cross-examination, has admitted that pursuant to the registered Sale Deed executed in favour of the plaintiff, he got his name mutated as per M.R. No. 12/1991 (Ex. P2) and got transferred his name in the relevant columns of the revenue records for the year 1991-92 (as per Ex. P3). But, he denies having knowledge of the sale made by the 2nd defendant in favour of the plaintiff as per registered Sale Deed dated 31.10.1990. He also denies the payment of kadayam and the entries in the revenue records in the name of the plaintiff. The conversion of the suit land for non-agricultural purpose is also denied by him. More importantly, he has admitted that no public notice was issued, nor published in the newspaper regarding the defendants' claim over the property. He pleads ignorance if the plaintiff Subramanyam was aware about the agreement of sale between himself and the 2nd defendant. It is noteworthy that allegations are made in the written statement and also in the examination-in-chief by him that the plaintiff and the 2nd defendant colluded together and created documents against him.

21. If the plaintiff had knowledge of the agreement and the Sale Deed in his favour was the result of collusion between the plaintiff and the 2nd defendant, he would not have stated in the cross-examination that he did not know if Subramanyam was not aware about the agreement of sale between him and the Thayanna. This answer given by D.W.1 in the cross-examination belies his allegation that plaintiff was not a bonafide purchaser and that he had knowledge about the agreement of sale. His plea of no knowledge of registered Sale Deed, Mutation, conversion in favor of plaintiff cannot be believed.

22. The Trial Court has rightly found that mere recitals in the agreement of sale dated 28.11.1981 were not sufficient to prove the possession of deceased 1st defendant over the suit property as except the interested version of the L.Rs. of

the deceased 1st defendant there was nothing on record to believe that the 2nd defendant had put them in possession of the property. Hence, point Nos. 1 & 2 are answered in favour of the plaintiff and against the appellant-defendants.

POINT No. 3

23. The contention of the counsel for the appellants is that the decree passed in O.S. No. 186/1991 directing specific performance of the agreement of sale dated 28.11.1981 was binding on the plaintiff. It is their contention that even though the plaintiff was not made a party to the said suit as the agreement of sale was earlier in point of time and as the Sale Deed executed by defendant No. 2 in favour of the plaintiff was much later, unless the plaintiff challenged the decree and got it avoided, the decree binds the plaintiff.

24. The Trial Court has found that the suit for specific performance was filed against Sarpaiah and Thayanna. Guruswamaiah, one of the executants of the agreement was not arrayed as a party to the suit. His legal heirs had also not been arrayed as parties. It was not the case of the legal representatives of the 1st defendant that Guruswamaiah had no other surviving legal heirs other than Thayanna. Sarpaiah was reported to be dead "during the pendency of O.S. No. 186/1991 His L.Rs. were not brought on record. Thayanna, the 2nd defendant was placed ex parte. In this background, it has been held by the Court below that the decree passed in O.S. No. 186/1991 for specific performance was a nullity in the eye of law.

25. The Trial Court has further found that as on the date the alleged agreement dated 29.11.1981 was executed in favour deceased Lakshmi Devi, they had no transferable title because admittedly, the Land Tribunal granted occupancy rights in respect of the suit schedule property only on 08.07.1982 in favour of Guruswamiah as per Ex. D17. The Trial Court has also further found that the plaintiff had become the owner of the property as per the registered Sale Deed dated 31.10.1990.

Hence, as on the date of filing of the suit, by Lakshmi Devi and her heirs in O.S. No. 186/1991 and as on the date of execution of the Sale Deed in their favour on 28.10.1993, the title in respect of the suit property was vested with the plaintiff and the 2nd defendant had absolutely no title to convey in favour of the L.Rs. of the deceased 1st defendant. Hence, there was no necessity for the plaintiff to challenge the said Sale Deed or the decree because it was not binding on him.

26. In the light of the above findings of the Trial Court and on reexamination of the entire matter, I find that the Trial Court has rightly held that as the-plaintiff was not made a party to the suit for specific performance filed by the defendants and as the title to the property had stood transferred in favour of the plaintiff prior to filing of the suit for specific performance, the decree passed for specific performance against the 2nd defendant could not affect the title of the plaintiff to the property. The 2nd defendant did not have any title to convey to the defendants pursuant to the decree for specific performance granted. Therefore,

the Sale Deed got executed through the Court did not affect the rights of the plaintiff over the suit property. In the case of Lala Durga Prasad and Another Vs. Lala Deep Chand and Others, , the Apex Court has in a situation where there was a subsequent sale made by the person who had contracted to sell the property to another person earlier in point of time, held that the title to the property validly passes from the vendor and resides in the subsequent transferee. It is laid down that, in such a situation, the sale made to him is not void, but only voidable at the option of the earlier contractor. As the title no longer rests in the vendor, it would be illogical from the conveyancing point of view to compel him to convey to the plaintiff, unless steps were taken to revest the title in him, either by cancellation of the subsequent sale or by reconveyance from the subsequent purchaser to him. In paragraph 42 of the said judgment, the Apex Court has held that proper form of decree in such case is to direct specific performance of the contract between the vendor and the plaintiff and also to direct the subsequent transferee to join in the conveyance, so as to pass the title which resided in him to the plaintiff. This view has been subsequently followed in the case of Dwarka Prasad Singh and Others Vs. Harikant Prasad Singh and Others, . Useful references can be made to paragraphs 9 & 10 of the said judgment.

27. Similarly, in the judgment rendered by the Madras High Court in the case of Vimala Ammal Vs. C. Suseela and others, , it has been held that in a suit for specific performance of sale, subsequent purchaser is a necessary party and a decree obtained without impleading him cannot be executed by the prior purchaser. In the said judgment referring to Section 19(b) of the Specific Relief Act, 1963, the Madras High Court has held that the subsequent transferee can retain the benefit of the transfer if he satisfies two conditions concurrently that is to say, 1) he must have paid the full value for which he has purchased the property and 2) he must have paid it in good faith and without notice of the prior contract. The Madras High Court has referred to the decision of the Apex Court referred to supra.

28. In the instant case, the plaintiff has proved that he was a bonafide purchaser for valuable consideration and had paid the full consideration amount, whereupon the khatha of the land was transferred in his name. In addition, the evidence on record disclosed that he had got the land converted and has gone on paying the tax, apart from obtaining license for using the land for industrial purpose. Therefore, the inescapable conclusion is that the decree for specific performance obtained by the 1st defendant and her L.Rs. was not at all binding on the plaintiff as he was not made a party to the said proceedings, though he was a necessary party to the same. Such a decree cannot operate to affect the rights of the present plaintiff who being a necessary party was deliberately not impleaded to the suit for specific performance filed by the 1st defendant and her L.Rs.

29. In fact, the Trial Court has referred to all these and several other circumstances to hold that in fact deceased 1st defendant and the present 2nd defendant had colluded with each other in getting the judgment and decree

passed in O.S. No. 186/1991 and also in getting the Sale Deed executed on 28.10.1993. Reliance placed by the learned counsel for the appellants on the judgment of this Court in the case Moulasab Bandgisab Goundi Vs. Yamanappa Ameenappa Hikodi, is not apposite to the facts of the present case as in the said case the subsequent purchaser was not found to be a bonafide purchaser for valuable consideration.

30. In the light of my findings on the above points, I consider it unnecessary to examine the other argument advanced by Sri S.P. Shankar placing reliance on the judgment of the Apex Court in the case of Virgo Industries (Eng.) P. Ltd. Vs. Venturetech Solutions P. Ltd., contending that the deceased 1st defendant ought to have claimed the relief of specific performance also when she filed the first suit for bare injunction in O.S. No. 8/1988 and the subsequent suit filed in the year 1991 for specific performance was barred under Order II Rules 2(ii) & (iii) of CPC.

31. Therefore, I have no hesitation to hold that the decree passed in O.S. No. 186/1991 for specific performance of the agreement of sale dated 29.11.1981 was not binding on the plaintiff and will not affect his title over the suit property. Point No. 3 is accordingly answered.

POINT Nos. 4 & 5

The Trial Court has rightly decreed the suit filed by the plaintiff. It has considered the evidence on record properly by analyzing the same. Hence, I do not find any illegality in the judgment and decree passed by the Court below.

In the result and for the foregoing, this appeal is dismissed. Having regard to the facts and circumstances, both parties are directed to bear their respective costs.