

(2012) 11 KAR CK 0008

In the Karnataka High Court

Case No : Regular Second Appeal No. 788 of 2012

Smt. Lambani Sevlibai @ Somlibai

APPELLANT

Vs

V.G. Channabasavanagowda, Since Deceased by his L.Rs ((a)
Smt. Nirmalamma, Sri. Lambani Lakshmanaik and Sri.
Lambani Nanyanaik

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Citation : (2012) 11 KAR CK 0008

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : A.C. Balaraj, for the Appellant; Gururaj Joshi, for C/R, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath

1. The divergent findings of the courts below are called in question in this second appeal. Heard leaned counsel for the parties.

2. Appellant was the plaintiff in O.S.No. 25/05 on the file of the Civil Judge (Jr. Dn) & JMFC, Harapanahalli. The suit was instituted by the plaintiff against the defendants to enforce the agreement dated 13.06.1989 and to grant a decree of perpetual injunction. According to the plaint averments, the 1st defendant- V.G. Channabasavanagowda along with his mother agreed to sell 6.56 acres of agricultural land situated at Giryapura Thanda village in Davangere district under an agreement of sale dated 13.06.1989 for a total sale consideration of Rs. 2,225/. According to the plaint averments, the possession was delivered to the plaintiffs husband on the date of the agreement and entire sale consideration was paid and her husband was enjoying the entire extent of land as an absolute owner.

3. After the death of her husband, on 27.12.2002 a sale deed has been executed

in her favour to an extent of 2.50 acres out of 6.56 acres by the 1st defendant by playing fraud on her. The plaintiff being an illiterate lady was taken to the Sub-Registrar office and she was under an impression that sale deed has been executed in respect of the entire extent of land.

4. Contending that she was ready and willing to perform her part of the contract and as the defendants are trying to interfere with her possession, she filed the suit for specific performance of contract and also to grant a decree of perpetual injunction.

5. The defendants contested the suit. The 1st defendant denied the execution of any sale agreement on 13.06.1989 agreeing to sell entire extent of 6.56 acres for Rs. 2,225/- along with his mother. According to him, suit filed by the plaintiff was barred by limitation. Further he admits the execution of the sale deed in respect of 2 acres 50 cents of land in favour of the plaintiff by him. 2nd defendant also contested the case and filed the written statement online with the written statement filed by the 1st defendant.

6. Based on the above pleadings, the following issues were framed by the trial court:-

(i) Whether plaintiff proves that the defendant No. 1 along with his mother entered into a sale agreement with his husband Gopya Naik on 13.6.1989? (ii) Whether plaintiff proves that the defendants executed an agreement of sale in favour of her husband by receiving Rs. 2,225/- on 13.6.1989?

(iii) Whether plaintiff proves that on the date of suit agreement the defendant along with his mother put the suit property into the possession of her husband?

(iv) Whether plaintiff proves that excluding the suit property the defendant executed registered sale deed in respect of remaining land only on deceiving manner?

(v) Whether plaintiff proves that she is always ready and willing to perform his part of contract?

(vi) Whether defendants prove that suit is barred by time?

(vii) What order or decree?

7. In order to prove the respective contentions, six witnesses were examined on behalf of the plaintiff, out of them, PW-1 is the plaintiff. She relied upon Exs. P1 to P19. Two witnesses were examined on behalf of the defendants. Deceased 1st defendant V.G. Channabasavanagowda was examined as DW-1. 2nd defendant was examined as DW-2 and they relied upon Ex. D1. The trial court considering the entire evidence on record held issue Nos. 1 to 5 in the "affirmative" and others in "negative". The suit of the plaintiff came to be decreed on 25.06.2011.

8. Aggrieved by the judgment and decree of the trial court, defendants filed an appeal before the Civil Judge (Sr. Dn), Harapanahalli in R.A. No. 30/2011. The

lower appellate court considering the arguments advanced by both the parties, formulated the following points for consideration:

(i) Whether the plaintiff has proved the execution of the agreement of sale dated 13.06.1989 by the defendant No. 1 and his mother Halamma for a consideration amount of Rs. 2,225/-and delivered the actual possession of the entire suit schedule property?

(ii) Whether the plaintiff has proved that the defendant No. 1 by misrepresentation and by fraud executed registered sale deed dated 27.12.2002 only to an extent of an area measuring 2 acre 50 cents of Sy. No. 14/C instead of executing registered sale deed to an area measuring 6 acre 56 cents?

(iii) Whether the judgment and decree of the trial court is sustainable?

(iv) What order or decree?

9. On considering the arguments advanced by both the parties and upon perusal of the evidence and pleadings held point Nos. 1 to 3 in negative and allowed the appeal filed by the defendants by its judgment dated 08.02.2012. Challenging the same, the present appeal is filed by the plaintiff.

10. I have heard Sri. A.C. Balaraj, learned counsel for the appellant and Sri. Gururaj Joshi, learned counsel for the respondents.

11. Though several contentions are urged in the appeal memo, at the time of arguments, he raised the following substantial question of law on behalf of the appellant.

12. According to him, the lower appellate court was not justified in reversing the findings of the trial court and reappreciation of evidence by the lower appellate court is perverse and liable to be set aside. He contends that the lower appellate court has committed an error in not considering the hand writing expert's opinion which is in favour of the plaintiff that the signature found on the sale agreement is that of the 1st defendant and his mother and he further contends that the findings of the lower appellate court that the appellant-plaintiff has failed to prove the fraud played on her by the 1st defendant in executing the sale deed in the year 2002 only to an extent of 2 acres 50 cents.

13. Per contra, Sri. Gururaj Joshi, learned counsel for the respondents contends that at the first instance, the plaintiff has failed to prove the execution of agreement of sale, because, in the agreement of sale either the survey number or the details of the land agreed to be sold has not been mentioned. According to him, no man of prudence would agree to sell 6.56 acres of land for paltry sum of Rs. 2,225/- which works out to less than Rs. 400 per acre. He further contends that even if the findings of the hand writing expert that the signature found on the alleged agreement of sale is that of the 1st defendant and his mother, the very same hand writing expert has given an opinion that signatures were taken on blank paper and later contents of the agreement has been filled up and if the

entire report of the hand writing expert is considered, it goes against the appellant and lower appellate court has rightly allowed the appeal.

14. He further contends that in the year 2002, plaintiff has obtained the sale deed from the 1st defendant in respect of 2 acres 50 cents of land and based on the same, plaintiff got mutated the revenue entries in her name in respect of the land purchased by her and three years later, she has filed the suit as if fraud is played by the 1st defendant in not executing the sale deed in respect of the entire 6.56 acres of land. According to him, it is the plaintiff who obtained the sale deed from the 1st defendant in the year 2002. When she has obtained the sale deed, she cannot be permitted to contend that she was under the impression that the 1st defendant has executed sale deed in respect of the entire 6.56 acres of land. According to him, when such serious allegation of fraud is alleged against the defendants, it is for the plaintiff to prove the said allegation. In order to prove the said allegation, the plaintiff has not chosen to examine either the scribe who drafted the sale deed or the witnesses who attested the sale deed. In circumstances, he requests the Court to dismiss the appeal.

15. Having heard the learned counsel for the parties, what is to be considered by this Court in this appeal is, whether any substantial question of law arises in this appeal in order to interfere with the judgment and decree of the lower appellate court.

16. As rightly pointed out by learned counsel for the respondents, the appellant who has obtained the sale deed in respect of 2 acres 50 cents of land from the 1st defendant in the year 2002 is trying to contend that her husband had agreed to purchase 6.56 acres of land under the suit agreement of the year 1989 agreeing to purchase the land for Rs. 2,225/- and entire sale consideration was paid by her husband. Admittedly, her husband was alive till 2002. From 1989 till 2002, no attempt is made by her husband to get the sale deed registered in his name. When the entire sale consideration was paid to the defendants in the year 1989, nothing prevented him to take the sale deed from the 1st defendant as there was no difficulty for the plaintiff or her husband to get the sale deed registered in the year 1989 itself or subsequently

17. Considering the value of the property as Rs. 2,225/-, the entire cost of registration in the year 1989 would not cross Rs. 200/- but there is no possible explanation offered by the plaintiff for not obtaining the sale deed immediately as it is not the case of the plaintiff that the 1st defendant was prevented with sufficient cause to could not able to perform his part of the contract in order to get the sale deed executed.

18. The very fact that after the death of her husband she has obtained the sale deed in the year 2002 to an extent of 2 acres 50 cents, she should have been careful to see that whether the sale deed was in respect of the entire extent of land or a part of it. Plaintiff alleges fraud against the defendants but the sale deed is obtained by the plaintiff from the 1st defendant. Then who could play a

fraud in executing the sale deed has to be considered by this Court.

19. In order to consider the allegation of fraud, the best witnesses could be either the scribe or the attestors to the sale deed. For the reasons best known to the plaintiff, neither the scribe nor the attestors have been examined in this case. Therefore, the lower appellate court is justified in reversing the findings of the trial court. As rightly pointed out by the respondents' counsel when the appellant's husband has not taken the sale deed from 1989 to 2002, in view of the specific findings of the hand writing expert that contents of Ex. P1 the agreement of sale is subsequent to the signature of defendant No. 1 and his mother on the agreement of sale would be a conclusive proof to show that the suit document is concocted. Viewed from any angle, this Court does not see any substantial question of law in this appeal. Accordingly, appeal is dismissed.