(2006) 09 KAR CK 0053

In the Karnataka High Court

Case No : Regular Second Appeal No. 327 of 2005

Sri Andanur Rajashekar — APPELLANT

Vs

Sri Vasavi Industrial Enterprises and Others — RESPONDENT

Date of Decision : 16-09-2006

Acts Referred:

Contract Act, 1872 — Section 23
Karnataka Land Reforms Act, 1961 — Section 79, 79 A, 80
Specific Relief Act, 1963 — Section 16 (c), 9

Citation : (2007) 2 CivCC 648 : (2007) 2 KCCR 69 SN : (2007) 2 KCCR 1213 : (2007) 5 RCR(Civil) 364

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : K. Raghavendra Rao, A. Madhusudhana Rao and V. Vidya Iyer, for the Appellant; K. Srinivas, for C/r 2, 4, 5, Udaya Holla, Holla and Holla Advs. for R-2 -4. R-1, 6, 8, 9, 10, 11, 12 and 13, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J. Gunjal, J.—Admit.

Mr. Raghavendra Rao, learned Counsel appearing for defendant No. 6 has raised the following substantial questions of law for consideration:

(i) Whether the Courts below were justified in holding that the plaintiffs are ready and willing to perform, their part of the contract and have satisfied the requirement of Section 16(c) of the Specific Relief Act and

(ii) Whether the agreement Ex.P1 is prohibited and hit by Section 80 of the Karnataka Land Reforms Act.

2. To appreciate the substantial questions of law raked by Mr. Raghavendra Rao, certain important facts are required to be noticed. The pleadings of the plaintiffs as well as the defendants can be summarized as follows:

The plaintiff is a firm represented by its partners. The suit schedule property is a vacant plot of land Sy. No. 204/1 measuring 2 acres 2 guntas out of 5 acres 29 guntas of Kundavada village. The suit property originally belonged to one Andanur Basappa of Davanagere. The said property was allotted to him in a family partition. He died on 08.06.1982 leaving behind him the defendants as legal heirs. First Defendant is his wife, defendants 2 to 9 are his children, and defendant No. 10 is his daughter-in-law and wife of deceased Anadanur Mallashettappa. The plaintiffs 2 to 5 were interested in purchasing the suit schedule properly for an industry to be started in the name of Vasavi Industrial Enterprises and for the said purpose, Andanur Basappa was interested in disposing of the plaint schedule property for his family necessities and deeds. Suffice it to say that the said understanding regarding purchase and sale was reduced in writing pursuant to an agreement to sell dated 01.01.1982.

3. Pursuant to the said agreement, Andanur Basappa also received a sum of Rs. 10,000/- from the plaintiffs as part of the sale consideration as earnest money, He also agreed to receive the balance of consideration within a period of 6 months from the date of agreement The sale consideration was Rs. 36,900/-per acre. The stipulation of the 6 months was for the purpose of obtaining exemption from the Deputy Commissioner u/s 7 of the Karnataka Vacant Land in Urban Areas (Prohibition of Alienation) Act as the subject matter of the agreement to sell was a vacant land, coming within the purview of the said Act which required the exemption from, the Deputy Commissioner to alienate the same for industrial purpose. For obtaining necessary permission, the execution and the registration of the regular conveyance was postponed for a period of 6 months to enable the parties to obtain exemption from the Deputy Commissioner to effectuate the sale of the suit property. The parties also agreed to extend the said period until such exemption is granted in the event if the said exemption is not obtained by the parties within 6 months. It is also stated that Andanur Basappa had agreed for extension of the time till the exemption from the Deputy Commissioner is obtained. It is the case of the plaintiffs that in spite of such an obligation to perform his part of the contract, the said Andanur Basappa did not comply with the said requirement during this lifetime but however, died within the stipulated period of 6 months, i.e., on 08.06.1982.

4. It is the case of the plaintiffs that they were always ready and willing to perform their part of the contract. Subsequently, the plaintiffs have paid some more money to the legal representatives of deceased Andanur Basappa on 10.07.1982. On 19.08.1982, the widow of Andanur Basappa requested for further amount of Rs. 20,000/- which was paid by the respondents through a cheque and an endorsement was also made on the agreement. The defendants thereafter promised that they would execute a regular conveyance in their favour but however, did not perform their part of the duty in executing the said regular conveyance. Suffice it to say a notice was issued on 11.04.1983 requesting the defendants to come and execute the sale deed. Since nothing transpired alter the issuance of notice, the suit is filed for enforcement of the said agreement dated 01.01.1982 and also for such other consequential relief which would flow from

the said agreement.

5. The defendants entered appearance and they have filed their written statement inter alia contending that the plaintiffs are not entitled for the said relief of enforcement of the agreement. They would primarily contend that the time was the essence of the contract and since the plaintiffs did not comply with the conditions of the agreement, the suit itself is barred by time inasmuch as the time fixed for performance of the contract was 6 months and since necessary permission regarding exemption was not obtained from the Competent Authority, the suit is liable to be dismissed. They would also contend that the defendants did not execute any sale deed as the plaintiffs had committed breach of the terms and conditions and the said agreement is no longer subsisting. It is also contended by them that the payment schedule has not been adhered to by the plaintiffs. Since the flaw lies at the threshold of the plaintiffs, the discretionary relief of specific performance cannot be granted. It in also contended that the endorsement dated 10.07.1982 and 19.08.1982 regarding the payment of additional amount is absolutely false.

6. The learned trial Judge, on the basis of these pleadings has framed necessary issues. Since the defendants did not participate in the proceedings, an exparte decree was passed. The said exparte decree was questioned by the defendants by way of an appeal. The learned appellate Judge allowed the appeal, set aside the judgment and decree of the trial Judge and remanded the matter to the trial Court to enable the defendants to participate in the proceedings.

7. After the matter was remanded, the defendants have filed their additional written statement inter alia reiterating what was stated in the earlier written statement. They would also contend that the said agreement is hit by the provisions of the Karnataka Land Reforms Act.

8. After a full-fledged trial, the learned trial Judge has recorded a finding that the plaintiffs are ready and willing to perform their part of the contract and they are entitled for a decree of specific performance and also that the prohibition under the Karnataka Land Reforms Act will not enure the benefit of the defendants and it is not a total bar. The said judgment and decree was questioned by the defendants in a R.A. No. 12/2001. The learned appellate Judge has concurred with the findings recorded by the learned trial Judge and has held that the plaintiffs were always ready and willing to perform their part of the contract and that the agreement to sell is not prohibited under the Karnataka Land Reforms Act.

9. Mr. Raghavendra Rao, learned Counsel appearing for the defendants elaborating his submissions on the two substantial questions of law would contend that the said document was executed on 01.01.1982. The time stipulated was six months with certain conditions that exemption has to be obtained from the Competent Authority to alienate the said land. Since that was not done, and the plaintiffs did not evince any interest in obtaining the said

exemption which would necessarily mean that the plaintiffs were not ready and willing to perform their part of the contract. It is also submitted that while instituting the suit, the plaintiffs had not deposited any money.

10. Insofar as the second substantial question of law regarding prohibition u/s 80 of the Karnataka Land Reforms Act, he would contend that a reading of the provisions of Section 80 of the Act would clearly disclose that there is a total prohibition for a non-agriculturist in purchasing the land. According to him, the plaintiffs are an industrial firm and it is clearly stated in the pleadings that they want to purchase the suit schedule properly for the purpose of putting up an industrial unit. In the circumstances, he submits that the said agreement is hit by Section 80 of the Karnataka Land Reforms Act. He would also submit that Section 9 of the Specific Relief Act would deal with the defenses available to the defendants in respect of the suit for relief based on contract. He would also submit that u/s 23 of the Contract Act, the said agreement is forbidden by law and is opposed to public policy and it is an unlawful agreement which cannot be enforced under the Specific Relief Act. He would also rely on certain decisions of the Apex Court to buttress his contention that the suit is not maintainable inasmuch as the agreement is opposed to public policy.

11. Mr. Udaya Holla, learned senior counsel appearing for the plaintiffs submits that the Courts below have concurrently found that the plaintiff is ready and willing to perform his part of the contract. Since the said concurrent findings are based on appreciation of evidence, the said concurrent findings cannot be interfered. Elaborating his submissions, he would contend that after the agreement was executed on 01.01.1982, on demand by the defendants, the plaintiff have parted with an additional sum of Rs. 20,000/- on 19.08.1982 and the said receipt of the amount has been endorsed by the widow of the executant. In the circumstances, he submits that if really the plaintiffs were not ready and willing to perform their part of the contract after the execution of the agreement on 01.01.982, there was no apparent reason as to why the plaintiff would part with the said amount. In fact, he would submit that on two occasions the plaintiffs have paid the money and the defendants have received the same i.e., on 10.07.1982 and 19.08.1982.

12. Insofar as the validity of the agreement and prohibition thereof u/s 80 of the Karnataka Land Reforms Act is concerned, he would submit that the said agreement is not opposed to public policy u/s 23 of the Contract Act, He would submit that Section 9 of the Specific Relief Act would, of course deal with the defences which are available to the executant when a suit is filed for specific performance. He would submit that A reading of Section 80 of the Karnataka Land Reforms Act nowhere prohibits the sale of an agricultural land. The only embargo is that the purchaser must be an agriculturist. He would submit that under Ex.P12, on the basis of the power of attorney executed by the defendants, the plaintiffs have sought permission from the Competent Authority for conversion and that has been granted. Consequently, Section 80 of the

Karnataka Land Reforms Act cannot be invoked in the present set of circumstances.

13. Regarding redlines and Willingness:

Insofar as the first substantial question of law regarding readiness and willingness is concerned, apparently, it is to be noticed that the suit document was executed on 01.01.1982. The suit is filed on 17.05.1983. Apparently, certain unexpected contingencies were covered in the agreement which are in the nature of seeking exemption from the Urban Land Ceiling Act, taking permission from the Competent Authority for alienation etc. But however, before the time fixed under the agreement, the original executant died. Consequently, the time was being extended for compliance of some of the conditions by the legal representatives from time to time. Apparently, on two subsequent occasions, after the agreement, the widow of the original executant has received a sum of Rs. 45,000/- and an endorsement has been made. If one were to take into account the totality of the circumstances, to my mind, the Courts below were justified in holding that the plaintiffs were ready and willing to perform their part of the contract. In this regard, it is also to be noticed that if certain payments are made after the execution of the agreement from time to time, this would satisfy the requirement of Section 16(c) of the Specific Relief Act. If any authority is required, one can refer to the case of Motilal Jain Vs. Smt. Ramdasi Devi and Others, . While dealing with the scope of Section 16(c) of the Specific Relief Act, the Apex Court has observed thus:

Delay which are relevant in a case of specific performance of contract for sale of immovable property: (i) Delay running beyond the period prescribed under the Limitation Act; (ii) Delay in cases where though the suit is within the period of limitation, yet: (a) due to delay the third parties have acquired rights in the subject-matter of suit; (b) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief....

The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract." So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form. It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of obligations under the contract which is subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale.

14. A perusal of pleadings namely the plaint would clearly indicate that in more than one place the plaintiffs have stated that they are ready and willing to

perform their part of the contract and the time was being extended from time to time by Andanur Basappa during his lifetime and after his death by his LRs to perform their part of the contract. That apart, as stated earlier, the plaintiffs have parted with a sum of Rs. 45,000/- on two different occasions and that has been accepted by the defendants. In view of this positive pleading, the evidence and the acceptance of the additional amount would be a clear indication that the plaintiffs were ready and willing to perform their part of the contract. That apart, both the Courts below have concurrently found that the plaintiff satisfies the requirement of Section 16(c) and the said finding is based on appreciation of evidence cannot be termed as substantial question of law.

15. Prohibition to attenuate and transfer of the land under the Act. Insofar this contention is concerned, it is useful to extract the provisions of Section 80 of the Karnataka Land Reforms Act.

(1)(a) No sale (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift or exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be lawful in favour of a person,-

(i) who is not an agriculturist or

(ii) who being an agriculturist holds as owner or tenant or partly as owner and partly as tenant land which exceeds the limits specified in Section 63 or 64; or

(iii) who is not an agricultural labourer; or

(iv) who is disentitled u/s 79A or Section 79B to acquire or hold any land:

Provided that the Assistant Commissioner having jurisdiction over the area or any officer not below the rank of an Assistant Commissioner authorized by the State Government in this behalf in respect of any area may grant permission for such sale, gift, or exchange, (to enable a person other than a person disentitled to acquire or hold land u/s 79A or Section 79B who bonafide intend taking up agriculture to acquire land on such conditions as may be prescribed in addition to the following conditions, namely:

(i) that the transferee takes up agriculture within one year from the date of acquisition of land and

(ii) that if the transferee gives up agriculture within five years, the land shall vest in the State Government subject to payment to him of an amount equal of eight tunes the net annual income of the land or where the land has bee purchased, the price paid for the land, if such price is less than eight times the net annual income of the land.

16. Section 9 of the Specific Relief Act would relate to the probable defences

which are available to an executant if a suit is filed for specific performance. The said provision was pressed into service by Mr. Raghavendra Rao to buttress his contention that no specific pleading or question was raised in the Courts below to the effect that the proposed agreement is hit by Section 80 of the Karnataka Land Reforms Act. Undoubtedly, a reading of Section 9 would indicate what are the defences available to the executant. Insofar as the said provision is concerned, undoubtedly it enables the executant to take up all such contentions which are available to him by way of a defence and which are available to him under any law relating to contracts. Insofar as Section 23 of the Contract Act is concerned, major thrust by Mr. Raghavendra Rao is that the suit agreement itself is prohibited and a sale cannot be executed u/s 80 of the Reforms Act. To appreciate this contention, it is necessary to look into the prohibitions in Section 80 of Reforms Act. The provision is already extracted earlier.

17. A perusal of Section 80 of the Reforms Act would indicate that the transfer of land to a non-agriculturist is specifically barred. It would state in no uncertain terms, that no sale is permissible including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue, gift or exchange or lease of any land or interest therein and it is further qualified that who is not an agriculturist shall be prohibited and also further who is disentitled u/s 79(a) and 79(b) to acquire or hold any land.

18. For our purpose it is not necessary to refer to Section 79(a) and 79(b) of the Act, but however, it is to be stated that the said embargo u/s 80 of the Act is further qualified by a proviso. The proviso would read that any competent officer under the Act who has the jurisdiction can certainty grant permission for such sale, gift or exchange to a bonafide purchaser intending to take up agriculture to acquire land on such conditions as may be prescribed in addition to the following conditions. The conditions imposed are:

(i) that the transferee takes up agriculture within one year from the date of acquisition of land and

(ii) that if the transferee gives up agriculture within five years, the land shall vest in the State Government subject to payment to him of an amount equal of eight tunes the net annual income of the land or where the land has bee purchased, the price paid for the land, if such price is less than eight times the net annual income of the land.

19. A perusal of Section 80 does not give an indication that there is a total prohibition under the Act which would necessarily mean that the contract which is entered into between the parties is not void ab initio and it does not become unenforceable. The said question regarding whether the agreement is hit by Section 23 of the Contract Act and Section 80 of the Reforms Act has fallen for consideration in several decisions. To my mind, the said position of law is no longer res Integra.

20. The Apex Court in the case of Manzoor Ahmed Margray Vs. Gulam Hassan

Aram and Others, while dealing with similar, if not, identical provision of the Karnataka Land Reforms Act, interpreting Section 3 of the Jammu & Kashmir Prohibition on Conversion of Land and Alienation of Orchards Act, 1975 observed that a prohibition of transfer of orchards is not absolute and the question of obtaining previous permission as contemplated u/s 3(1)(a) would arise at the time of execution of the sale deed on the basis of decree for specific performance. Section 3 does not bar the maintainability of the Suit and permission can be obtained by filing the proper application after the decree is passed. Therefore, it cannot be stated that the decree for specific performance is not required to be passed.

21. Division Bench of this Court in the case of Jose v. Anahtha Bhat reported in (1987)1 KLJ 16, while dealing with the scope of Section 80 of the Land Reforms Act vis-a-vis Section 23 of the Contract Act has observed thus:

7. Insofar as we are required to deal with the first ground urged, we are satisfied that the matter is concluded and covered by the decision rendered by this Court in the case of Shivannappa Sidramappa Prantur v. Virupaxappa Allappa Bach ILR (Karnataka) 1980(1) 702, Almost identical argument fell for consideration before the learned Judges. There, what was pleaded was that the agreement to sell stated to be in force in the decree obtained related to a sale in favour of a non-agriculturist prohibited by Section 80 of the Land Reforms Act. After examining several decided cases not only of this Court, but also of other High Court and the Supreme Court, the Division Bench came to the conclusion that in a suit for specific performance the only question for consideration by the Court was whether there was a valid agreement to sell agricultural lands and whether it was enforceable and it was a fit case for granting decree of specific performance. They ruled as such having regard to the fact that the prohibition was not total inasmuch as the proviso to Section 80 of the Land Reforms Act enabled the Assistant Commissioner or other officer authorised by the State Government to give permission to non-agriculturists to purchase the land. In other words enforcement of such agreement to sell would not in itself be an illegality unless action contemplated under the Land Reforms Act in terms of Sections 82 and 83 actually takes place.

22. Another division Bench of this Court in the case of Mrs. Sushila A. Dass Vs. Mrs. Mary Boiger, while dealing with the interpretation of Section 80 of the Act has observed thus:

Karnataka Land Reforms Act, 1961 (Karnataka Act No. 10 of 1962) - Section 79 & 80 -Scope and ambit-legality of transactions to be examined by authorities under Act not Civil Court - No bar for Civil Court to grant specific performance of contract to sell agricultural land -Amendment to Section 80(b) enlarges jurisdiction of authorities to impeach transactions violation Section 80 Agreement to sell not void and unenforceable notwithstanding violation of Section 79A.

23. It is to be noticed that what prohibits is sale or a mortgage of any land or

interest in favour of a person who is not an agriculturist who intends to take up agriculture provided that the Assistant Commissioner, an provided under proviso to Sub-section (1) of Section 80 certainty can grant permission for the purchase of land, of course, subject to the conditions enumerated in Clause (1) and (2) of the said proviso. It is no doubt true that Section 23 of the Contract Act prohibits an agreement which is forbidden by law or agreement, if permitted would defeat the purpose of law or is fraudulent or is opposed to the public policy. But the wording of Section 80 and the provision and the proviso does not prohibit the agreement to sell between the land owner and the non-agriculturist. What it prohibits is the non-agriculturist in purchasing an agricultural land. He can also purchase after obtaining necessary permission from the statutory authority as provided in the proviso above.

24. Another way to look at Section 80 of the Karnataka Land Reforms Act is whether a sale is prohibited or an agreement to sell is prohibited. A reading of a provision of Section 80 would deal with the prohibition of sale to a non-agriculturist. But however, nowhere in Section 80, it is stated that an agreement to sell is prohibited. In fact, it is only after the contract, and a regular sate deed is executed, the competent authority gets power to enter the field and decide whether the same is hit by Section 80 and it is to be nullified on the ground that the purchaser is a non-agriculturist. But however, in the case on hand, the right and the sale deed is yet to be crystallized.

25. In the circumstances, I am of the view that the agreement in question cannot be construed as opposed to public policy. In fact this exercise of interpretation of Section 80 is not really required but however with regard to the vigor with which it was pressed into service by Mr. Raghavendra Rao, the court had to deal with Section 80. The scope of Section 80 would be relegated to the background when Ex.P12 is looked into. Section 80 of the Land Reforms Act deals with prohibition of purchase of agricultural land by a non-agriculturist in which case the Assistant Commissioner or the competent authority is entitled to seek revocation of the said sale and direct the vesting of the land with the Government. But however a perusal of Ex.P12 would indicate that the suit property has lost all the characteristics of an agricultural land. Under Ex.P1, the suit agreement, the plaintiffs were clothed with a general power of attorney by the defendants to approach the competent authority for the conversion of the said land from agricultural land to non-agricultural land. Apparently, the application was made on the basis of the said power of attorney to the competent authority namely the Deputy Commissioner for conversion of the said land. The Deputy Commissioner after due deliberations has granted permission and has directed conversion from an agricultural land to non-agricultural land after setting up a small-scale industry and a permission is also granted for the said purpose. One of the said conditions is also that the plaintiff can start the industry after taking necessary permission u/s 95 of the Karnataka Land Reforms Act. The other contention is that the applicant (namely plaintiff/ defendant) without a prior permission of the competent authority shall not make use of the

land. A perusal of Ex.P12 would clearly disclose that the suit land has lost the characteristics of an agricultural land. In the circumstances, the question of invoking or having recourse to Section 80 of the Karnataka Land Reforms Act does not arise.

26. Indeed Mr. Raghavendra Rao has relied on Waman Shriniwas Kini Vs. Ratilal Bhagwandas and Co., , AIR 90 SCC Vol. 3 also India Financial Assn., Seventh Day Adventists Vs. M.A. Unneerikutty and Another, . But however, the said decisions will not be applicable to the facts of this case. Apparently, in all these decisions, the Apex Court was dealing with a total prohibition of any action which is forbidden under the law and the same is hit by the rule/policy. Indeed in the last referred cases, the Apex Court has observed:

The primary duty of Courts below is to enforce terms which the parties have made and to uphold the sanctity of contract which forms the base of society.

27. Having considered the material on record, I am of the view that the substantial question of law which are raised by Mr. Raghavendra Rao are required to be answered against the defendants. Consequently, the appeal stands dismissed. Costs are made easy.

