

(2012) 06 KAR CK 0143

In the Karnataka High Court

Case No : Regular Second Appeal No. 1547 of 2010

Venkatappa

APPELLANT

Vs

Venkataswamy Reddy, Munirathnamma and B. Muniraju

RESPONDENT

Date of Decision : 04-06-2012

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : (2012) ILR (Kar) 3403 : (2012) 6 KarLJ 174

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Reuben Jacob, for the Appellant; B. Veerappa and Associates.- Advs.,
for the Respondent

Final Decision : Dismissed

Judgement

A.S. Pachhapure

1. The appellant has challenged the Judgment and Decree of the Trial Court for specific performance of the contract of Sale, which is confirmed by the first Appellate Court. The brief facts of the case are as under:

The parties will be referred as per their rank before the trial Court for the sake of convenience.

The 1st respondent herein instituted the suit for specific performance of the contract of Sale Agreement, dated 21.12.2000, executed by respondent Nos.2 and 3 herein [defendant Nos.1 and 2 before the trial Court], agreeing to sell the suit property bearing Sy. No. 36/3, measuring 1 acre 61/2 guntas out of 2 acres and 13 guntas, fully described in the schedule to the plaint for a consideration of Rs. 2,23,200-00. Though the plaintiff was ready and willing to perform his part of the contract, defendant Nos. 1 and 2 did not execute the Sale Deed and therefore, the plaintiff instituted the suit seeking specific performance.

Though defendant No. 1 admitted the Agreement of Sale, the 2nd defendant

denied the same and filed a written statement. During pendency of the suit, the 3rd defendant i.e., the appellant herein was impleaded and it is his contention that defendant Nos. 1 and 2 executed a Sale Deed in respect of the suit property in his favour on 23.06.2001.

Therefore, he contended that he is the bona fide purchaser of the suit property, being unaware of any transaction of Agreement of Sale in between the plaintiff and defendant Nos. 1 and 2. The suit came to be decreed by the trial Court granting the relief of specific performance of the contract.

The appeal filed by the 3rd defendant also been dismissed. Aggrieved of the concurrent findings, the present appeal has been filed.

2. This Court while admitting the appeal has framed the following substantial question of law for consideration:

Whether both the Courts below were right in holding that the Sale Deed in favour of the appellant was not valid in a suit for specific performance of agreement of sale, where no such prayer was claimed by the plaintiff?

3. I have heard learned counsel for both the parties.

4. It is the submission of learned counsel for the appellant that the plaintiff did not seek a relief of declaration of the validity of the Sale Deed executed by defendant Nos.1 and 2 in favour of defendant No. 3 and therefore, he claims that the suit itself is not maintainable in law. So also, it is his contention that the trial Court did not set aside the Sale Deed executed by defendant Nos.1 and 2 in favour of defendant No. 3 and did not even grant any relief to declare it as illegal.

Per contra, learned counsel for the respondents supported the Judgments and Orders of the Courts below. Admittedly, the suit came to be instituted by the plaintiff on 16.06.2001. The Sale Deed executed in favour of the appellant by defendant Nos. 1 and 2 was on 23.06.2001. To mean, the said Sale Deed was executed after institution of the suit. As could be seen from the provisions of Section 52 of the Transfer of Property Act, 1882 [hereinafter called as "the T.P. Act" for short]" during pendency of a suit or proceeding, which is not collusive and in which any right to movable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of any other party thereto under the decree or order, which may be made therein, except under the authority of the Court and on such terms as it may impose. Admittedly, the permission of the Court was not obtained by the 3rd defendant to get a Sale Deed executed in his favour from defendant Nos. 1 and 2. Further, the suit is not collusive. Therefore, the Sale Deed executed would hit by principle of lis-pendens. Whatever transfer that is made during pendency of the suit is subject to result of the suit. So, when the plaintiff succeeded in getting a decree for specific performance of the contract against defendant Nos. 1 and 2, the 3rd defendant had no right, authority or competency to get a Sale Deed executed in

his favour, as the said property was subject matter of the suit. Therefore, there is no necessity for the plaintiff to seek any relief for setting aside the Sale Deed or any direction to the 3rd defendant to execute the Sale Deed as the said Sale Deed is invalid, unenforceable, in view of Section 52 of the T.P. Act, In such circumstances, I am of the opinion that there is no error or illegality in the Orders of the Courts below, granting a decree for specific performance and it is also not necessity for the plaintiff to seek any relief either a declaration or an order to set aside the Sale Deed executed by defendant Nos.1 and 2 in favour of defendant No. 3. The appellant at the most may take action against defendant Nos.1 and 2 for refund of sale consideration or compensation and the remedy for him is elsewhere. In that view of the matter, I answer the substantial question of law in negative and proceed to pass the following:

ORDER

The appeal is dismissed. No costs.