



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1597 OF 2013 (SP)

BETWEEN:

1. SRI T ANNAYAPPA
S/O LATE THIMMARAYAPPA,
SINCE DEAD BY HIS LR'S
- 1(A) VENKATAMMA
W/O LATE ANNAYPPA
AGED ABOUT 73 YEARS
R/AT S. BINGIPURA VILLAGE
HULIMANGALA POST
JIGNI HOBLI, ANEKAL TALUK
BANGALORE - 560 105
- 1(B) GIRIJAMMA
D/O ANNAYPPA
AGED ABOUT 56 YEARS
D. HOSAHALLI
ANUGONDANAHALLI HOBLI
DEVANAGONDI POST
HOSAKOTE TALUK
BANGALORE RURAL DISTRICT.
- 1(C) MUNIRAJ
AGED ABOUT 65 YEARS
AKKAMAHADEVI ROAD
GAVIPURA, BASAVANAGUDI
BANGALORE - 560 019
- 1(D) SRI. RAVI
S/O LATE ANNAYPPA





AGED ABOUT 50 YEARS
SURJAPURA HOBLI
ANEKAL TALUK
BANGALORE - 562 125

1(E) SRI. SURESH
S/O LATE ANNAYPPA
AGED ABOUT 47 YEARS
R/AT S. BINGIPURA VILLAGE
HULIMANGALA POST
JIGNI HOBLI, ANEKAL TALUK
BANGALORE - 560 105

1(F) SRI. MANJUNATH
AGED ABOUT 45 YEARS
S/O LATE ANNAYPPA
R/AT No.899, MARAMMA TEMPLE
BEGUR
BANGALORE SOUTH TALUK
BANGALORE - 560 068

1(G) SRI. AMBARISH A
S/O LATE ANNAYPPA
R/AT S. BINGIPURA VILLAGE
HULIMANGALA POST
JIGNI HOBLI, ANEKAL TALUK
BANGALORE - 560 105

1(H) SMT. JAYAMMA
W/O KRISHNAPPA
AGED ABOUT 42 YEARS
R/AT NERALUR VILLAGE
No.275, CHANDAPURA CIRCLE
ANEKAL TALUK
BANGALORE - 560 107

1(I) SMT. SAVITRAMMA
W/O THIMMARAYAPPA
AGED ABOUT 40 YEARS
R/AT VANDENA HALLI VILLAGE
DENKANIKOTE TALUK
KRISHNAGIRI DISTRICT - 635 107



1(J) SMT. JYOTHI
W/O SRI RAMESH
AGED ABOUT 35 YEARS
R/AT BASAVANAPURA MAIN ROAD
No.46-1, 4TH CROSS ROAD
K.R. PURAM
BANGALORE EAST

...APPELLANT

(BY SRI. AMIT DESHPANDE, ADVOCATE FOR A1(A-J))

AND:

1. SMT. CHINNAMMA
AGED ABOUT 57 YEARS,
W/O NAGARAJU,
R/O PHODU VILLAGE,
S. BHINGIPURA DHAKALE,
JIGANI HOBLI, ANEKAL TALUK,
BANGALORE RURAL DISTRICT
2. SMT. PILLAMMA
W/O LATE ANNAYAPPA
SINCE DEAD, REP. BY HIS LR'S
- 2(A) SRI. NARAYANAPPA
S/O LATE ANNAYAPPA
SINCE DEAD, REP. BY HIS LR'S
- 2(B) SMT. LAKSHMAMMA
W/O NARYANAPPA
AGED ABOUT 55 YEARS
- 2(C) SMT. SHOBHA
D/O LATE NARAYANAPPA
AGED ABOUT 35 YEARS
- 2(D) SMT. MANJULA
D/O NARAYANAPPA
AGED ABOUT 33 YEARS



2(E) SHRI. SANTHOSH
S/O NARAYANAPPA
AGED ABOUT 33 YEARS

ALL ARE R/AT
VALEPURA VARTHUR HOBLI
BANGALORE.

...RESPONDENTS

[BY SRI. HEMAVATHI A.T., ADVOCATE FOR
SRI. CHINTAN CHINNAPPA, ADVOCATE FOR R1
VIDE ORDER DATED 19.02.2020 NOTICE TO R2(A-E) D/W]

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGEMENT & DECREE DTD 24.7.2013 PASSED IN R.A.NO.162/2006 ON THE FILE OF THE III ADDL. DISTRICT & SESSIONS JUDGE, BANGALORE RURAL DISTRICT, SIT AT ANEKAL, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 2.9.2005 PASSED IN O.S.NO.243/1998 ON THE FILE OF THE ADDL. CIVIL JUDGE (JR.DN) & JMFC., ANEKAL.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This Regular second appeal is filed by the appellant challenging the judgment and decree dated 24.07.2013 passed in R.A.No.162/2006 by the III Additional District and Sessions Judge Court, Bangalore Rural District, sitting at Anekal, wherein the first Appellate Court granted the relief of specific performance of contract .



2. The parties are referred to as per their ranking before the trial Court. The appellant is the defendant and respondent is the plaintiff.

3. The brief facts leading rise to filing of this appeal are as under:

Plaintiff filed a suit for specific performance of contract. It is the case of the plaintiff that, defendant is the absolute owner of the suit schedule property. He offered to sell the suit schedule property for consideration of Rs.28,000/-. Accordingly, the plaintiff agreed to purchase the suit land for consideration of Rs.28,000/-. Accordingly, the defendant executed the agreement of sale on 05.02.1996, agreeing to sell the suit schedule property for valuable consideration of Rs.28,000/-. The plaintiff paid the entire consideration amount to the defendant and the defendant acknowledge the receipt of the same in the presence of witnesses. It is contended that as there was prohibition for alienating the suit schedule property till the expiry of 15 years by the land Tribunal and it was



agreed between the parties that after the expiry of prohibition clause, the defendant has to execute the registered sale deed in favour of the plaintiff. The defendant assured her that after collecting all the necessary documents with respect to the suit schedule property, he will intimate the date of execution of registered sale deed. The defendant went on postponing the execution of registered sale deed. The plaintiff was/is ready and willing to perform her part of contract, but the defendant was not ready to perform his part of contract and committed the breach of contract. The plaintiff got issued the legal notice on 12.08.1996 calling upon the defendant to execute the register sale deed, but the defendant did not reply the legal notice. Hence cause of action arose for the plaintiff to file the suit for specific performance of contract.

4. The defendant filed the written statement denying the averments made in the plaint and also denied the execution of agreement of sale dated 05.02.1996. The



defendant has not executed any agreement of sale in favour of the plaintiff with regard to the suit schedule property. It is contended that the market value of the suit schedule property is more than 12 lakhs, the plaintiff got created the document styled as agreement of sale stating that the value of the suit schedule property is Rs.28,000/- and the plaintiff has manipulated the records. It is further contended that the defendant was not the absolute owner of the suit schedule property, he was only an occupant and occupancy right was granted in his favour as a manager of the joint family consisting of himself, his sons, daughter and grandchildren and he has represented the entire family before the land tribunal. It is contended that the plaintiff has manipulated the agreement of sale and further contended that defendant put his signature and LTM on the blank stamp paper on the belief and trust he had in the plaintiff. Hence prayed to dismiss the suit.

5. The Trial Court, on the basis of the above said pleadings, framed the following issues:



1. *Whether the plaintiff proves that defendant has executed a sale agreement on 05.02.1996 in respect of the suit schedule property for valuable consideration of Rs.28,000/- and on the same day defendant has received entire sale consideration?*
2. *Whether plaintiff proves that ready and willing to perform her part of contract?*
3. *Whether defendant proves that Court fee paid by the plaintiff is insufficient?*
4. *Whether defendant proves that sale agreement is created, forged and manipulated by the plaintiff?*
5. *What order or Decree?*

Additional Issue framed on 02.09.2005:

1. *Whether the plaintiff is entitle for specific performance of contract?*

6. The plaintiff in order to substantiate her case examined herself as PW.1 and examined two witnesses as PWs.2 and 3 and got marked 7 documents as Exs.P.1 to P7. The Power of Attorney holder of defendant was examined as DW.1 and examined two witnesses as DWs.2 and 3 and got marked 9 documents as Exs.D1 to D9 and court documents are marked as Exs.C1 and C2. The trial court after recording the evidence and hearing arguments



on both sides and on the assessment of oral and documentary evidence answered issue Nos.1, 2 in the affirmative, issue Nos.3 and 4 in the negative, additional issue No.1 in the negative, issue No.5 as per the final order. The suit of the plaintiff was partly decreed with costs. It is ordered and decreed that the plaintiff is directed to pay a sum of Rs.28,000/- to the plaintiff with interest @ 6% p.a. from the date of agreement of sale i.e., 5.02.1996 till the date of realisation. Prayer of specific performance of contract was dismissed.

7. The plaintiff, aggrieved by the judgment and decree passed by the trial court dismissing the suit for specific performance of contract, preferred an appeal in R.A.No.162/1006 on the file of III Additional District and Sessions Judge, Bangalore Rural District, sitting at Anekal.

8. The First Appellate Court, after hearing the learned counsel for the parties, has framed the points for consideration.



1. *Whether the appellant has made out just and reasonable grounds to allow I.A.No.2 and to condone the delay in preferring the present appeal?*
2. *Whether the appellant proves that the judgment and decree passed by learned Addl. Civil Judge and JMFC, Anekal in O.S.No.243/1998 dated 02.09.2005 is suffering from irregularities and illegalities in respect of refusal to grant decree for specific performance and required interference by this Court in this appeal?*
3. *Whether the appellant proves that she is entitled for decree for specific performance of contract?*
4. *What order?*

9. The First Appellate Court on re-assessment of oral and documentary evidence answered issue Nos.1 to 3 in the affirmative, issue No.4 as per the final order. The First Appellate Court has allowed the appeal and set aside the judgment and decree passed by the trial court in O.S.No.243/1998 dated 02.09.2005 and consequently decreed the suit of the plaintiff for relief of specific performance of contract with costs and directed the defendant to execute the register sale deed in pursuance



of sale agreement deed dated 05.02.1996 in favour of plaintiff within 3 months from the date of decree and in case of failure to execute the register sale deed in pursuance of sale agreement deed dated 05.02.1996. The plaintiff is at liberty to get the register sale deed through the court in accordance with law.

10. The defendant, aggrieved by the judgment and decree passed by the trial court decreeing the suit for specific performance of contract, filed this second appeal.

11. Heard the learned counsel for the defendant and also learned counsel for the plaintiff.

12. Learned counsel for the defendant submits that, the land Tribunal granted occupancy right in favour of the defendant and Form No.10 was issued on 31.08.1981 and he submits that the agreement of sale is in contravention of Section 61 of Karnataka Land Reforms Act. He submits that the said transaction is in contravention of Section 61 of Karnataka Land Reforms Act and Section 23 of Indian



Contract Act, 1872. Hence he submits that the First Appellate Court has committed an error in granting the relief of specific performance of contract. Hence, on these grounds he prays to allow the appeal.

13. Per contra, Smt. Hemavathi A.T, learned counsel for the plaintiff submits, that said land was granted in the year 1979. If the year is taken as 1979, then the agreement was executed on 05.02.1996, i.e., after 15 years from the date of grant. Hence she submits that agreement of sale is not in contravention of Section 61 of Karnataka Land Reforms Act and Section 23 of the Indian Contract Act. Further, she also placed reliance on the judgment of the Hon'ble Apex Court in the case of **SHYAMAL KUMAR ROY Vs. SUSHIL KUMAR AGARWAL REPORTED IN (2006) 11 SCC 331** and also **JAVER CHAND AND OTHERS Vs. PUKHRAJ SURANA REPORTED IN 1961 SCC ONLINE SC 22** and judgment of this court in the case of **SANGAPPA Vs. STATE OF KARNATAKA REPORTED IN ILR 2002 KAR 3603**. Hence she submits that First Appellate Court



was justified in passing the impugned judgment. Hence she submits that impugned judgment passed by the First Appellate Court decreeing the suit for specific performance of contract is just and proper and does not call for interference. Hence on these grounds she prays to dismiss the appeal.

14. This court has admitted the appeal on 27.03.2024, on the following substantial questions of law :

1) Whether the first Appellate Court is justified in granting the relief of specific performance of contract, when the agreement of sale is completely prohibited for a period of 15 years from the date of grant under Section 61 of the Karnataka Land Reforms Act?

2) Whether the defendant proves that the judgment and decree passed by the trial Court is contrary to the law laid down by the Hon'ble Apex Court in the case of Smt. Narayanamma and anr. Etc. etc. Vs. Govindappa and ors. Etc.etc.,reported in AIR 2019 SC 4654?

15. **Substantial question of law Nos.1 and 2:**

Substantial question Nos.1 and 2 are interlinked with each other. Hence they are taken together for common discussion in order to avoid repetition of facts. The plaintiff



in order to prove her case examined herself as PW.1 and she has reiterated the plaint averments in the examination-in-chief. In order to prove that the defendant has executed the agreement of sale agreeing to sell the suit schedule property for consideration of Rs.28,000/-, accordingly, the plaintiff paid the entire consideration amount to the defendant and the defendant executed the agreement of sale in favour of plaintiff. The plaintiff has produced the agreement of sale marked as Ex.P4. Ex.P1 is the RTC extract in respect of suit land stands in the name of the defendant. Ex.P2 is the copy of the legal notice got issued by the plaintiff to the defendant calling upon the defendant to execute the register sale deed. Ex.P3 is the acknowledgment, Exs.P5 to 7 are the acknowledgement receipts. The plaintiff in order to prove the execution of agreement of sale also examined two witnesses as PWs.2 and 3. In the course of cross examination of PW.1, except denial nothing has been elicited from the mouth of this witness. In rebuttal, the Power of Attorney holder of defendant was examined as



DW.1 and he has reiterated the written statement averments in the examination-in-chief and further the defendant has produced the documents - Ex.D1 is the Power of attorney executed by defendant in favour of DW.1 authorising him to depose on behalf of the defendant. Ex.D2 is the genealogical tree. Ex.D3 is the acknowledgment receipt, Exs.D4 to D7 are the RTC extracts, Ex.D8 is the mutation order, Ex.D9 is the Form-10 which was issued on 31.01.1981 and the defendant has also examined two witnesses, in order to establish his possession over the suit schedule property. From the perusal of Ex.P4, the defendant agreed to sell the suit schedule property for consideration of Rs.28,000/- and accordingly received the consideration amount and further the defendant did not perform his part of contract. The plaintiff got issued the legal notice as per Ex.P2 calling upon the defendant to execute the register sale deed. The defendant did not reply to the said legal notice. Thus, it is clear from the records that, the plaintiff has proved the defendant has executed the agreement of sale in favour of



plaintiff, now the question arises in this appeal is whether the said agreement of sale is in contravention of Section 61 of Karnataka Land Reforms Act, 1961.

16. Admittedly, the plaintiff has produced Ex.P7. The defendant has produced Ex.D9 i.e., Form-10 certificate which was issued on 31.08.1981. The defendant has produced certificate of registration of a tenant as an occupant under Section 55(1) of Karnataka Land Reforms Act, 1961, which is marked as Ex.D9. The said certificate was issued on 31.08.1981 and admittedly, the agreement of sale was executed on 05.02.1996. The said agreement was executed within fifteen years from the date of issuance of date of certificate of registration . Thus it could be seen that the transaction is nothing short of transfer of property under Section 61 of Land Reforms Act, there is a complete prohibition on such a transfer for a period of 15 years from the date of grant under Section 61(1) of the Reforms Act begins with a non-obstante clause, thus it is clear that the unambiguous



legislative intent is that no such transfer would be permitted for a period of 15 years from the date of grant. Undisputedly, even according to the plaintiff, the grant is of the year 1980, as such, the transfer in question in the year 1996 is beyond any doubt within the prohibited period of 15 years. Subsection (3) of Section 61 of the Reforms Act makes the legislative intent very clear. It provides, that any transfer in violation of subsection (1) shall be invalid and it also provides for the consequence for such invalid transaction. The Hon'ble Apex court in the case of **SMT. NARAYANAMMA AND ANOTHER ETC. ETC. VS. GOVINDAPPA AND OTHERS ETC ETC., REPORTED IN AIR 2019 SC 4654**, held that the Hon'ble Supreme Court had an occasion to consider Section 61 of the Karnataka land reforms Act, held in para 23 which reads as under:

'The transaction between the late Bale Venkataramanappa and the plaintiff is not disputed. Initially the said Bale Venkataramanappa had executed a registered mortgage deed in favour of the plaintiff. Within a month, he entered into an agreement to sell wherein, the entire consideration for the transfer as well as handing over of the possession was acknowledged. It could thus be seen, that the transaction was nothing short of a



transfer of property. Under Section 61 of the Reforms Act, there is a complete prohibition on such mortgage or transfer for a period of 15 years from the date of grant. Subsection (1) of Section 61 of the Reforms Act begins with a nonobstante clause. It is thus clear that, the unambiguous legislative intent is that no such mortgage, transfer, sale etc. would be permitted for a period of 15 years from the date of grant. Undisputedly, even according to the plaintiff, the grant is of the year 1983, as such, the transfer in question in the year 1990 is beyond any doubt within the prohibited period of 15 years. Subsection (3) of Section 61 of the Reforms Act makes the legislative intent very clear. It provides, that any transfer in violation of subsection (1) shall be invalid and it also provides for the consequence for such invalid transaction.'

17. Thus, the agreement executed in between plaintiff and defendant is hit by section 61 (1) of the Karnataka Land Reforms Act, 1961 and the said agreement of sale is invalid. The First appellate Court without examining the said aspect has proceeded to pass the impugned judgement. The judgments relied upon by the learned counsel for the plaintiff are not applicable to the present case on hand. The defendant has not challenged issue Nos.1 and 2 nor filed any cross objection or cross appeal. The impugned judgment passed by the first Appellate Court is contrary to the law laid down by the



Hon'ble Apex Court in the case of **SMT. NARAYANAMMA AND ANOTHER** (referred supra). In view of the above discussion, I answer substantial question of law No.1 in the negative and No.2 in the affirmative.

18. Accordingly I proceed to pass the following:

ORDER

The appeal is allowed.

The judgment and decree passed by the First appellate Court, is set aside .

The judgment and decree passed by the trial court is restored.

No order as to the costs.

In view of disposal of the appeal, I.A.No.1/2013 does not survive for consideration and accordingly disposed of.

SD/-
JUDGE

sks