

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15<sup>TH</sup> DAY OF JULY, 2011

BEFORE

THE HON'BLE MR. JUSTICE H.N. NAGAMOHAN DAS

**R.S.A. No.804/2005**

BETWEEN :

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1. KANTHAMMA  
W/O LATE B.LAKSHMI  
NARASIMAHAIH  
AGED ABOUT 77 YEARS
2. B.L.VENUGOPAL  
S/O LATE B.LAKSHMI  
NARASIMAHAIH  
AGED ABOUT 48 YEARS
3. V.PRASANNA KUMARI  
W/O B.L.VENUGOPAL  
AGED ABOUT 44 YEARS  
ALL ARE R/AT No.595, FORT  
CHICKABALLAPUR TOWN  
562 101.

... APPELLANTS

(By Sri. R.ABDUL REYAZ KHAN, ADV.)

AND :

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1. M.NANJUNDAPPA  
S/O MULVAGALAPPA

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AGED ABOUT 65 YEARS  
SHANKARMUTT ROAD  
CROSS, III DIVISION,  
CHICKABALLAPUR -562 101.

2. B.L.MANJUNATH  
S/O B.LAKSHMI  
NARASIMHAIAH  
AGED ABOUT 45 YEARS  
No.595, BEHIND KRISHNA  
TALKIES , FORT,  
CHICKABALLAPUR - 562101.

... RESPONDENTS

(By Sri BOJARAJ, ADV., FOR R-1  
Sri A.NAGARAJU, ADV., FOR R-2 )

THIS RSA IS FILED UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 09.09.2004 PASSED IN RA No.15/1999 ON THE FILE OF THE PRL.DISTRICT JUDGE, KOLAR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 10.02.1999 PASSED IN O.S.No.56/1993 ON THE FILE OF THE CIVIL JUDGE (SR.DN.) & JMFC,CHICKBALLAPUR.

THIS RSA COMING ON FOR HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING;

**JUDGMENT**

This second appeal is directed against the judgment and decree dated 10.02.1999 in O.S. No. 56/1993 passed by the Civil Judge (Senior Division) Chikkaballapur and confirmed by the



judgment and decree dated 09.09.2004 in R.A. No. 15/1999 passed by the Principal District Judge at Kolar.

2. Appellants and respondent No. 2 are the defendants and respondent No. 1 is the plaintiff before the Trial Court. In this judgment for convenience the parties are referred to their status before the trial Court.

3. Plaintiff contends that on 12.11.1988 the defendants executed an agreement of sale agreeing to sell the plaint schedule property for a total sale consideration of ₹80,000/- and acknowledged the receipt of advance amount of ₹70,000/-. It is further agreed that after a lapse of 4 years from the date of agreement and within one year thereafter the defendants have agreed to execute the registered sale deed in favour of plaintiff by accepting the balance sale consideration. After lapse of four years plaintiff orally requested the defendants on 12.11.1992 to execute the registered sale deed by accepting the balance sale consideration. Since the defendants evaded to perform their part of obligation the

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plaintiff got issued a lawyer's notice on 09.09.1993. Though the defendants received the plaintiff's lawyer's notice, have neither replied nor complied the demand made therein. Having no other alternative the plaintiff filed O.S. No. 56/1993 for decree of specific performance of agreement of sale.

4. The defendants entered appearance before the Trial Court and filed written statement inter alia contending that they have not executed agreement of sale dated 12.11.1988. On the other hand the defendants contend that they have borrowed a loan of ₹30,000/- and in that connection they have signed certain blank stamp papers and handed over to the plaintiff. The plaintiff by concocting the blank stamp papers created the alleged agreement of sale and filed a false suit. It is further contended that they have not received consideration of ₹70,000/- as falsely contended by the plaintiff. The defendants are not the exclusive owners of plaint schedule property and there are other persons interested in the plaint schedule property. On these grounds the defendants opposed the claim of plaintiff. On the basis

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of pleadings, the Trial Court framed the following issues for its consideration.

1. Does the plaintiff prove that the defendants executed the agreement of sale deed 12.11.1988 and received the advance of ₹ 70,000/-?
2. Whether the defendants prove that the said document came into existence in the circumstances stated in para 7 of their written statement ?
3. Does the plaintiff prove that he has always been ready and willing to perform his part of the contract ?
4. Is the defendant No.3 a necessary party to the suit ?
5. Is the plaintiff entitled to the relief of specific performance?
6. To what relief are the parties entitled ?

5. Before the Trial Court the plaintiff examined four witnesses as P.W.1 to P.W.4 and got marked Ex.P.1 to Ex.P.17. The defendants examined four witnesses as D.W.1 to D.W.4. The Trial Court on appreciation of the oral and documentary evidence held that the plaintiff has proved the due execution of the agreement of

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sale dated 12.11.1988. Consequently under the impugned judgment the Trial Court decreed the suit of plaintiff.

6. Aggrieved by this judgment the defendants filed an appeal in R.A. No. 15/1999. The first Appellate Court on reappreciation of the entire evidence on record passed the impugned judgment dismissing the appeal and confirming the judgment of the Trial Court. Hence, this second appeal.

7. This Court by order dated 16.04.2008 admitted the appeal on the following substantial question of law.

*“Whether the Courts below were justified in holding that the suit agreement is an agreement of sale and not a loan transaction as contended by the defendants having regard to the undisputed recitals in the agreement of sale itself”?*

8. On 14.07.2011 I heard learned counsel for the appellants/defendants and partly heard learned counsel for the respondent/plaintiff. The matter is listed today for further arguments



on the side of respondent/plaintiff. Learned counsel for the respondent/plaintiff instead of continuing arguments, sought to file a memo to retire from the case for want of instructions. I decline to accept the memo since the matter is part heard. I perused the entire appeal papers.

9. It is not in dispute that originally the plaint schedule property belonged to late Lakshminarasimhaiah. Defendant No. 2 was examined as D.W.4. D.W.4 in his evidence deposed that there are 7 children to their father Lakshminarasimhaiah, they are, Panduranga Shetty, Prameelamma, Girijamba, Vanaja, Venugopala, Manjunath and Vijayalakshmi. This evidence is not seriously challenged. P.W.1 in his cross-examination deposed that he is not aware of the number of children of late Lakshminarasimhaiah. On the demise of Lakshminarasimhaiah all his 7 children and wife Kamtamma – defendant No.1 succeeded to the plaint schedule property. Only wife and two children have executed the agreement of sale in favour of the plaintiff agreeing to sell the plaint schedule

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property. In the absence of other children of late Lakshminarasimhaiah as parties to the proceedings the suit of the plaintiff for decree of specific performance cannot be granted.

10. Ex.P.6 the agreement of sale is signed by only the vendors/defendants and not signed by the plaintiff. Learned counsel for the defendants relying on a judgment in the case of S.M. Gopal Chetty Vs. Ramal alias Natesan and others, AIR 1998 Madras 169, contends that in the absence of mutual contract between the vendor and vendee it will be only a memorandum of understanding and not an agreement of sale creating mutual obligation between the parties. In the absence of mutual obligation the party to the memorandum of understanding cannot enforce specific performance. There is some force in this contention of the learned counsel for the defendants. Admittedly the plaintiff who is the purchaser has not affixed his signature to the agreement of sale – Ex.P.6. Therefore the plaintiff is not entitled to seek decree of specific performance.





11. A reading of agreement of sale – Ex.P.6 specifies that out of sale consideration of ₹80,000/- a sum of ₹70,000/- is paid to the defendants. The balance is only ₹10,000/-. For payment of balance amount of ₹10,000/- and to obtain registered sale deed after lapse of 4 years and within 5 years. This is one of the circumstances that is to be taken into consideration for the purpose of finding out the nature of transaction and the intention between the parties. If really it is a sale transaction, there was no need for fixing 4 to 5 years' time for performance of an agreement of sale. It is the specific case of defendants that towards a loan transaction they signed blank stamp papers and as a security handed over the same to the plaintiff. Though the defendants have not established the theory of signing blank stamp papers it can be gathered from the oral and documentary evidence that under Ex.P.6 it is only a loan transaction and not a sale transaction.

12. It is seen from the record that plaint schedule property is located in a most important prime locality in Chikkaballapur town.

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Even according to P.W.1 the market value of the plaint schedule property as on the date of agreement of sale was more than ₹80,000/-. It is the specific case of defendants that on the date of agreement of sale the market value of the plaint schedule property was ₹4.00 to ₹5.00 lakhs. This is one of the circumstances to hold that under Ex.P.6 the parties had only intended to enter into a loan transaction and not a sale transaction. Both the Courts below committed an illegality in holding that Ex.P.6 is an agreement of sale and plaintiff is entitled for a decree of specific performance. It is settled position of law that decree for specific performance is a discretionary and equitable relief. It is seen from the record that sale consideration fixed under Ex.P.6 is less than the market value prevailing as on that date. By paying ₹70,000/- out of ₹80,000/- the sale consideration, time was fixed after 4 years and before 5<sup>th</sup> year. After lapse of 4 years the plaintiff got issued a lawyer's notice on 09.09.1993. It will be too harsh on the defendants to execute a registered sale deed for a valuable property by only accepting the balance sale consideration of ₹10,000/- at this length of time.



Therefore the plaintiff is not entitled for decree of specific performance.

13. The defendants contend that they had received only ₹30,000/- from the plaintiff and not ₹70,000/- as stated in the agreement – Ex.P.6. But the defendants have failed to prove and establish the defence taken by them. As already held the defendants have also failed to prove and establish that they have only signed blank stamp papers and the plaintiff has misused it. Therefore I hold that the agreement of sale – Ex.P.6 is a loan transaction for a sum of ₹70,000/-. Therefore the defendants are liable to refund the amount covered under Ex.P.6 with interest. Having regard to the facts and circumstances of this case the plaintiff is deprived of use and enjoyment of ₹70,000/- from the date of Ex.P.6 in the year 1988 till today. On the other hand the defendants had the benefit and enjoyment of ₹70,000/- from the year 1988. Therefore the defendants are liable to refund the amount of ₹70,000/- with 12% interest per annum.



14. For the reasons stated above, the question of law framed above is answered in negative. Accordingly, the following;

**ORDER**

- i. The appeal is hereby allowed.
- ii. The judgment and decree dated 10.02.1999 in O.S. No. 56/1993 and the judgment and decree dated 09.09.2004 in R.A. No. 15/1999 are hereby set aside.
- iii. Suit of the plaintiff in O.S. No. 56/1993 is hereby decreed directing the defendants to pay a sum of ₹70,000/- with interest at the rate of 12% p.a. from the date of suit till the date of realisation with costs.  
Ordered accordingly.

Sd/-  
JUDGE

LRS/15072011.