

Fakkirawwa Vs. Ashok and Another

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Court : Karnataka Dharwad

Decided On : Jul-18-2014

Judge : The Honourable Dr. Justice K. Bhakthavatsala

Appeal No. : Writ Petition No. 76686 & 76687 of 2013 (GM-CPC)

Appellant : Fakkirawwa

Respondent : Ashok and Another

Judgement :

(Prayer: These Writ Petitions Are Filed Under Articles 226 And 227 Of The Constitution Of India Praying To Quash Order Dated 05/02/2013 In O.S.No.94/2011 On I.A.No.6 And 7 Passed By The Court Of The Iii Additional Civil Judge(Junior Division) Dharwad At Dharwad Vide Annexure G And Reject The Applications Vide Annexure C And D Dated 20/06/2012 And Etc.)

1. The trial Court, by the impugned common order dated 5.2.2013, allowed I.As.VI and VII filed under Order VI Rule 17 of the Code of Civil Procedure by the plaintiff in O S No.94/2011 on the file of III Addl. Civil Judge, at Dharwad.

2. There is no illegality in the impugned order passed on I.A-VI permitting the plaintiff to correct survey number in the Plaint. What is seriously challenged by the petitioner/defendant in this case is the order passed on I.A-7 filed under Order VI Rule 17 of CPC directing the defendants to correct the survey number mentioned in the agreement of sale as 63/A/2 instead of 63/2A.

3. Learned Counsel for the petitioner submits that the trial Court misunderstood the ratio laid down in PURAN RAM Vs. BHAGURAM (AIR 2008 SC 1960) and the impugned order passed on I.A-VII may be set aside.

4. Learned Counsel appearing for the respondent/ plaintiff submits that there is no illegality or infirmity in the impugned order, as Section 26 of the Specific Relief Act, 1963, permits to seek rectification of an instrument, and therefore, the trial Court is justified in directing the defendants to rectify the survey number in the agreement of sale.

5. In the light of the above, the only point that arises for my consideration is:

Whether the impugned order passed on I.A-VII filed under Order 6 Rule 17 r/w Section 151 of CPC directing the defendants to correct the Sy. No.63/A/2 instead of 63/2A in the agreement of sale dated 25.4.1992 said to be executed by the defendants in favour of the plaintiff calls for interference by this Court ?

6. My answer to the above point is in the negative for the following reasons:

Chapter-III of the Specific Relief Act, 1963 deals with regard to rectification of instruments in the event of fraud or mutual mistake of the parties mentioned therein. As per sub-Section (2) of Section 26, if, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention. Further, sub-Section (3) of Section 26 says that a contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

The above-said provision does not permit the plaintiff, who has filed a Suit for specific performance of agreement to seek direction to the defendants to amend the Sy. No.63/A/2 instead of Sy. No.63/2A in the agreement of sale. It is pertinent to mention that if the case of the plaintiff is that there is mistake in mentioning correct survey number in the agreement of sale, it is open to the plaintiff to plead the same in the plaint or seek amendment of the plaint for such a relief in the suit

by urging the grounds, but the above-said provision does not give any such right to the plaintiff to seek rectification of the instrument viz., the agreement of sale by filing an application under Order VI Rule 17 of CPC. The trial Court appears to have misunderstood the ratio laid down in Puran Ram's case, supra and the same is liable to be quashed.

7. In the result, I pass the following order: Petition in WP No.76686/2013 in so far as the impugned order made on I.A-VI filed under Order VI Rule 17 of CPC in the above-said Suit at Annexure-G fails and the same is hereby rejected.

Petition in WP No.76687/2013 is allowed and the impugned order passed on I.A-VII filed under Order VI Rule 17 of CPC in the above-said Suit, at Annexure-G is quashed, with liberty to the plaintiff to take such course of remedy available in law.

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