

Basavaraj Vs. Shivappa and Others

Basavaraj Vs. Shivappa and Others

SooperKanoon Citation : sooperkanoon.com/1185523

Court : Karnataka Dharwad

Decided On : Nov-10-2016

Judge : Ravi Malimath

Appeal No. : Regular Second Appeal No. 5994 of 2010

Appellant : Basavaraj

Respondent : Shivappa and Others

Judgement :

(Prayer: This regular second appeal is filed under section 100 of CPC against the judgment and decree dated 02.07.2010 passed in R.A. no.55 of 2006 on the file of the addl. civil judge (sr. dn.) haveri, dismissing the appeal, filed against the judgement dated 10.04.2006 and the decree passed in o.s. no. 150 of 1995 on the file of the civil judge (Jr. Dn.) and Jmfc, at haveri, partly decreed the suit filed for specific performance of contract.)

1. Aggrieved by the concurrent findings recorded by both the Courts below in partly decreeing the suit of the plaintiff and directing the defendant to pay the earnest money of Rs.2,500/- at 6% per annum, the plaintiff has filed this appeal.
2. Parties are referred to as per their rank in the Trial Court.
3. The case of the plaintiff is that the suit property belongs to the defendant. On 25.06.1973 defendant executed a registered sale agreement by receiving an

earnest money of Rs.2,500/- out of the total sale consideration of Rs.9,200/-. Plaintiff was put in possession of the same. The Plaintiff has also discharged the loan in respect of the suit property. That the balance consideration has also been paid. It is further pleaded that in the alternative, he may be declared as owner by way of adverse possession. The plaintiff issued a notice to the defendant calling upon to execute the sale deed. Nothing came of it. Hence, the instant suit was filed seeking specific performance of the contract dated 25.06.1973.

4. On service of suit summons, defendant entered appearance and filed a written statement. He denied the sale agreement. He denied receipt of earnest money deposit as well as payments of other amounts. He denied that plaintiff has discharged the loan. It is contended that the plaintiff and his father are doing money lending business and used to take signatures on a blank paper by giving loan. Since the defendant needed money, he approached the plaintiff's father for Rs.8,000/-. The documents were taken. This is how the documents have been misused. That there is an encumbrance on the property. That the suit property is in the name of Vysya Bank. Therefore, the suit itself is not maintainable.

5. Based on the pleadings, the Trial Court framed the following issues and additional issues:

1) Whether the plaintiff proves that the defendant has executed the sale agreement dated 25.06.1973 for total consideration amount of Rs.9,200/- and earnest amount of Rs.2,500/- and handed over the actual possession of the suit property in his favour?

2) Whether the plaintiff proves that on 02.08.1973, the defendant has taken part consideration of Rs.3260/- and also on 29.05.21975 remaining balance consideration amount of Rs. 100/-?

3) Whether the plaintiff proves that as per agreement he had paid the loan amount of the defendant to Byadgi Land Development Bank?

4) Whether the plaintiff proves that he is ready and willing to perform his part of contract?

- 5) Whether the plaintiff proves that he has also perfected his title by adverse possession?
- 6) Whether the proper Court fee is paid?
- 7) Whether the defendant proves that when he approached for the loan of Rs.8,000/-, the father of the plaintiff made him to bring the stamp papers and his signature were taken on bond paper and white papers, by giving impression to close the society loan and he has signed on the bond papers and white papers in good faith?
- 8) Whether the defendant proves that the plaintiff has got created the document as for his convenience and in collusion with the Revenue authorities, he has got entered his name in the records?
- 9) Whether the plaintiff is entitled for the relief as prayed for?
- 10) Whether the defendant is entitled for the compensatory costs?
- 11) What order or decree?

Additional Issues

- 1) Whether the defendant proves that if specific performance is granted they will be put to some hardship and no hardship would cause to plaintiff?
- 2) Whether the defendant proves that suit is not maintainable under Section 32(3) of Karnataka Co operative Society Act?
- 6) Plaintiff examined himself as P.W.1 and marked five documents. Defendant examined himself as D.W.1 and marked 32 documents. Issues 1 and 9 were held partly in the affirmative. Issue No.6 and additional issue Nos.1 and 2 in the affirmative. Issue Nos.2 to 4, 7, 8 and 10 in the negative. Issue No.5 as not pressed for consideration. The suit was partly decreed. The suit for specific performance of contract was refused. However, the plaintiff was entitled for earnest money of Rs.2,500/- at 6% per annum from the date of agreement till realization Aggrieved by the same, the plaintiff preferred an appeal which was

dismissed. Hence, the present second appeal.

7) Learned counsel for the appellants contends that the judgment and decree of both the Courts below are perverse and hence, interference is called for. That the Trial Court failed to consider the plea of the plaintiff.

8) On the other hand, learned counsel for the respondent disputes the same.

9) On hearing learned counsels, I am of the considered view that there is no merit in this appeal.

10) So far as the readiness and willingness is concerned, the same was held against the plaintiff. He was unable to prove that he is ready and willing to perform his part of contract. His part of the contract was to the affect of making the balance payment to the defendant and thereafter expecting him to execute the sale deed. In view of holding the issue against the plaintiff concurrently by both the Courts below, I do not find any error that calls for any interference. The evidence and the material on record would clearly indicate that the plaintiff has failed to prove readiness and willingness to perform his part of the contract. The plaintiff has further failed to prove with regard to the payment of the balance consideration. The evidence led in by the defendant would clearly indicate that the papers were wrongly obtained by the plaintiff in the guise of executing the sale deed. Even otherwise, the property was encumbered with the Bank and therefore, the suit itself was not maintainable. On all these grounds, the Trial Court was justified in holding that the plaintiff has failed to prove his case. However, the plaintiff was entitled to refund the earnest money deposit. I do not find any error committed by both the Courts below that calls for any interference. Even otherwise, the entire case of the plaintiff revolves only around facts. No substantial question of law arises for consideration in this appeal. Consequently, the appeal being devoid of merit is dismissed.

The judgment and decree of both the Courts below are affirmed.

No costs.