

K. Thammaiah Vs. Papanna

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Court : Karnataka

Decided On : Jan-23-1985

Reported in : ILR1985KAR1885; 1985(2)KarLJ120

Judge : Jagannatha Shetty and ;Chandrakantaraj Urs, JJ.

Acts : [Specific Relief Act, 1963](#) - Sections 10

Appeal No. : RFA No. 41 of 1975

Appellant : K. Thammaiah

Respondent : Papanna

Advocate for Def. : Chandrasekharaiah, Adv. for ;Kesvay and Co.

Advocate for Pet/Ap. : Gopal, Adv. for ;B.K. Ramachandra Rao, Adv.

Disposition : Appeal Dismissed

Judgement :

Chandrakantaraj Urs, J.

1. This appeal of defendants is directed against the Judgment and Decree of the Court of the Civil Judge at Mandya in O.S.No. 49/1971 on his file. The respondent in this appeal was the plaintiff and the appellants were the defendants. In the course of this order, we will refer to the parties by the rank assigned to them in the

Trial Court.

2. Briefly stated the facts of the case are as follows : The plaintiff brought the suit for specific performance of the obligations of the defendants in accordance with the terms and conditions set out in Exhibit-P1, the suit document and agreement to sell, dated July 8, 1971, certain agricultural land bearing S.No.145 / I (old No.898) in Mandya (Kasba). The extent of the land agreed to be sold under Exhibit-P1 was 1 acre and 22 1/2 guntas for a consideration of Rs.27,390/- and a sum of Rs 11,000/- was paid on the date of the agreement and the balance was to be paid before the Sub-Registrar at the time of the execution and registration of the deed of sale. The plaintiff was required to have the property conveyed to him within three months from the date of the agreement on performing his part of the agreement and the defendants were required to convey the same at the expense of the plaintiff, the property in question free from all encumbrances including charges of land revenue etc. The plaintiff was ready and willing to perform his part of the agreement, but the defendants were putting off the execution of the sale deed for one or the other reason. In that circumstance, he got issued notice as per Exhibit DI dated September 28, 1971, through his Counsel setting out the terms of the agreement, his willingness to perform his obligations under the agreement and calling upon them to perform their part; he also put them on notice that if they failed to perform the agreement, he would proceed to institute a suit for specific performance. That notice was replied to as per Exhibit-P9 issued through Counsel of defendants bearing the date September 30, 1971. In that reply, the defendants admitted their liability and expressed their willingness to convey the suit schedule property provided the plaintiff performed his obligations under the agreement such as payment of the balance of consideration and the expense of conveyance. The only point which they disputed in the reply to Exhibit-DI was that the plaintiff was put in possession of 1 acre and 22 1/2 guntas at the time of agreement to sell and his claim for 10 guntas shortage in Exhibit-DI was not correct. There-after, there appears to have been some exchange of correspondence as to the time and place at which the parties should meet. It is not in dispute that the defendants received by cheque the amount for purchase of stamp paper of proper value for deed of conveyance.

3. There is no dispute that parties were to be present in the office of the Sub-Registrar on October 7, 1971. The plaintiff asserted that he went to the office of the Sub-Registrar on that date at 8 a.m. and waited till 5 p.m. and did not find the defendants putting in appearance as agreed to be fore. The defendants denied that they were absent. On the other hand, they contended that they were present there at the Office of the Sub-Registrar from morning till 3 p.m. on that date. The plaintiff did not put in appearance and therefore the defendants had to return without executing any sale deed. The defendants on October 7, 1971, itself got issued a notice as per Exhibit-P23(a) by which they repudiated the contract as per Exhibit-P1 and denied that they had any further obligation and demanded that the plaintiff deliver possession of the suit land of which he was in possession from the date of the agreement of sale.

4. On October 8, 1971 the plaintiff presented the plaint in the Court of the Civil Judge at Mandya for specific performance essentially pleading the same facts which have been narrated above. The defendants did not seriously dispute the facts alleged but rested their defence entirely on the facts that it was due to the breach committed by the plaintiff by not appearing on October 7, 1971 in the Office of the Sub-Registrar as appointed, and the plaintiff had disentitled himself to seek for specific performance. However, they clearly admitted that 1 acre and 22 1/2 guntas of land was in the possession of the plaintiff and that they would take separate proceedings to recover possession and that they had no further obligation to perform as the period of three months had elapsed under the agreement.

5. On the respective stands taken by the parties, the Trial Court framed as many as five issues. We are only concerned with Issues Nos. 1 and 4 and they are as follows :

'1. Whether the plaintiff was not put in possession of the land mentioned in the agreement of sale ?

4. Whether the non-execution of the sale deed was due to the default of the plaintiff as alleged by the defendants'

6. Both the issues were held against the defendants. What clinched the case for the plaintiff was that in addition to his own oral evidence he produced certain copies of three documents in respect of certain lands issued by the Sub-Registrar of Mandya for which the applications were made on October 7, 1971, evidencing the presence of the plaintiff in the Office of the Sub-Registrar. The documents in question were exhibited as Exhibits P2 to P4 from which it is clear that he made the application on October 7, 1971. As against this, Defendant-1 (D.W. 2) asserted on oath that he was present in the Office of the Sub-Registrar but that self-serving testimony was not supported or corroborated by any other witness. In fact, it was not even alleged in the written statement that both the defendants who were required to execute the conveyance went to the Sub-Registrar's Office nor has the other defendant been examined in the case.

7. There was the other question to which reference may be made as to the extent of land of which the plaintiff was actually given possession. Some evidence was led by the defendants as to the measurements that were taken at the time by the concerned authorities at their request in the presence of the plaintiff. But the Trial Court has found, though the measurements might have taken place, there was no proof that S. No. 145/1 the suit schedule land was measured in the presence of the plaintiff. On that ground the Trial Court also came to the conclusion that the plea of the plaintiff that he was put in possession of the suit schedule land short of 10 guntas was also upheld.

8. In the light of the findings of the Trial Court, the only question that falls for consideration by us is whether the breach of contract took place on account of any default made by the plaintiff or whether such breach took place on account of the conduct of the defendants.

9. Mr. Gopal, Learned Counsel appearing for the appellants, has taken us through the various documents, exhibits, the depositions of witnesses examined for the parties in support of their respective cases and also the judgment. The question centers around and falls within a narrow compass as to who was present at the Office of the Sub-Registrar on July 7, 1971. Exhibits P2 to P4 definitely indicate that the stamp paper required for obtaining the certified copies of the

documents from the Office of the Sub-Registrar were purchased on October 7, 1971. The endorsement to the applicant and the date of application for issue of certified copies is that the plaintiff made the applications on October 7, 1971. That could not have been done unless the plaintiff was present in the Office of the Sub-Registrar. Against this, the evidence for the defendants is only the assertion of the 2nd defendant on oath that he alone was present with the stamp paper. The stamp paper itself which was exhibited was purchased admittedly on October 6, 1971 at the cost of the plaintiff who had sent the required money by cheque earlier, to the defendants. That, instead of helping the defendants, proves the genuine intentions at all times of the plaintiff to perform his obligations under the agreement as per Exhibit-Pi. The stamp paper has not been written upon. The intended scribe has not been examined. No other person present in the Office of the Sub-Registrar known to, the, defendants has been examined in support of the assertion. In these circumstances, the assertion of the plaintiff supported by indisputable evidence containing intrinsic probative value as evidenced by documents Exhibits P2, P4 must necessarily be accepted by the Court and therefore we are of the view that the learned Trial Judge correctly came to the conclusion that the plaintiff had demonstrated his willingness to perform his obligations under Exhibit-P1 till the last minute. Therefore, the conclusions reached by the Trial Court that breach occurred by the act of the defendants must be sustained.

10. However, Mr. Gopal argued that in the light of the alternative plea made by the plaintiff that in the event of his main prayer not being granted by the Court, the advance paid by him, the damages suffered by him and the interest on the advance should be awarded as damages should have persuaded the learned Trial Judge to give the benefit of Section 10 of the [Specific Relief Act, 1963](#), (hereinafter referred to as the Act) to the defendants. The argument is that the Court ought not to have called upon the defendants to execute the sale deed but passed a decree for such damages quantified and claimed by the plaintiff himself. For this proposition, he relied upon the language of Section 10 of the Act as also the decision of the Privy Council in the case of Ramji Patel-v.- Rao Kishore Singh. Undoubtedly, Clause (a) of Section 10 of the Act does provide that when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done, the Court must enforce the specific

performance of the contract. Similarly, Clause (b) of Section 10 of the Act provides for enforcement of the specific performance of the contract when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief. In fact, Mr. Copal's contention is founded on Clause (b) rather than Clause (a) of Section 10 of the Act. The Privy Council decision referred to supra does support his case. But the facts therein were totally different. The defendant who had failed to perform his obligations under a written agreement had pleaded specifically that he was in a disturbed state of mind when he entered into the contract, that the value of the village agreed to be conveyed under the agreement was over Rs. 20,000/- while the consideration under the agreement was only Rs. 5,000/- and further that the plaintiff had at a relevant point of time agreed to take back the money which he had advanced not insisting upon the conveyance. It was on those facts that the Privy Council came to the conclusion that the agreement to sell therein was for an unconscionable consideration. More than that they found, in the earlier litigation in the Courts in India, the District Judge had re-corded a finding that the breach of contract could be amply compensated by awarding damages. It was in that circumstance that the Privy Council came to the conclusion that once the Court formed the opinion that the breach of contract could be compensated in terms of money, then the specific performance should not be directed. The facts herein are entirely different apart from there being no specific plea in the written statement, the argument has been founded entirely upon the fact of there being an alternative prayer in the plaint and no more. On the other hand, a perusal of the written statement clearly indicates that the defendants did not even concede at any time the plaintiff was entitled to any damages or for his loss under the contract and could be compensated in terms of money. We do not think that Privy Council decision is of any assistance to the defendants.

11. It was next contended by Mr. Gopal that the Court below erred in issuing a direction to the defendants to get the land measured by qualified persons to show the boundaries to the plaintiff and that the defendants should put the plaintiff in possession of 10 guntas of land which was said to be in the possession of Bommaiah and Javaraiah. It is stated that the defendants are not in possession of the lands though they have obtained an injunction against the plaintiff and two

others in O.S. No. 285/1966. It is also stated that the plaintiff has filed an appeal against that decree granting permanent injunction. We do not think we should concern ourselves in this case with what has been directed in some other litigation. Having regard to the direction given by the Court below for fresh measurement by competent authorities, we only clarify that if on such measurements if plaintiff is found to be inpossession of 1 acre and 22 1/2 guntas of agricultural land the defendants are required to do no more. But if he is short by 10 guntas, the defendants shall make good the same in accordance with the boundaries shown in the agreement of sale Exhibit-P1.

12. With this slight modification, the Judgment and Decree of the Trial Court are confirmed. The appeal is dismissed.

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