

Kalavathi, Vs. Ramadevi and ors.

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Court : Karnataka

Decided On : Jun-02-2011

Judge : H.N. Nagamohan Das, J.

Acts : Code of Civil Procedure (CPC) - Section 100

Appeal No. : R.S.A.No.59672005

Appellant : Kalavathi,

Respondent : Ramadevi and ors.

Advocate for Pet/Ap. : SRI TS.MAHANTESH, ADV

Judgement :

1. This second appeal is against the judgment and decree dated 2.8.2001 in O.S.35/1996 passed by the Civil Judge (Jr.Dn) at Chirkaballapur and judgment and decree dated 11.1.2005 in R.A.No. 133/2001 passed by Prl.Civil Judge (SrDn) at Chickbaltapur, dismissing the suit for decree of specific performance of agreement of sale.

2. Appellant is the second defendant and second respondent is the first defendant and first respondent is the plaintiff before the Trial Court. In this judgment for convenience, the parties are referred to their status before the Trial Conn.

3. Plaintiff contends that defendants executed at agreement of sale on 20.7.1995 agreeing to sell the plaint schedule property for a total sale consideration of Rs.50,000/- and acknowledged the receipt of advance money of Rs.30,000/-. It is further aggrieved that within a time frame of six months, the balance said consideration is to be paid and the first defendant shall execute the sale deed in favour of plaintiff. Despite repeated requests and demands, the first defendant failed to perform his part of obligation under the agreement of sale. Plaintiff got issued a lawyer's notice on 11.12.1995 calling upon the first defendant to receive the balance sale consideration and to execute the registered sale deed. Despite the receipt of plaintiff's lawyer's notice, the first defendant has neither replied nor complied with the demand made in the notice. Plaintiff having no other alternative filed suit O.S.No.35/1996 for a decree of specific performance of agreement of sale dated 20.7.1995.

4. During the pendency of the proceedings before the Trial Court, the plaintiff came to know that the first defendant sold the plaint schedule property in favour of second defendant under a registered sale deed dated 26.4.1996. Therefore, the second defendant was impleaded to the proceedings before the Trial Court.

5. Before the Trial Court, the first defendant filed separate written statement denying the execution of agreement of sale of 20.7.1995 and receipt of advance money. The first defendant also denied the receipt of plaintiff's lawyer's notice dated 11.12.1995. The first defendant contends that plaintiff by concocting the agreement of sale has filed the false suit. The second defendant also filed the written statement inter alia contending that first defendant has not executed the agreement of sale and has not received the consideration from the plaintiff. The second defendant contends that she is a bonafide purchaser of plaint schedule property from the first defendant without notice and knowledge of agreement of sale in favour of plaintiff. On these grounds, the defendants opposed the claim of plaintiff. On the basis of pleadings, the Trial Court framed the following issues for its consideration:

i) Do the plaintiff prove the execution of the agreement dt.20.7.1995 by the defendant no. 1?

- ii) Do the plaintiff proves that /" defendant has agreed to sell to the suit property for a sum of Rs.50,000/- and payment of Rs.30,000/- in advance, agreeing to execute sale deed within 6 months by receiving balance of Rs.20,000/-?
- iii) Do the 1st defendant proves that alleged agreement relied upon by the plaintiff has been concocted by forging his signature?
- iv) Do the plaintiff proves that she is always ready and willing to perform her part of contract and the defendant failed to perform his part of contract?
- v) Do the 2nd defendant proves that first defendant has constructed dwelling house in the suk schedule property and has sold the same to her on 26.4.96 and she is in possession and enjoyment of the same?
- vi) Do the plaintiff is entitled for the relief of specific enforcement of agreement?
- vii) What order or relief?

6. Before the Trial Court the plaintiff examined three witnesses as PW.1 to PW.3 and got marked Exs.P1 and P2. The defendants have not examined any witnesses on their side and have not produced any documents. The Trial Court on appreciation of pleadings, oral and documentary evidence held that first defendant has executed the agreement of sale agreeing to sell the plaint schedule property and acknowledged the receipt of advance money. The plaintiff was always ready and willing to perform her part of obligation. It is further held that during the pendency of the suit, the second defendant has purchased the plaint schedule property from the first defendant and therefore, doctrine of lis pendens is applicable. It is also held that second defendant is not a bonafide purchaser of plaint schedule property without notice and knowledge of the agreement of sale in favour of the plaintiff. Consequently, under the impugned judgment, the Trial Court decreed the suit of plaintiff. Aggrieved by this judgment of the Trial Court, defendants filed an appeal in R.A. 133/2001 and the same came to be dismissed and judgment and decree of the Trial Court came to be confirmed. Hence, this second appeal.

7. This Court by order dated 29.3.2005 admitted the appeal on the following substantial question of law:

Whether the defendant is a bonafide purchaser in view of stipulation in Ex.PI and further the stipulation which provides for damages in the event of breach was sufficient enough for the courts below in law to have refused the relief of the specific

performance to the plaintiff?

8. I heard arguments on both the side and perused the entire appeal papers.

9. It is not in dispute that first defendant is the owner of the plaint schedule property. Plaintiff contends that first defendant executed the agreement of sale Ex.PI agreeing to sell the plaint schedule property and acknowledge the receipt of advance amount of Rs.30,000/- on 20.7.1995. PW.2 is the attesting witness and PW.3 is the scribe of agreement of sale. The evidence of PW.1 to PW.3 remained unchallenged. The defendants have not adduced any oral evidence. In the circumstances: both the courts below concurrently held that the plaintiff has proved the due execution of the agreement of sale Ex.PI by the first defendant.

10. A perusal of Ex.PI, the agreement of sale specifies that first defendant has agreed to receive the balance sale consideration of Rs.20,000/- and to execute a registered sale deed in favour of the plaintiff, failing which he will also pay the damages. This stipulation in the agreement of sale is only to enforce the due performance of first defendant's obligation under the agreement of sale Ex.PI. The agreement of sale Ex.PI do not bar the plaintiff from seeking the specific performance of agreement of sale. A reading of Section 23 of the Specific Relief Act specifies that payment of liquidated damages is not a bar to seek decree of specific performance. In the circumstances, the stipulation in the agreement of sale will not bar the plaintiff from seeking decree of specific performance.

11. It is seen from the record that the agreement of sale is dated 20.07.1995. This agreement of sale specifies that first defendant has acknowledged the receipt of advance amount of Rs.30,000/-. The first defendant has agreed to receive the

balance sale consideration of Rs.20,000/- and to execute the registered sale deed within six months from the date of agreement of sale. Within the expiry of six months specified in the agreement of sale, the plaintiff orally demanded the first defendant to execute the agreement of sale. Within the expiry of six months period, plaintiff also got issued a lawyer's notice as per Ex.P2 but defendant has not replied to the plaintiffs lawyer's notice. Therefore, the plaintiff filed the suit before the Trial Court on 17.01.1996. On 02.03.1996, the first defendant entered appearance before the Trial Court through his Advocate. Thereafter on 26.04.1996, the first defendant executed a registered sale deed in favour of second defendant. This chronology of events manifestly makes it clear that the sale transaction between the first defendant and second defendant is with full knowledge and notice of the earlier agreement and the institution of the suit. As against this, the defendants have not stepped into the witness box and have not placed any oral evidence on record. In the absence of any such evidence on record, both the courts below were legally correct in holding that the sale transaction between the first defendant and second defendant is hit by Doctrine of Lis Pendence and that the second defendant is not a bonafide purchaser without knowledge and notice of earlier agreement of sale.

12. For the reasons stated above, the question of law framed above is answered in negative and the courts below are legally correct in granting a decree of specific performance of agreement of sale. Accordingly , the appeal is hereby dismissed.

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