

KAMS010056322019



**IN THE COURT OF THE III ADDL DISTRICT & SESSIONS
JUDGE, MYSURU**

Present: Sri.Jerald Rudolph Mendonca B.A.L.,LL.B.

Dated this the 2nd day of September 2021

R.A./366/2019

Appellant:

R.Lokesh S/o Late Ramakrishna, Aged about 53 years, R/at House No.163, 9th Main Road, 3rd Cross, Rajmahal Vilas Extension, Bangalore. Duly represented by his power of attorney, Madesha S/o Late Sannaiah, Aged about 41 years, R/at Duddugere Village, Varuna Hobli, Mysuru Taluk.

(By Sri.S.Prasad., Adv.)

/vs/

Respondents:

N.Ashok Kumar Dead by LR's

1. Smt.Girija W/o N.Ashok Kumar, Aged about 42 years.
2. Kum.Aishwarya Gowda D/o N.Ashok Kumar, Aged about 21 years.

Both are R/at Door No.150, 'E' Block, 20th Main Road, 20th Cross, J.P.Nagar, Khille Mohalla, Mysuru.

(R1 and 2 By Sri.R.S.Ranand &
S.J.Lakshme Gowda., Adv.,)

Date of institution of appeal: 19.09.2019

Nature of appeal: To set aside the judgment and
decree passed in OS.No.1124/2014
dt: 26/08/2019 passed by the III
Addl. Senior Civil Judge, Mysuru.

Date on which the Judgment : 02.09.2021
was pronounced

Total Duration:	Years	Months	Days
	01	11	13

J U D G M E N T

This Appeal is preferred by the Appellant / Plaintiff against the Judgment and Decree in OS.No.1124/2014 dated 26/08/2019 passed by the Hon'ble III Addl.Senior Civil Judge, Mysuru.

2. The parties to the Appeal are referred in the same rank as referred before the Trial Court for the sake of convenience. The Appellant is the Plaintiff and the Respondents are the Defendants No.1 to 3 before the Trial Court.

3. The plaintiff has filed this suit for specific relief directing the defendants to execute Sale Deed in his favour in respect of the plaint schedule property by receiving the balance consideration amount of Rs.6,57,856/- and to grant consequential relief of permanent injunction restraining the defendants from interfering with the peaceful enjoyment of the plaint schedule property.

4. The brief facts of the case of the Plaintiffs are as follows:

(i) The plaintiff and defendants have entered into agreement of sale dated 13.02.2014 in respect of agricultural property bearing Sy.No.81/1 measuring 10 guntas and in that property a structure is built in the area of 50 x 20 situated at Hangate village, which is described in the plaint. The defendants are the absolute owners of the suit schedule property. The defendant No.1 got the said property in the partition.

(ii) The defendants have agreed to sell the suit schedule property for Rs.65,00,000/- accordingly, the plaintiff has paid advance of Rs.10,00,000/-. The defendants have agreed to receive the balance amount of Rs.55,00,000/- at the time of execution of sale deed.

(iii) As per the plaintiff there are two properties shown in the agreement, in which 2 acre 8 guntas in Sy.No.13/3, for which already the sale deed has been

executed on 06.05.2014. The defendants had agreed that they would get the sale deed registered in respect of the suit schedule property within a short span of time. The plaintiff was always ready and willing to perform his part of contract.

(iv) The plaintiff has stated that he has paid a total sum of Rs.58,42,144/- towards the purchase of the property bearing Sy.No.13/3 measuring 2 acres 8 guntas. The plaintiffs have to pay Rs.6,57,856/- to the defendants and the defendants have to execute the sale deed in respect of the suit schedule property.

(v) The plaintiff has erected the barbed wire fence and compound and other works for which he has spent a sum of Rs.8,50,000/-. Even though he has issued a notice to defendants to execute the sale deed, the defendants have not executed the sale deed. Therefore, the plaintiff has filed the suit.

5. After issuance of summons, the defendants have appeared through their counsels and have filed their written statement. The defendant No.1 has passed away during the pendency of the proceedings and the defendant No.2 and 3 are his legal heirs.

6. The Defendants in their written statement have contended as follows:

(i) The defendants have denied the claim of the plaintiff. As per the defendants in pursuance of the sale agreement, the sale deed has been executed on 06.05.2014. Hence, the present claim of the plaintiff is not in force. As per the said agreement, the 10 guntas has to be excluded at the time of execution of sale deed as the revenue records were not upto date. Further in the said agreement it was specifically mentioned that only in case the property 10 guntas falls to the share of the defendants they will execute the sale deed. But already in respect of 2 acres 8 guntas the sale deed has been executed. Hence, the question of executing the sale deed in respect of suit property does not arise. Further as per the defendants they have received consideration amount only in respect of the property sold under the sale deed.

(ii) The defendants are not responsible for expenses made by the plaintiff on property. Further as per the defendants they are not the owners of the suit schedule property. The said property has fallen to the share of defendant No.1 father P.Nagaraju. The plaintiff is aware of the said fact. The said P.Nagaraju has filed suit against the present plaintiff for injunction in O.S.No.284/2014 which is pending before 2nd Addl.Civil Judge, Mysuru.

(iii) The plaintiff has agreed that consideration amount for 10 guntas should be adjusted to remaining portion and agreed to deduct the amount of Rs.6,63,270/- from total amount of Rs.65,00,000/- which was clearly mentioned in clause 14 of the sale agreement.

(iv) they pray to dismiss the suit. The defendant No.1 was died during the pendency of the suit. His legal heirs were already on record.

Therefore, the Defendants have prayed to dismiss the suit.

7. On the basis of the pleadings of the respective parties, the Trial Court has framed the following;

ISSUES

1. Whether the Plaintiff proves that, the defendants entered in to agreement of sale dated 13.02.2014 with the plaintiff by receiving advance amount of Rs.10,00,000/- out of total consideration of Rs.65,00,000/- agreeing to sell the plaint schedule property Sy.No.18/1?
2. Whether the defendants prove that the sale agreement with regard to suit schedule property is not in existence?
3. Whether the court fee paid by the plaintiff is proper and correct?
4. Whether plaintiff is entitled for the relief of Specific Performance of Contract?
5. What Order or decree?

8. To prove the case of the plaintiff, the GPA holder of the plaintiff examined himself as P.W.1 and got marked documents at Ex.P1 to P63. The defendants have not lead any evidence nor they have cross-examined the P.W.1.

9. After hearing both sides, the Trial Court has dismissed the suit of the Plaintiff with no order as to costs.

10. Being aggrieved by the said Judgment and Decree passed by the Trial Court, the Appellant / Plaintiff has preferred this Appeal on the following amongst other grounds:

GROUND

(i) The Judgment is perverse arbitrary and contrary to law.

(ii) The main reason given by the Trail Court for the dismissal of the suit is the non-changing of khatha in the name of the defendant No.1. The defendants have not produced any document to show that the khatha was not changed in the name of the defendant No.1.

(iii) The defendants have remained absent through out and have not contested the matter and hence the learned Trial Judge ought to have decreed the suit.

(iv) The plaintiff has now procured the revenue records which shows that the same stands in the name of the

defendant No.1 and the same is intentionally suppressed by the defendants and this has misled the Trial Court to pass the judgment.

(v) The plaintiff has invested huge sums of money over the suit schedule property. This is not considered by the Trial Court. The defendants have not intention the execute the sale deed and want to enjoy the fruits of the investment made by the plaintiff.

Therefore, the Appellant/ Plaintiff has prayed to allow the Appeal and decree the suit.

11. In pursuance of the notice, the Respondents have appeared through their counsel.

12. The Plaintiff has filed I.A.No.II under Order XLI Rule 27 read with Section 151 of CPC seeking permission to produce the documents as additional evidence. In the Affidavit accompanying the application the Plaintiff has stated that the khatha in respect of the suit property is mutated in the name of the defendant No.1 after the filing of the suit. The plaintiff was under the impression that the defendants would produce the said document. But, the defendants have not contested the case. He came to know about the said entry recently and therefore, he could not produce the same before the Trial Court. Therefore, the Plaintiff has prayed to allow the application.

13. The respondents have not filed the Objections to the IA.No.II.

14. The Trial Court Records were secured.

15. Heard the learned counsel for the Appellant and the Respondents.

16. Now the points that arise for the consideration of this Court are:

1. Whether the documents sought to be produced by the Plaintiff along with I.A.No.II under Order XLI Rule 27 CPC have to be received as additional evidence ?
2. Whether finding of the Trial Court that the Plaintiff is not entitled for the specific performance of the agreement of sale dated 13/02/2014 in respect of the plaint schedule property is contrary to the facts and circumstances of the case and the evidence on record and against the principles of law and calls for interference by this Court ?
3. Whether the Judgment and Decree of the trial Court dismissing the suit of the Plaintiff is contrary to the facts and circumstances case and against the principles of law and calls for interference by this Court ?

4. What order ?

17. The findings on the above points are as follows.

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

Point No.4: As per final order

for the following:

REASONS

POINT NO.1 to 3:

18. This is a suit filed by the Plaintiff for specific performance of the agreement of sale dated 13/02/2014 marked as Ex.P3. The said agreement is entered into in respect of two properties forming a compact block. The particulars of the survey numbers are Sy.No.18/1 measuring 0-10 guntas and Sy.No.13/3 measuring 2 acres 8 guntas of Hungate Village, Varuna Hobli, Mysuru Taluk.

19. The sale deed in respect of Sy.No.13/3 measuring 2 acres 8 guntas is executed on 05/05/2014 in pursuance of the said agreement of sale. The relevant clause relating to the execution of the sale deed is the clause No.14 of Ex.P3 which reads as follows:

"ಒಂದು ವೇಳೆ ಸರ್ವೆ ನಂ.18/1 ರಲ್ಲಿ 0-28 ಗುಂಟೆ ವೈಕಿ 0-10 ಗುಂಟೆ ಒಂದನೇ ಪಾರ್ಶ್ವಯವರ ಹೆಸರಿನಲ್ಲಿ ಖಾತೆ ಆಗದ ಪಕ್ಷದಲ್ಲಿ 0-01 ಗುಂಟೆಗೆ ರೂ.66,327/- ರಂತೆ 0-10 ಗುಂಟೆಗೆ ರೂ.

6,63,270/- (ಆರು ಲಕ್ಷದ ಅರವತ್ತ ಮೂರು ಸಾವಿರದ ಎರಡು ನೂರ ಎಪ್ಪತ್ತು ರೂಪಾಯಿ)
 ಗಳನ್ನು ಒಟ್ಟು ಮೊತ್ತ ರೂ.65,00,000/- ಅರವತ್ತೈದು ಲಕ್ಷ ರೂಪಾಯಿಗಳು ಮಾತ್ರ) ಗಳಲ್ಲಿ
 ರೂ.6,63,270/- (ಆರು ಲಕ್ಷದ ಅರವತ್ತ ಮೂರು ಸಾವಿರದ ಎರಡು ನೂರ ಎಪ್ಪತ್ತು ರೂಪಾಯಿ)
 ವಜಾ ಮಾಡಲು ಒಂದನೇ ಪಾರ್ಟಿ ಒಪ್ಪಿರುತ್ತಾರೆ."

20. Therefore, the reading of the said clause suggests that if the khatha is not changed in favour of the vendor in respect of Sy.No.18/1 measuring 10 guntas then the sale deed had to be executed only in respect of Sy.No.13/3.

21. The plaintiff has now produced the RTC in respect of Sy.No.18/1 which shows that the 10 guntas of land stands in the name of the defendant. The said RTC is for the year 2019-20. The plaintiff has also produced the partition deed entered into amongsts the defendant and his family members on 03/05/2005 as per Ex.P2 which shows that the 10 guntas of land in Sy.No.18/1 out of 1.06 acres is allotted to the share of the defendant. The boundaries shown to the said 10 guntas of land and the boundaries to the entire property as shown in the sale agreement are compared it shows on the face of it that it is the same land.

22. The contention of the defendant is that the sale agreement has come to an end as the sale deed in respect of Sy.No.13/3 is executed and now the sale agreement is not in existence for its enforcement. The Trial Court has also has held the same.

23. The Trial Court has also held that the defendants have no right to execute the sale deed in respect of the suit property. AS per the agreement the defendants are not liable to execute the sale deed only if the khatha in respect of 10 guntas of land is not changed to the name of the defendant. As contended by the learned counsel for the defendant if the parties had reserved their right to execute the sale deed in respect of Sy.No.18/1 the same should have been mentioned in the sale deed Ex.P4 or the said property should have been sold in Ex.P4 itself. This argument of the learned counsel for the defendant is acceptable but what was the intention of the parties at the time of executing sale deed has to be found out by oral evidence as there is no documentary evidence evidencing the same.

24. The P.W.1 is not cross examined by the defendant. The defendant has also not led the evidence. Under the above circumstances if there is no documentary evidence showing the intention of the parties as to whether the sale agreement has come to an end on the execution of the sale deed as per Ex.P4 or whether the parties had the intention to execute the sale deed in respect of the suit property in pursuance of the agreement of sale at a future date has to be decided by appreciating the oral evidence. As the P.W.1 is not cross examined and the defendant has not led evidence, this Court is of the opinion that there is no sufficient evidence to give a correct finding on this point.

25. The production of the RTC is material to show that the khatha of the property was standing in the name of the defendant in respect of the suit property and therefore the defendant is liable to execute the sale deed.

26. Considering the above circumstances, this Court is of the opinion that the matter has to be remanded for fresh disposal to give opportunity to the parties to lead further evidence.

27. Under Order XLI Rule 23-A CPC this Court has the power to remand the suit. As the plaintiff wants to produce the RTC which is a material document and as the Defendants have to cross-examine the Plaintiff and also have to lead the evidence, a fresh trial has to be held. Therefore, this Court cannot proceed with the recording of the evidence and the matter has to be remanded to the Trial Court.

28. Therefore, this Court holds that the plaintiff has made out ground to receive the document produced along with IA.No.II as additional evidence and the findings given by the Trial Court has to be set aside and the matter has to be remanded to the Trial Court and the Judgment and Decree passed by the Trial Court has to be set aside. Hence, these Points are answered in the **Affirmative**.

POINT NO.4:

29. As the suit is of the year 2014, the time limit has to be fixed for the disposal of the case by the Trial Court. It is needless to say that the parties should co-operate with the Trial Court to dispose of the case at the earliest. In the result, this Court proceeds to pass the following order:-

ORDER

The I.A.No.II filed by the Plaintiff under Order XLI Rule 27 r/w Section 151 of CPC is allowed with no order as to costs.

The Appeal filed by the Appellant under Section 96 read with Order XLI Rule 1 of CPC is disposed of as follows with no order as to costs.

The Judgment and Decree dated 26/08/219 passed in OS.No.1124/2014 by the Hon'ble III Addl. Senior Civil Judge, Mysuru, is set aside.

The suit in OS.No.1124/2014 is remanded to the Trial Court for fresh disposal as follows:

The Trial Court shall take back the suit on its file in its original number and grant an opportunity to the Plaintiff to produce the documents and to the defendants to cross-examine the P.W.1 and lead the evidence in defence.

The Plaintiff is at liberty to adduce further evidence and produce the documents and the applications filed by the parties shall be considered by the Trial Court in accordance with law.

The parties shall appear before the Trial Court on 29/09/2021 without further notice.

The Trial Court shall make an endeavor to dispose of the suit at the earliest latest within 6 months from 29/09/2021.

Draw up decree accordingly.

Transmit the Trial Court Records forthwith along with the copy of the Judgment and decree of this Court.

(Dictated to the Stenographer directly on computer and then pronounced in the open court on this the 2nd day of September 2021)

(J.R. Mendonca)
III Addl. District & Sessions Judge,
Mysuru

(Judgment pronounced in open Court vide
separate Judgment)

ORDER

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III Addl. District & Sessions Judge,
Mysuru