

KATK610005312015



Presented on : 03-08-2015
Registered on : 03-08-2015
Decided on : 30-10-2023
Duration : 8 years, 2 months, 27 days

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE &
JMFC COURT, MADHUGIRI.**

Dated this the **30th day of October 2023**

PRESENT : Smt. PRAMEELA. M

B.Com., LL.B.,

Addl.Senior Civil Judge
& JMFC, Madhugiri

R.A.NO. 112/2015

Appellant/s:

D. Rangappa S/o Late Doddegowda,
Major, R/o Gutte Village, Dodderi
Hobli, Madhugiri Taluk, Tumakuru
District, Dead by LR's

a) Smt. Lakshmamma W/o Late
D.Rangappa, Aged about 63
years,

b) Sri. D.R.Doddegowda S/o
Late D.Rangappa, Aged about
45 years,

c) Smt. Girija W/o D.S.Shivakumar,
D/o Late D.Rangappa, Aged
about 43 years,

d) Sri. D.R.Mohan S/o Late
D.Rangappa, Aged about 40
years,

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All are R/o Gutte Village, Dodderi
Hobli, Madhugiri Taluk.

(Plaintiffs in the lower court)

(Smt/Sri. T.D.- Advocate)

V/s

Respondent/s:

1. Basmanga Aradhya S/o Late
Rudra Aradya, Since Dead by
LR's

a) Veena D/o Late Basmanga
Aradhya, Aged about 28
years, R/o Inahalli Village,
Dharmapura Hobli, Hiriyur
Taluk,

b) Manjunatha S/o Late
Basmanga Aradhya, Aged
about 25 years, R/o Gutte
Village, Dodderi Hobli,
Madhugiri Taluk.

2. Manjunatha Aradhya S/o Late
Rudra Aradhya, Now attained
majority, Aged about 18 years,
R/o Gutte, Dodderi Hobli,
Madhugiri Taluk and now
residing with his father at new
Urkere, Kasaba Hobli, Tumkur
Taluk and District.

(Defendants in the Lower court)

(Smt/Sri.R.M.- Advocate for R1(a)
& (b)

R2- Exparte)

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Date of institution
of the Appeal : 03-08-2015

Nature of the Appeal : Against Judgment & decree in
OS 187/2007, dated 24-06-2015
on the file of Prl. Civil Judge &
JMFC, Madhugiri

Date of Judgment : 30-10-2023

Total Duration	: Year/s	Month/s	Day/s
	08	02	27

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30/10/2023
(PRAMEELA.M)

Addl. Senior Civil Judge & JMFC,
Madhugiri

: J U D G M E N T :

This regular appeal is preferred by the appellants/ plaintiffs U/o Order 41 rule 1 r/w Sec.96 of CPC challenging the Judgment and decree passed in O.S.No.187/2007, dated 24-06-2015 on the file of Prl. Civil Judge and JMFC, Madhugiri.

2) The parties are referred to as per the ranks held by them before the trial court for convenience.

3) The case of the plaintiffs is as under:

The defendants are the absolute owner of the suit properties. In

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the month of October 2003 Defendants offered to sell the suit properties for their legally necessities and family benefit. The original plaintiff accepted the offer. After negotiation both defendants and original plaintiff fixed the same price of Rs.50,000/-. On 17.10.2005 defendant no.1 has executed himself and on behalf of minor 2nd defendant in favour of original plaintiff. On the date of execution defendants received advance amount of Rs.35,000/- by agreeing to execute the sale deed after khatha and pahani changed in his name by receiving balance consideration amount.

4) Plaintiff has mobilized the balance consideration amount and approached the defendants in the month of June-2006 and requested to execute the sale deed by receiving balance consideration amount. But, defendants postponed the same by giving one or other reasons. Finally during the last week of June-2007, defendants have refused to perform their part of contract. The original plaintiff always ready and willing to perform his part of contract but defendants failed to perform their part of contract. Hence, on 23.06.2007 plaintiff got issued legal notice through his advocate and called them to perform their part of contract. In spite of it, defendants neither perform their part of contract nor reply the notice. In the result, original plaintiff filed suit.

5) Defendants filed their written statement by contending that suit properties are the ancestor and joint family properties of 1st defendant and his brother Thipperudraiah. They were in joint possession and enjoyment of the suit properties. Hence, defendant no.1 and 2 have no exclusive right and title in respective suit properties. On 14.10.2006 defendant no.1 relinquished his rights by executing a registered

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relinquishment deed in favour of his brother Thipperudraiah by receiving Rs.30,000/- towards suit properties and survey no.112 of Chandragiri Village. By virtue of the said relinquishment deed his brother Thipperudraiah has become an absolute owner of the suit properties. On the basis of Relinquishment deed 1st defendant's brother is in possession of the suit properties by changing khatha in his name. Defendants 1 & 2 never executed the alleged agreement of sale in favour of original plaintiff. The original plaintiff created concocted and fabricated the alleged agreement of sale only with intension to harass the defendants and to knock out the properties with an active support of scribe and attesters. Defendants further contended that there is a ill-will between the plaintiff and 1st defendant's brother Thipperudraiah. At the instance of enmity this suit. The suit is bad for non joinder necessary party. Hence, prayed to dismiss the suit with cost.

6) Based on the pleadings the trial court has framed the following issues:

1) Whether the plaintiff proves that the defendant no.1 executed an agreement of sale dated 17.10.2005 agreeing to sell the suit schedule property in his favour for Rs.50,000-00 and received advance consideration of Rs.35,000-00 on the date of agreement itself?

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

3) Whether the defendants prove that the agreement of sale dated 17.10.2005 is created, concocted and fabricated one?

4) Whether the plaintiffs are entitled for relief sought?

5) What order or decree?

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7) In the trial court, plaintiff No.1(d) has examined himself as PW 1 and 12 documents got marked as Exs.P1 to P12. Plaintiffs have examined two witnesses as PW-2 and PW-3. On the other hand, defendant No. 1 examined himself as DW 1 and 10 documents got marked as Ex.D1 to Ex.D10.

8) After appreciation of oral and documentary evidence adduced and produced by both parties, the trial court partly decreed the suit of the plaintiffs. Appellants/plaintiffs challenged the judgment and decree by way of this appeal on the following grounds:

i) The trial court without properly appreciated the evidence and give findings that suit is bad for non-joinder of necessary party.

ii) The trial court has rightly giving findings in respect to issue No. 1 to 3 but, the trial court has answered issue No. 4 in the partly allowed without proper.

iii) The trial court has wrongly decree the suit in part by ordering to refund of earned money instead of direct the respondents to execute the regular registered sale deed in favour of appellants.

iv) When the trial court has answered affirmative regarding execution of agreement of sale and readiness and willingness, the court has ought to ordered for specific performance of contract based on agreement of sale.

Hence, prayed to allow the appeal and set aside the judgment & decree passed by the trial court.

9) Respondents appeared through advocate and supported the judgment and decree passed by the trial court.

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10) Both appellants and respondent counsel submitted written arguments and same have taken on record. Perused the material on record.

11) Based on grounds urged by the appellants the following points arise for consideration:

- 1) Whether the trial court was justified in holding that plaintiffs are entitled for refund of earnest money with interest instead of specific performance of contract ?
- 2) Whether the impugned judgment & decree needs to be interference?
- 3) What order or decree?

12) My findings to the above points are as under:

- 1) IN THE NEGATIVE
- 2) IN THE AFFIRMATIVE
- 3) AS PER THE FINAL ORDER for the following.

REASONS

13) **POINT No.1** : It is the case of the original plaintiff that defendants are the absolute owners of the suit property. Defendants entered into sale transaction with original plaintiff to sell the suit property a sum of Rs.50,000/-. On 17-10-2015 defendant No.1 received earnest money of Rs.35,000/-by executing agreement of sale himself and on behalf of defendant No.2 when she was minor in favour of plaintiff. Defendant undertake to execute registered sale deed by receiving earnest money. Later defendants failed to execute the sale deed. Hence, on 23-06-2007 original plaintiff got issue legal notice to the defendants. On receipt of legal notice, defendants have given untenable reply.

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During the pendency of the suit, plaintiff passed away and his legal heirs brought on record. Plaintiff (d) who is the original plaintiff has examined himself as PW-1 and reiterated the plaint averments. PW-1 placed 12 documents at Ex.P1 to P12. In order to prove due execution of agreement of sale plaintiff examined the attester and scribe of Ex.P9 as PW-2 and PW-3. Both witnesses identified their signature and signature of defendants found Ex.P9. Further they have specifically deposed the sale transaction in respect of suit properties and passing of sale consideration in part.

Defendants denied the execution of agreement of sale and passing of sale consideration amount has stated by the plaintiff. According to defendants suit properties are the joint family properties. No division among the defendant No.1 and his brother. So, defendant No.1 has no exclusive right to sale the suit properties. Defendants further contended plaintiff created and forged the suit document in order to get illegal benefit. Defendants executed Relinquishment deed in favour of his brother Thipperudraiah on 14-10-2006 and relinquished their share in respect of suit properties along with Sy.No.112 by receiving Rs.30,000/-. Plaintiff created the alleged agreement of sale.

To rebut the case of the plaintiffs, defendant No.1 has examined himself as DW-1 and four documents got marked as Ex.D1 to D4. Ex.D1 is the certified copy of Relinquishment deed dated: 14-10-2006, Ex.D2 and Ex.D3 are the certified copies of mutation vide MR No.24/2006-07 and MR No.49/2008-09 respectively. Ex.D4 is the certified copy of order in Tahasildar in RRT No.42/2009. Ex.D5 is the RTC extract.

To meticulously analyses the oral and documentary evidence attached to judgment of trial court, it is very clear that the trial court has

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given findings that plaintiffs proved the execution of Ex.P9 and their readiness and willingness to perform of their part of contract. But the trial court decreed the suit in part by declining to grant specific performance of contract based on agreement of sale. But the trial court refund the earnest money with interest. Aggrieved by the above judgment and decree plaintiffs preferred this appeal by challenging the judgment ordered for refund of earnest money by declining specific performance of contract based on agreement.

Admittedly, the trial court given findings that plaintiffs proved the Ex.P9 and their readiness and willingness to perform their part of their contract. Defendants not challenged the findings of trial court in respect of issue No.1 and 2 and also not filed cross appeal hence, there is no need to discuss the execution of Ex.P9 on readiness and willingness of plaintiffs to perform their part of contract. As per the appeal ground on arguments and arguments of learned counsel for appellant that they have not sought for relief of refund of earnest money. they specifically sought for decree for specific performance of contract. But the trial court ordered for refund of earnest money by exercising discretionary power vested as per the Sec.20 of Specific Relief Act. Once, the plaintiffs proved the execution of Ex.P9 and their readiness and willingness the court ought to have ordered for specific performance of contract on the basis of agreement of sale.

Defendants counsel submitted written arguments but they they have not taken any contention in respect to issue No.1 and 2. Further, defendants have not opposed the judgment and decree passed by the trial court. By consideration evidence and arguments the trial court answer issue No.1 and 2 in the Affirmative. But declined to order for

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specific relief based on agreement of sale. Now the question is whether the trial court refund the earnest money without proper reliefs sought by the plaintiffs in respect to refund of earnest money with interest. At this stage it is necessary to read the Sec.22 of Specific Relief Act.

Section.22; power to grant relief of possession, partition, refund of earnest money, etc.

(1) Notwithstanding anything to the contrary contain in the Code of Civil Procedure, any person suing for the specific performance of contract for transfer of immovable property may, in any appropriate case ask for-

a) Possession, her partition and separate possession o the property in addition to such performance; or

b) Any other relief to which he may be entitle, including the refund of any earnest money her deposit or made him, in case which claim for specific performance his refuse.

(2) No relief under clause (a) or (b) of Section 1 shall be granted by the court unless it has been specifically claimed;

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of proceedings allow him to amend the plaint on such terms has may be just for including a claim for such reliefs.

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The above provision provided that no relief grant a under (a) or (b) of Sub Sec.1 shall be granted by the court unless it has been claimed by the plaintiffs. A carefully gone through entire records the plaintiffs are not sought for alternative relief for refund of earnest money. Therefore, without specifically claiming the relief the court cannot grant the same.

At this juncture it is worth full to refer the decision reported in (2023) 3 SCC 714 between Deshraj and others V/s Rohatsh Singh.

**The Contract and Specific Relief Act 1963 - Sec.22 -
Refund of contractual price- deposit - earnest money -
impermissibility of, where no such relief claimed by the
plaintiff in suit seeking specific performance of contract
- Held the prayer clause is a sine qua non for grant of
decree of refund of earnest money.**

In the present case, plaintiffs had neither prayed for refund of earnest money in the original plaint not they sought any amendment at a subsequent stage. In the absence of such prayer the court cannot grant the refund of earnest money by refusing specific performance of contract. The trial court has not justified why they have refund of earnest money without sought prior for refund of earnest money by the plaintiffs. Therefore, the judgment passed by the trial court not in accordance with law. Hence, it needs to interference in respect impugned judgment and decree passed by the trial court only in respect to refusal of specific performance of contract on the basis of Ex.P9 Agreement of sale dated: 17-10-2005. As such Point No.1 answered in the Negative Point No.2 answered in the Affirmative.

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14) **POINT No.3** : In view of the above discussion on Points 1 and 2, I proceed to pass the following :

ORDER

The appeal preferred by the appellants/plaintiffs u/s 96 r/w Order 41 rule 1 of CPC is hereby allowed.

Consequently, the judgment & decree passed in O.S.No.187/2007 by the Prl. Civil Judge & JMFC, Madhugiri on 24-06-2015 is hereby set aside and decreed the suit in O.S.No.187/2007 with cost.

The defendants shall execute the registered sale deed in favour of the plaintiffs in respect of suit schedule properties within 3 months from the date of this order by receiving balance consideration amount of Rs.15,000-00. On failure of the defendants to execute the registered sale deed, the plaintiffs are at liberty to get it executed through process of court.

Consequently, the plaintiffs are also entitled for the possession of the suit schedule properties after execution of the registered sale deed.

Draw decree accordingly.

Office to send the TCR with the copy of this judgment to the trial court.

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Transmit the copy of this judgment to the Trial court along with TCR forthwith.

(Dictated to the Judgment Writer, the transcript revised, corrected and pronounced in the open court on this 30th October 2023).

P.e.m.
30/10/2023

(PRAMEELA.M)

**Addl. Senior Civil Judge & JMFC,
Madhugiri**