

"1
C.A.No. 3750 OF 1998
ITEM No.101

COURT NO.9

SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 3750/98

T.Mohan Appellant

VERSUS

Kannammal & Anr. Respondents

(With CA No.3751/98-with prayer for interim relief and office report)

Date: 23.1.2002. This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.P. MOHAPATRA
HON'BLE MR. JUSTICE P.VENKATARAMA REDDI

For Appellant (s)

Mr. P.R.Ramasesh,adv.
Mr. A.P.Sahay,adv.

For Respondent (s)

Mr. S.B.Sanyal,Sr.Adv.
Ms. Mahalakshmi N.Pavani,adv.
Mr. Manish Goswami,adv.
Mr. Pratap C. Mahapatra,adv.
Mr. C.K.Sucharita,adv.

UPON hearing counsel Court made the following
ORDER

.....L.....I.....T.....T.....T.....T.....T.J
.SP2

The appeals are dismissed. No costs.

.SP1

(Suman Wadhwa)
Court Master

(S.Malkani)
Court Master

Signed order is placed on the file.

.PA
Item No.101

Ct.No.9

Draft
23.1.2002

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3750 OF 1998@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

T.Mohan

...Appellant

Vs.

Kannammal & Anr.

...Respondent

ORDER@@
CCCCC

.....L.....I.....T.....T.....T.....T.....T.....J.
.SP2

In these two cases the defendants are in appeal against the judgment and decree passed by the High Court of Karnataka in Regular First Appeal No.129/93 decreeing the suit for specific performance of contract. The appeals are interlinked with each other while C.A.No.3750/98 has been filed by defendant No.2 the subsequent purchaser of the property; C.A.No.3751/98 has been filed by defendant No.1-the vendor.

The respondent herein filed the suit OS No.10453/82 on the file of the court of the Additional City Civil Judge, Bangalore for a declaration with a saledeed, dated 5.5.1981 executed by the first defendant in favour of the second defendant as a legal document for permanent injunction, restraining the second defendant from alienating the schedule property to any one else and from interfering with possession of the plaintiff over the suit schedule property and for specific performance directing the defendant to execute and register a saledeed in respect of the suit schedule property in favour of the plaintiff. In the alternative plaintiff prayed for a direction to the first defendant for return of the advance consideration, she had paid.

-2-

The case of the plaintiff shorn of unnecessary details was that she was tenant on a portion of the suit property under defendant No.1. On 20th October, 1980 the parties (Plaintiff and defendant No.1) executed an agreement for sale of the property in her favour for a consideration of Rs.29,500/- out of which Rs.10,000/- was paid as advance. It was stipulated in the agreement that the vendee will pay the balance consideration money within 18 months and on receipt of the same the vendor will execute the registered saledeed in her favour. Further case of the plaintiff was that the vendor-defendant No.1 failed to abide by the terms stipulated in the agreement and sold the property to the defendant No.2 vide the registered sale deed dated 18/5/81. In such circumstance the plaintiff filed the suit seeking a declaration and for specific performance of the agreement of sale as noted earlier. She asserted in the plaint that she has all along been ready and willing to pay the balance consideration money and is still ready to pay the same. Indeed the amount was deposited in the trial court (filing of regular first appeal).

The case of the defendant No.1-vendor was that the document annexed to the plaint purportedly a copy of the agreement was not the document executed by the parties. In the document executed by the parties the consideration amount agreed to was Rs.33,000/- and not

-3-

Rs.25,500/- and further that the period stipulated for payment of the balance amount was still 20th March, 1981 and not 18 months from the date of execution of the document. The defendant alleged that the document was a spurious and fabricated one and on basis of such document a decree for specific performance of contract could not be passed. It was the further case of the defendant that the document was executed on an insufficiently stamped paper and such a document was not admissible in evidence. It was also contended that in the absence of the original agreement purported a copy produced by the plaintiff was not admissible.

The trial court framed certain issues including issues relating to execution of document, the relevant terms stipulated therein and the readiness and willingness on the part of the plaintiff to abide by the terms of the agreement. The court did not accept the case of the plaintiff holding, inter alia, that in the absence of the original document before the Court so called, copy could not be relied upon by plaintiff for the purpose of the suit. He further held that the document was insufficiently stamped and inadmissible in evidence on that score. On the question of readiness and willingness of the plaintiff to carry out his part of the contract also the finding was against the plaintiff. On such finding the suit was dismissed.

-4-

In the appeal filed by the plaintiff the High court, as appears from the discussions in the judgment, assessed the evidence on record regarding execution of the document and held that the document on record which has been produced on record was entered into by the parties on 20th October, 1980. On execution the original document was with the vendor-defendant No.1 that he has deliberately failed to produce the document in court that in the circumstances the copy of the document produced by the plaintiff was admissible as secondary evidence and has rightly been accepted in the suit. However, the High Court held that the agreement which was written out on five rupees stamped paper was insufficiently stamped but even so it was admissible in evidence and could be relied upon by the plaintiff for the purpose of the suit.

We may clarify here that this finding of the High Court that the agreement was insufficiently stamped is erroneous. It is patent on a perusal of the relevant provision in Karnataka Taxation and Certain Other Laws (Amendment) Act, 1979 (Karnataka Act No.21 of 1979) and by the Karnataka Stamp Act, 1957 (Karnataka Act 34 of 1957) was amended and this schedule was substituted provided in Art.5 thereof that agreement or memorandum of an agreement in respect of which no specific provision

-5-

regarding the denomination of the stamp to be paid has been made the requisite denomination of the stamp would

be Rs.5/- . According to the evidence and finding of the High Court it was executed on a five rupees stamp paper. The High Court in all probability was guided by the further amendment of the Stamp Act which by Karnataka Stamp (Amendment) Act 78 of 1995 in which relevant provision of schedule 5 was further amended to provide, inter alia, that if document relating to sale or immovable property when the part performance of the Act has been made is valued at a sum exceeding Rs.20,000/- but not exceeding Rs.50,000/-. The High Court held that the stamp duty to be paid was Rs.100/- and therefore the document was insufficiently stamped. The provision of the Stamp Act relating for the purpose of the case when the pre 1995 Amendment Act in which, as noted earlier, the requisite stamp duty was Rs.5/- only, that having been complied with. There is no insufficiency in the stamp duty paid on the document.

The main thrust of the arguments of learned counsel for the appellant was with regard to the inadmissibility of the copy of the agreement Ext. P.1 and regarding the requirement of the plaintiff establishing his readiness and willingness to abide by the terms of the contract prior to filing of the suit and even thereafter.

-6-

As observed earlier, the High Court in the first appeal found as a fact that the original of the agreement was kept with the vendor who did not produce the same before the court. The said finding is based on the evidence of plaintiff witnesses PWs.1-4. From their witnesses it is clear that the agreement was typed out on 13th October, 1980, signed by the parties and attesting witnesses on 20th October 1980 and the original document was retained with the vendor. It was agreed then that the original document would be retained by the vendor. The High Court has also discussed the circumstance which make this aspect of the case probable and acceptable. On consideration we do not find any legality in appreciation of the evidence and in drawing the conclusion by the High Court, as noted above. It is not disputed that in the absence of the original document the copy of the agreement which was prepared as a duplicate at the time when the original document was typed out could be received as secondary evidence in the case. The son of the deceased vendor DW.2 has himself admitted the signatures on the document Ext.P.1 to be those of his vendor. Therefore, in the circumstance no exception could be taken to the document being accepted as genuine and the contents being accepted as true. In the circumstances of the case sufficient foundation for accepting the document as secondary evidence in terms of Section 65 of the Evidence Act was led.

-7-

Coming to the question of readiness and willingness on the part of the plaintiff to perform her part of the contract we have already noted earlier that it was so averred in the plaint and reiterated in the

notice dated 18/19.5.81 and also in the evidence of the plaintiff. Further this question of readiness and willingness to pay the balance consideration money is not of much significance in view of the admitted fact that the vendor had parted with the property in favour of the purchaser-defendant No.2 even before expiry of the period on 18.5.81 itself and on expiry of the period stipulated in the agreement. Therefore in this Court too, no exception can be taken on the finding of the High Court that the plaintiff duly satisfied the requirement of law of being ready and willing to perform her part of the contract. With the result, these appeals being devoid of merit are dismissed. The judgment and decree passed by the High Court is confirmed. It is open to the respondents to execute the decree passed by the High Court in accordance with law. No costs.

.SP1

.....J.
(D.P. MOHAPATRA)

.....J.
(P.VENKATARAMA REDDI)

New Delhi;
January 23,2002.