

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. 1295 OF 2001

B. Rajeshwari & Anr.

Appellant(s)

Versus

Puttaswamy & Anr.

Respondent(s)

(With office report)

With

CIVIL APPEAL NO. 1296 OF 2001
(With office report)

Date: 10/10/2006 This/these matter(s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. G.V. Chandrashekhar, Adv. for
Mr. P.P. Singh, Adv.

In CA 1296/01

Mr. R.S. Hegde, Adv. for
Mr. T.N. Rao, Adv.

For Respondent(s)

Mr. Rajesh Mahale, Adv.

Mr. R.C. Kohli, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed order.

(J.S. Rawat)

(Pushap Lata Bhardwaj)

AR-cum-PS

Court Master

[Signed order is placed on the file.]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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O R D E R

These appeals are directed against a judgment and order dated 15th March, 1999 passed by the High Court of Karnataka at Bangalore in RFA No. 362/1992 whereby and whereunder it set aside a judgment and decree dated 31st March, 1992 passed by the 2nd Additional Civil Judge, Mysore in O.S. No. 256/1983 dismissing the suit for specific performance of contract filed by the respondents herein.

The 1st defendant before the Trial Court was admittedly the owner of the property. The plaintiffs-respondents and the 1st defendant were said to have entered into a series of correspondences allegedly leading to conclusion of the contract for an agreement to sell of the properties in suit for a sum of Rs.1.20 lakhs.

The contention of the 1st defendant before the Trial Court was that no concluded contract had been arrived at by and between the parties. The learned Trial Judge, in view of the pleadings of the parties, framed the

following issues:

"1. Whether the plaintiff proves that there is a privity of contract of sale between himself and the 1st defendant?

2. Does he further prove that he has taken possession of the suit schedule property as a part performance of the said contract?

3. Does he further prove that at the request of the 1st defendant, he paid a sum of Rs.15,000/- to one M.N. Swamy as advance?

4. Whether 1st defendant has committed breach of the terms of the contract?

5. Whether the 1st defendant proves that there is no privity of contract of sale with the plaintiff and the plaintiff is a trespasser who is in wrongful possession of the suit schedule property?"

However, admittedly, the 1st defendant (the original owner), sold the suit properties in favour of Appellants herein. They were impleaded as parties in the suit. They filed their separate written statements. Additional issues were also framed.

The principal contention of the parties centered round the question as to whether by reason of correspondences exchanged by and between the plaintiffs and the 1st defendant, a concluded contract to sell the properties in suit was arrived at or not?

The learned trial Judge in his judgment opined:

"But the evidence on record has highly improbabilised the contention of the plaintiff that there was certainty regarding the 4th ingredient. In the result, the alleged agreement to sell has not remained concluded. To put it in other words, there was no concluded contract between the plaintiff on one side and the 1st defendant on the other in respect of the sale of the plaint schedule property."

Inter alia, on the afore-mentioned findings, the suit filed by the plaintiffs-respondents was dismissed. They preferred an appeal thereagainst

before the High Court. The High Court by reason of the impugned judgment allowed the said appeal. We, at this juncture, are not concerned with other issues. The High Court although noticed the pleadings of the parties, the issues framed by the learned Trial Judge and the answers thereto, but, without formulating any points for its determination as envisaged under Order 41 Rule 31 of the Code of Civil Procedure and, furthermore, without analysing the reasons assigned by the learned Trial Judge leading to his conclusion that no concluded contract between the parties had been arrived at, it passed the impugned judgment, holding :

"The fact that there was an agreement of sale between the parties and there was ad-idem for selling the property through the power of Attorney holder is also not in dispute, it cannot be disputed. The authorities relied upon by the Trial Court do not apply to the facts of this case in as much as it is proved beyond doubt through the evidence and documents produced that there was an offer made by the defendants to sell the property and said offer was accepted. If really there was no

agreement of sale there was no need for the 1st defendant to return the money by way of demand draft to the plaintiff. Therefore, the crux of the case is whether the defendant is entitled to cancel the contract of sale even after of the plaintiff has taken possession of the property of portion in pursuance of agreement of sale. The intention of the defendant is very clear that he wanted to sell the property to defendants-3 and 4 and defendant-3 and 4 cannot be termed as bonafide purchasers without any knowledge and such claim is not sustainable. Defendant-1 who himself examined as D.W. 1 admitted in his evidence that he has informed about both the agreement of sale and the correspondence to 3rd and 4th defendant at the time of taking advance, "but defendant-3 and 4 paid advance to me saying that the transaction between himself and Puttaswamy, the plaintiff/appellant herein is separate" would clearly goes to show that defendants-3 and 4 having knowledge of previous agreement of sale the 1st defendant had with plaintiff and they have taken risk to purchase the suit property after coming to know about the arrangement/agreement with the plaintiff."

Having heard the learned counsel for the parties, we are of the

opinion that the High Court, keeping in view the fact that it was exercising

its jurisdiction under Section 96 of the Code of Civil Procedure, should have analysed the evidences adduced by the parties before the Trial Court independently. It not only failed to discuss the evidence on record as indicated herein before, also failed to pose the correct question of law.

The High Court erroneously proceeded on the basis that the parties were ad idem, that there exists a concluded contract. The bone of contention of the appellants as also the 1st defendant was that there was no concluded contract. The High Court should, thus, have analysed its evidences on record in regard to the question as to whether there existed a concluded contract between the parties or not.

In this view of the matter, we are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly. The appeals are allowed and the matters are remitted to the High Court for a fresh decision thereon, in accordance with law.

Keeping in view the fact that the suit was filed in the year 1983, the High Court is requested to hear out and dispose of the appeal as expeditiously as possible and preferably within a period of four months from the date of receipt of a copy of this order.

Original record be transmitted to the High Court forthwith.

.....J.

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(S.B. SINHA)

New Delhi;
.....J.

.....

October 10, 2006.

(MARKANDEY KATJU)