

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. (S).11452-11453 OF 2014
(Arising out of SLP(C) Nos.18864-18865 of 2012)

G.VENKATAKRISHNA RAO

Appellant(s)

VERSUS

BANGLI NAGAPPA (D) BY LRS.

Respondent(s)

O R D E R

Leave granted.

These appeals arise out of an order dated 29th February, 2012 passed by the High Court of Karnataka, Circuit Bench at Dharwad, whereby RFA No.183 of 2007 and RFA CROB No.16 of 2007 have been dismissed by the High Court in the process affirming the dismissal of a suit filed by the appellant herein for specific performance of an agreement to sell dated 18th June, 1987 allegedly executed between the parties.

It is, in our opinion, unnecessary to recapitulate the facts in detail as the trial court and the High Court in appeal have done so at great length. All that we need mention is that, the vendor-respondents appear to have acquired occupancy tenancy rights in respect of the suit property under the Karnataka Land Reforms Act, 1961/Inam Abolition Act. A statutory prohibition against alienation of any land acquired under the provisions of

the Karnataka Land Reforms Act,1961/Inam Abolition Act notwithstanding the vendor is alleged to have executed first an agreement dated 31st July, 1976, allegedly creating an agency in favour of the plaintiff-appellant herein, followed by an agreement to sell dated 18th June, 1987 which eventually became the basis of the suit for specific performance filed by the appellant herein. The said suit was contested by the vendor-defendants on several grounds including the ground that no such agreement, as set up by the appellant, was ever executed between the parties. The trial court framed issues and allowed the parties to lead evidence and eventually came to the conclusion that the agreements, set up by the plaintiff-appellant herein, were not specifically enforceable as the bar against alienation of property acquired under the provisions of the Karnataka Land Reforms Act,1961/Inam Abolition Act squarely applied to the land in-question. The court took the view that the defendant-respondents herein could not have created any agency in derogation of the said provisions or agreed to transfer the said property within the stipulated period of 15 years. The suit was on that basis dismissed by the trial court who directed refund of the amount of Rs. 3,31,020/- received by the defendant-respondents herein with interest at the rate of 8%

per annum. Aggrieved by the direction regarding refund of the amount paid under the alleged agreement to sell, the defendant-respondents herein preferred RFA No.183 of 2007 before the High Court of Karnataka while the respondents herein preferred RFA No.CROB No.16 of 2007 against the dismissal of the suit and for a decree for specific performance in his favour. Both these matters were heard and disposed of by the Circuit Bench of the High Court at Dharwad by its common order dated 29th February, 2012, impugned in the present appeals. The High Court, it is evident from a reading of the judgment under appeal, held that the execution of the agreement to sell itself was doubtful and on that finding affirmed the decree passed by the trial court to the extent the same dismissed the suit filed by the plaintiff-appellant herein. The High Court also set aside the direction regarding refund of the amount on the ground that since the agreement in-question was not proved the plaintiff-appellant herein could seek no refund.

We have heard Mr. S.S. Javali, learned senior counsel appearing for the appellant, at some length and Mrs. Kiran Suri, learned senior counsel appearing for the respondents, who have taken us through the orders under challenge. There is, in our

opinion, no substantial question of law arising for our consideration in the present appeals inasmuch as the High Court has, on an appraisal of the evidence adduced before the trial court, recorded a finding of fact that the agreement to sell forming the basis of the suit for specific performance was not itself sufficiently proved. The High Court has observed as under:

"21. However, on a careful consideration of Ex.P.2, which is the basis for the defendant to refund the amount to the plaintiff, it is seen that the document appears to have been a document, which is created after obtaining the signature of the defendant. It is seen that the document does not contain any space either on the top or on both sides indicating margin and is typewritten without leaving any space in between two lines while the document Ex.P.1 indicates that it was brought into existence on the basis of the draft given by Sri A.S. Malebennur, advocate, Bellary which runs into 9 pages. In Ex.P.2 lot of materials have been stuffed in one page and the type note at the bottom indicates that the same is typed as per the direction of Sri. A.S. Malenbennur, advocate Bellary. The said document also contains the signature of Sri K. Veerabhadrappe, who is the typist of the said document. It is further seen that the signature of the plaintiff in the said document is put below the word 'Vendee' which indicates that the signature is put before the word 'Vendee' is typed. The defendant has stated that his signature had been obtained by the plaintiff on many blank stamp papers and the plaintiff has misused his signatures. A careful scrutiny of Ex.P.2 on which the claim of the plaintiff for Rs.3,31,020/- is placed, clearly establishes that the same is a got up document and does not inspire confidence in the mind of this court, to hold that the defendant has in fact received a sum of Rs.3,31,020/- from the plaintiff. Under the circumstances, it is not safe to rely on Ex.P.1 to direct the defendant to refund the amount as claimed by the plaintiff."

We fail to see any perversity in the view taken by the High Court in the passage extracted above. The view is at any rate a possible view on the material placed before the courts below. We, therefore, see no reason to upset the finding of fact recorded by the High Court that the execution of agreement, Ex.P-2, was itself not proved sufficiently to entitle the appellant to any relief on that basis. Having said so, we asked Ms. Suri whether the receipt of Rs.3,31,020/- was also in serious dispute as there appears to be material to suggest that there was some financial transaction between the two parties in the course of which the said amount was paid and received in terms of receipts placed on record. Ms. Suri did not seriously oppose any direction regarding refund of the amount, allegedly paid by the plaintiff-appellant herein, with such rate of interest as the court may deem fit. She argued that although no refund can be directed by the court unless there is a specific prayer made for such a refund in the light of Section 22 of the Specific Relief Act, 1963 yet keeping in view the provisions of sub-section (2) of Section 22 of the Specific Relief Act, any prayer for such a relief could be allowed at any stage. She submitted that the oral prayer being made at the Bar by Mr. Javali for refund of the amount, could be considered by this Court

and an appropriate direction issued in accordance with law to make the ends of justice meet. There is, in our opinion, merit in that contention. It is true that in the ordinary course no refund order may be made without there being a specific prayer in the plaint to that extent but keeping in view the peculiar circumstances of this case and with a view to avoiding any further delay in the disposal of this matter, we see no reason why the oral prayer made at the Bar by the appellant herein should not suffice for a direction to the defendant-respondents to refund the amount, Rs.3,31,020/-, to the plaintiff-appellant herein with interest.

In the result, we allow these appeals but only in part and to the extent that while the judgment and decree passed by the courts below dismissing the suit for specific performance, filed by the appellant, shall stand affirmed, a sum of Rs.3,31,020/- with interest at the rate of 10% w.e.f. 18th June, 1987 till actual payment shall be refunded to the plaintiff-appellant by the defendant-respondents herein. The decree passed by the trial court shall stand modified to that extent. We grant to the defendant-respondents herein three months' time to pay the amount, aforementioned, failing which the appellant shall be free to have

the same recovered by instituting appropriate execution proceedings before the court concerned. No. costs.

.....J
(T.S. THAKUR)

.....J
(R. BANUMATHI)

NEW DELHI
DATED 16th DECEMBER, 2014.

ITEM NO.2

COURT NO.2

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for

Special Leave to Appeal (C) No(s). 18864-18865/2012

(Arising out of impugned final judgment and order dated 29/02/2012 in RFA No. 183/2007,29/02/2012 in CROB No. 16/2007 passed by the High Court Of Karnataka Circuit Bench At Dharwad)

G.VENKATAKRISHNA RAO

Petitioner(s)

VERSUS

BANGLI NAGAPPA (D) BY LRS.

Respondent(s)

(with interim relief and office report)

Date: 16/12/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. S.S. Javali, Sr. Adv.
Mr. Azeem A. Kalebudde, Adv.
Mr. Ankolekar Gurudatta, Adv.

For Respondent(s) Mrs. Kiran Suri, Sr. Adv.
Ms. Vithika Garg, Adv.
Dr. (Mrs.) Vipin Gupta, Adv.

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

Heard.

Leave granted.

In terms of the signed order, these appeals are allowed but only in part:

"In the result, we allow these appeals but only in part and to the extent that while the judgment and decree passed by the courts below dismissing the suit for specific performance, filed by the appellant, shall stand affirmed, a sum of Rs.3,31,020/- with interest at the rate of 10% w.e.f. 18th June, 1987 till actual payment shall be refunded to the plaintiff-appellant by the defendant-respondents

herein. The decree passed by the trial court shall stand modified to that extent. We grant to the defendant-respondents herein three months' time to pay the amount, aforementioned, failing which the appellant shall be free to have the same recovered by instituting appropriate execution proceedings before the court concerned. No. costs."

(MAHABIR SINGH)
COURT MASTER

(RENUKA SADANA)
COURT MASTER

(Signed order is placed on the file)