

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8953 OF 2017

(Arising out of SLP (C) No. 12145 of 2016)

G. VENKATAPATHY ... Appellant

VERSUS

SHANKAR VEERAPPA ... Respondent

O R D E R

Leave granted.

Nobody has appeared on behalf of the respondent in spite of service of notice.

The brief facts involved in the instant matter are that an agreement of sale dated 24.11.2005 was entered into between the appellant herein being the vendor and the respondent herein being the purchaser in respect of land bearing Sy. No. 2/2 (presently Sy. No. 3/1) measuring 0.18 Guntas situated at Somashettihalli Village, Yeshwanthpur Hobli, Bengaluru North Taluka, for a total sale consideration of Rs.12,25,000/- and an amount of Rs.5,20,000/- was paid as advance amount towards it. It was agreed to between the parties that the respondent herein had to pay the balance sale consideration and then the appellant herein had to execute the registered sale deed in favour of the respondent within a period of three months from the date of agreement. It is alleged that the respondent failed to comply with the terms and conditions of the agreement which stipulated that

the entire sale transaction had to be completed within a period of three months and, therefore, the respondent had committed breach of contract.

The respondent filed Civil Suit under Order VII Rule 1 of the Code of Civil Procedure(CPC) seeking specific performance but the Trial Court vide its order dated 15.11.2014 impounded the agreement of sale dated 24.11.2005 and the Registry of the Court was directed to calculate the duty and penalty on the agreement of sale dated 24.11.2005.

Aggrieved, the respondent filed writ petition before the High Court. It is the case of the respondent that agreement dated 24.11.2005 does not indicate that as on the date of the execution of the agreement the possession has been delivered and that ratio in the case of '*Danappagouda Fakkiragouda Patil v. Kamalawwa and Anr.*' reported in 2006(4) KCCR 2439 and in the case of '*N. Srinivasa v. Murulesh and Ors.*' reported in ILR 2014 KAR 4350 would squarely apply to the facts in hand. Per contra, the respondent (petitioner herein) relied upon the provisions of Article 5(e)(i) of Schedule (1) of Karnataka Stamps Act. The High Court, vide its impugned judgment and final order dated 09.12.2015, allowed the writ petition observing that the agreement in question does not indicate about possession having been delivered on the date of the agreement dated 24.11.2005. However, subsequently, in view of the endorsement made on 13.7.2006, possession had been delivered, which is subsequent

to the agreement and as such the order directing the plaintiff to pay duty and penalty would not arise and the order of the trial Court is liable to be set aside.

The moot question, therefore, is as to whether the agreement dated 24.11.2005 executed between the parties, on the basis of which suit for specific performance has been filed by the respondent, needed registration and adequate stamp duty. Admittedly, the document is unregistered and proper stamp duty which is required has not been paid thereon as per the Stamp Act. On the objection taken by the appellant/defendant, the trial Court had passed orders dated 15.11.2014 directing impounding of the document and also calling upon the Registry to calculate the duty and penalty thereupon. It would be interesting to note that thereafter on 06.01.2015, the counsel for plaintiff had submitted before the Trial Court that plaintiff was ready to pay duty and penalty on the aforesaid agreement dated 24.11.2005. However, in spite of this statement, the respondent thereafter filed the aforesaid writ petition which has been allowed by the High Court. The order of the High Court would reflect that the main reason given by the High Court while allowing the writ petition is that the agreement in question does not indicate that the possession having been delivered on the date of the agreement. This observation is clearly contrary to record and in the light of averments which are made in the agreement, inasmuch as, last two lines of the

agreement clearly record that the appellant had handed over the vacant possession to the purchaser (plaintiff/respondent) on the date of the agreement.

The order of the High Court is, therefore, unsustainable and is hereby set aside. The appeal is allowed restoring the order of the Trial Court.

....., J.
[A.K. SIKRI]

....., J.
[ASHOK BHUSHAN]

New Delhi;
July 11, 2017.

ITEM NO.13

COURT NO.7

SECTION IV-A

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. 12145/2016

(Arising out of impugned final judgment and order dated 09-12-2015 in WP No. 31318/2015 passed by the High Court of Karnataka at Bangalore)

G. VENKATAPATHY

Petitioner(s)

VERSUS

SHANKAR VEERAPPA

Respondent(s)

Date : 11-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s)

Mr. Anand Sanjay M. Nuli, Adv.
Mr. Dharm Singh, Adv.
M/s. Nuli & Nuli, AOR

For Respondent(s)

Mr. Nitin Kumar Thakur, AOR (NP)

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

Leave granted.

The appeal is allowed in terms of the signed order.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

[Signed order is placed on the file.]