

Supreme Court of India

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T. Mohan vs Kannammal And Anr. on 23 January, 2002

Equivalent citations: JT 2002 (2) SC 163, (2002) 10 SCC 82

Bench: D Mohapatra, P V Reddi

ORDER

1. The defendants have filed these appeals 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 of sale. The appeals are inter-finked with each other; while C.A. No. 3750/98 is filed by defendant No. 2 who is the subsequent purchaser of the property. C.A. No. 3751/98 is by defendant No. 1 - the vendor.

2. The respondent herein filed the suit, OS No. 10453/82 in the court of the additional city civil judge, Bangalore for a declaration that the sale deed dated 18.5.1981 executed by the first defendant in favour of the second defendant is not a legal document; for permanent injunction restraining the second defendant from alienating the property to any one else; from interfering with possession of the plaintiff over the suit schedule property and for a decree of specific performance directing the defendant to execute and register a sale deed in respect of the suit schedule property in favour of the plaintiff, in the alternative for a direction to the first defendant for return of the advance consideration, the plaintiff had paid to him.

3. 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 as receipt of the same, the vendor will execute the registered sale deed 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 18.5.1981. 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 after filing of the first appeal.

4. The case of the defendant No. 1 was that the document annexed to the plaint which is purportedly a copy of the agreement for sale of the suit property was not the document executed by the parties. In the document executed by the parties, the consideration amount agreed by them was Rs. 33,000/- and not Rs. 25,500/-; that the period stipulated for payment of the balance amount was till 20th March, 1981 and not 18 months from the date of execution of the document. The defendant alleged that the so called agreement was a spurious and fabricated one and on the basis of such document, a decree for specific performance of contract should not be passed. It was the further case of the defendant that the document was executed on insufficiently stamped paper and such a document was not admissible in evidence. It was contended that in the absence of the original agreement, the copy produced by the plaintiff was not admissible.

5. The trial court framed certain issues, including issues relating to execution of the agreement, the terms stipulated therein and readiness and willingness on the part of the plaintiff to abide by the terms of the agreement. The trial court on appreciation of the evidence on record held, inter alia, that in the absence of the original document before the court, the so called copy could not be relied upon by plaintiff for the purpose of the suit; 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 her part of the contract also, the finding recorded was against the plaintiff. On such findings, the suit was dismissed.

6. In the appeal filed by the plaintiff, the High Court, assessing the evidence on record regarding execution of the document held inter alia that the document which has been produced in court shows that it was entered

into by the parties on 20th October, 1980; that after execution, the original document was kept with the vendor; that the vendor deliberately did not produce the original document in court; that in the circumstances, the copy of the document produced by the plaintiff was admissible as secondary evidence. However, the High Court held that the agreement which was written out on a five rupee stamp paper was insufficiently stamped, even so it was admissible in evidence and could be relied upon by the plaintiff for the purpose of the suit.

7. We may clarify that the finding of the High Court that the agreement was insufficiently stamped is erroneous. It is patent on a perusal of the relevant provisions in the Karnataka Taxation and Certain Other Laws (Amendment) Act, 1979 (Karnataka Act No. 21 of 1979) by which the Karnataka Stamp Act, 1957 (Karnataka Act 34 of 1957) was amended and the schedule was substituted provided in Article 5 thereof that an agreement or memorandum of an agreement in respect of which no specific provision 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 rupee stamp paper. The High Court in all probability was guided by the further amendment of the Stamp Act by Karnataka Stamp (Amendment) Act 78 of 1995 in which relevant provision in Schedule (5) was further amended to provide, inter alia, that in case of a document relating to safe of immovable property where part performance has been made is valued at a sum exceeding Rs. 20,000/- but not exceeding Rs. 50,000/- the stamp duty to be paid was Rs. 100/-. The provision of the Stamp Act applicable in the present case is the pre-1995 Amendment Act, when the prescribed stamp duty was Rs. 5/- only. Therefore, there is no insufficiency in the stamp duty paid on the document.

8. The main thrust of the arguments of the learned counsel for the appellant was regarding inadmissibility of the copy of the agreement, exhibit P1 and requirement in law for the plaintiff to establish her readiness and willingness to abide by terms of the contract prior to filing of the suit and even thereafter.

9. As noticed earlier, the High Court found as a fact that the original agreement was kept with the vendor who did not produce the same before the court. The said finding was based on the evidence of the witnesses PWs 1 and 4, who were examined on behalf of the plaintiff. From the evidence of these witnesses, it is clear that the agreement was typed out on the 13th October, 1980, signed by the parties and the attesting witnesses on 20th October, 1980. It was agreed then that the original document would be retained by the vendor. The High Court has also discussed the circumstances which make this aspect of the case probable and plausible. There is neither any illegality in appreciation of the evidence nor are the findings vitiated on any score. It is not in dispute that in the absence of the original document, the copy of the agreement which was typed as a duplicate of the document, could be received as secondary evidence in the case. The son of the vendor (deceased) DW 2 has admitted the signatures on the document exhibit P1 to be those of his father. In such circumstances, no exception could be taken to acceptance of the document as genuine and its contents as true. On the evidence on record, sufficient foundation for accepting the document by way of secondary evidence in terms of Section 65 of the Evidence Act has been laid.

10. Coming to the question of readiness and willingness of the plaintiff to perform her part of the contract, it was so averred in the plaint and reiterated in the notice dated 18/19.5.1981 and also in the evidence of the plaintiff. Further, the question of readiness and willingness to pay the balance consideration money is not of much importance in view of the admitted factual position that the vendor had parted with possession of the property in favour of the purchaser even before expiry of the period stipulated in the agreement. In that view of the matter, no exception can be taken to the finding of the High Court that the plaintiff duly satisfied the requirement of law of readiness and willingness to perform her part of the contract.

11. In the result, these appeals being devoid of merit are dismissed, and 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.