

JUDGMENT

These three captioned second appeals arise out of suit for specific performance in O.S.No.237/2006.

2. RSA.No.808/2023 is filed by defendants 1 to 6 feeling aggrieved by the judgment and decree passed in R.A.No.51/2018 wherein defendants 1 and 3 to 6 are directed to execute sale deed in favour of the plaintiff in respect of 1 acre 20 guntas of land bearing Survey No.214/5 situated at Kudumalakunte Village, Kasaba Hobli, Gowribidanur Taluk.

3. RSA.No.1358/2023 is filed by the plaintiff questioning the judgment and decree rendered in R.A.No.51/2018 wherein the appellate Court has dismissed the suit filed by the plaintiff insofar as land measuring one acre owned by first defendant-Anjinamma bearing Survey No.214/6.

4. RSA.1372/2023 is filed by the plaintiff assailing the judgment and decree rendered in R.A.No.105/2018 in granting a decree in favour of defendant No.7 in respect of one acre of land wherein the appellate Court has set aside the judgment of the trial Court directing defendant No.7 to pay compensation to the plaintiff and also the finding recorded by the trial Court on the sale deed obtained by defendant No.7.

5. For the sake of convenience the parties are referred to as per their rank before the trial Court.

6. Facts leading to the case are as under:

Plaintiff has instituted a suit for specific performance of contract in O.S.No.237/2006 based on an agreement to sell dated 15.01.2006 executed by defendants 1 and 2 in respect of suit land totally

measuring 2 acres 20 guntas, out of which, one acre is owned by defendant No.1 and 1.20 guntas is owned by defendant No.2. The case of the plaintiff is that defendants 1 and 2 offered to sell the suit land for sale consideration of Rs.2,50,000/- and have executed an agreement to sell on 15.01.2006 by receiving earnest money of Rs.50,000/-. Plaintiff has contended that he was ever ready and willing to perform his part of contract and the present suit is filed alleging that defendants 1 and 2 have sold land measuring one acre in favour of defendant No.7 under registered sale deed dated 29.9.2006 and the said transaction is in breach of contract between plaintiff and defendants 1 and 2.

7. Defendants 1 and 2, who are husband and wife have contested the suit by filing written statement. Defendant No.1 in her written statement has admitted the suit agreement executed in favour of

plaintiff. Defendant No.1 has however alleged that plaintiff was not ready to perform his part of the obligation and has not shown his willingness to pay the balance sale consideration and get the property registered in his name. Defendant No.1 on the contrary has alleged that since plaintiff failed to complete the transaction as agreed under the suit agreement, she along with defendant No.2 and children have sold one acre of land in favour of defendant No.7 under registered sale deed dated 29.9.2006. Defendants 1 and 2 also contended that if relief of specific performance is granted in favour of plaintiff insofar as 1 acre 20 guntas, the same would cause more hardship to them and hence prayed for dismissal of the suit.

8. Defendant No.7 who is the purchaser of one acre of land claimed that he is a bonafide purchaser and that he is in exclusive possession and

enjoyment in view of registered sale deed dated 29.9.2006.

9. Defendants 1 and 7 have also specifically alleged that plaintiff has unilaterally inserted a portion to negate the terms and conditions of the agreement and specific pleadings were raised in that regard at Paragraphs 6 and 8 of the additional written statement filed by them.

10. Plaintiff and defendants to substantiate their case have let in oral and documentary evidence.

11. Trial Court having examined the pleadings of the parties and oral and documentary evidence let in by both the parties answered issue No.1 in the negative and held that plaintiff has failed to prove his readiness and willingness to perform his part of the contract. Trial Court having answered Issue No.1 in the negative partly decreed the suit and thereby

directed defendants 1 to 6 to refund the earnest money of Rs.50,000/- along with interest at 18% per annum. The trial Court further answered additional issue No.4 framed on 15.7.2016 in the negative and held that defendant No.7 has failed to prove that he is a bonafide purchaser for value and therefore, directed the defendants to pay compensation of Rs.1,50,000/- to the plaintiff.

12. Plaintiff, feeling aggrieved by the judgment and decree of the trial Court in refusing decree for specific performance, preferred an appeal. Defendants 1 to 6 also filed an appeal questioning the decree for refund. Defendant No.7 feeling aggrieved by the finding on additional issue No.4 also preferred an appeal.

13. The appellate Court clubbed all the three appeals and has independently assessed the entire

material on record. The appellate Court while taking cognizance of the sale deeds vide Exs.P26 and 28 and lease deed vide Ex.P42 was not inclined to affirm the finding recorded by the trial Court on readiness and willingness of the parties. Referring to these sale deeds and bank statement of the plaintiff, appellate Court was of the view that plaintiff has adduced overwhelming evidence to demonstrate his readiness and willingness to perform his part of the contract. Appellate Court held that the trial Court has misread the evidence let in by the plaintiff and therefore, held that the conclusions arrived at by the trial Court on readiness and willingness suffer from serious infirmities. Appellate Court on the contrary held that plaintiff has succeeded not only in establishing his financial capacity but has also succeeded in establishing his willingness in completing the transaction. The appellate Court also held that the

trial Court has not taken cognizance of the revenue records which offers a satisfactory explanation as to why plaintiff instituted the suit on 30.10.2006 though agreement stipulated period of three months to complete the transaction and the same was extended by further sixty days under the very agreement. Appellate Court on re-appreciation of evidence however, was of the view that under the agreement, defendants 1 and 2 were required to get the name of defendant No.2 mutated in the revenue records measuring 1 acre 20 guntas. Under the agreement, the appellate Court found that defendants were required to produce original records by getting the name of defendant No.2 mutated in the revenue records to enable the parties to complete the transaction. The appellate Court therefore, held that defendants 1 and 2 are guilty of not performing their part of contract.

14. Insofar as sale in favour of defendant No.7 to an extent of one acre in the very survey number is concerned, the appellate Court on re-appreciation of evidence however, held that defendant No.7 has succeeded in establishing that he is a bonafide purchaser of one acre of land. Appellate Court while examining the transaction details and referring to the evidence on record held that defendants 1 and 2 have sold one acre of land in favour of defendant No.7 which is much prior to the filing of the suit and after expiry of the period stipulated under the agreement vide Ex.P2. The appellate Court has reversed the findings recorded by the trial Court on issue No.1 relating to readiness and willingness of plaintiff and the finding recorded on additional Issue No.4 relating to whether defendant No.7 is a bonafide purchaser of one acre of land. The appellate Court on these set of reasoning has reversed the findings recorded by the

trial Court. The appellate Court has decreed the suit of the plaintiff granting the relief of specific performance of contract in respect of 1 acre 20 guntas and defendant No.7 is held to be the bonafide purchaser of one acre of land. The findings of the trial Court that defendant No.7 is not a bonafide purchaser and is liable to pay compensation to the plaintiff is set aside by the appellate Court.

15. Heard the learned counsel appearing for defendants 1 to 6 and learned counsel appearing for plaintiff and learned counsel appearing for defendant No.7. I have also given my anxious consideration to the judgments cited by learned counsel appearing for respondents 1 to 6. I have also examined the synopsis dated 17.11.2023 filed by the learned counsel for the appellant in RSA.Nos.1358/2003 and 1357/2003.

16. Defendants 1 to 6 have admitted the suit agreement. Their only defence is that plaintiff has failed to perform his part of contract and he had no financial capacity to complete the transaction. The trial Court while answering issue No.1 in the negative has taken note of Ex.P56 which is the bank statement. Placing reliance on Ex.P56, trial Court has come to the conclusion that plaintiff had no sufficient money to complete the transaction. Referring to Ex.P56, trial Court has come to the conclusion that plaintiff has mobilized funds after expiry of stipulated period of three months. The trial Court was of the view that plaintiff had no sufficient funds till filing of the suit.

17. However, appellate Court has taken a contrary view on readiness and willingness of the plaintiff. Appellate Court while taking cognizance of sale deeds vide Exs.P3, 26 and 28 as well as the purchase of a residential house as per Ex.P39,

was of the view that plaintiff's financial capacity is clearly evident from the said sale transactions. Referring to Ex.P42, appellate Court was of the view that plaintiff has received a sum of Rs.7,00,000/- in 2006. It is in this background, appellate Court differed with the findings recorded by the trial Court on readiness and willingness.

18. In the light of the divergent findings on readiness and willingness, let me examine the law relating to the proof of readiness and willingness. The question that needs consideration is: "Whether the trial Court was justified in reading Ex.P56 in isolation ignoring the other clinching evidence more particularly the other sale transactions entered into by the plaintiff as per Exs.P3, 26 and 28. It is a trite law that plaintiff to demonstrate his financial capacity need not necessarily have sufficient bank balance or cash balance at the relevant time for arriving at a

conclusion that he was always ready to perform his part of the contract.

19. In the realm of Contract law, the doctrine of specific performance serves as a unique remedy compelling the parties to honor their commitments. Within these legal frame work, the plaintiffs readiness and willingness to perform his contractual obligation assumes paramount significance. Section 16(c) of the Specific Relief Act anchors the requirement of the plaintiff to exhibit the continuous state of readiness and willingness throughout the litigation process. However, a nuanced analysis reveals that adequacy of plaintiff's bank balance, while relevant, is not an absolute pre-requisite to establish his readiness and willingness.

20. It is equally trite law that at the core of specific performance lies the principle of equity,

seeking to rectify the breaches of contract by enforcing the promised performance rather than settling for mere monetary damages. The judiciary, cognizant of multifaceted nature of contractual relationships, has consistently upheld the notion that readiness and willingness hinge on the sincerity and genuine intent of the plaintiff. A plaintiff's financial constrains, *per se*, should not be wielded as a prohibitory factor if its actions and expressions manifest a true desire to meet its contractual obligations and therefore, it is not solely contingent on financial largesse but encompasses a broader spectrum of commitment and integrity.

21. Therefore, in the light of the principles discussed supra, what needs to be examined by this Court is as to whether the trial Court could have totally banked on one document to assess the plaintiff's financial capacity ignoring other material

documents. The phrase "sufficient bank balance" must not be construed in isolation, but rather within the context of specific performance landscape. The Courts are bound to scrutinize the totality of the circumstances, evaluating not only the plaintiff's conduct, communications and overall engagements with contractual process, but equally the conduct of the defendants who are guilty of laying several obstacles and creating an environment which momentarily compels the plaintiff to take one step backward. This normal reaction of the plaintiff in a contractual process cannot be gathered to draw an inference that plaintiff is not found to be ever ready and willing to perform his part of the contract. The Legislative intent beyond Section 16(c) of the Specific Relief Act, appears to aligning with the equitable ethos of specific performance and therefore,

trial Court erred in underscoring the plaintiff's commitment in performing his part of the contract.

22. The relevant portion of the suit agreement is culled out as under:

"ಈ ಸ್ವತ್ತಿನ ಬಗ್ಗೆ ಮೂಲ ದಾಖಲೆಗಳು ಅಂದರೆ, ಪಹಣಿ, ಮ್ಯುಟೇಶನ್, ಖಾತಾ, ವಂಶವೃಕ್ಷ, ಸ್ಟೆಚ್ ಕಾಪಿ, ಮದರ್ ಡೀಡ್, ರಿಜಿಸ್ಟರ್ಡ್ ಪತ್ರ, ಪಟ್ಟಾ ಮತ್ತು ಕಂದಾಯದ ರಶೀದಿಗಳನ್ನು ತಂದುಕೊಟ್ಟ ಮೇಲೆ 60 ದಿನಗಳೊಳಗೆ ಬಾಕಿ ಹಣ ಪಡೆದುಕೊಂಡು ಸ್ವತ್ತಿನ ಕ್ರಯವನ್ನು ನಿಮಗೆ ನೋಂದಾಯಿಸಿಕೊಡುತ್ತೇವೆ."

The said recital clearly gives an indication that defendants 1 and 2 were required to update the revenue records to complete the transaction. As per Ex.P14, the Tahsildar ordered to mutate the names of defendants 1 and 2 in the RTC. It is evident from Ex.P20 mutation under ME No.5/1999-2000 was certified on 30.12.2008 and second defendant's name

was ordered to be mutated in respect of 1.20 guntas. The name of first defendant also came to be entered in the RTC only on 17.4.2006. It is also significant to note that first defendant taking advantage of her name mutated in the RTC has immediately sold one acre of land in favour of defendant No.7 under registered sale deed dated 29.9.2006.

23. If these significant details are looked into, the defendants have no locus to question the readiness and willingness of the plaintiff. The above culled out portion of the suit agreement clearly indicates that they were required to update the records to complete the sale transaction. Instead of performing their part of the contract by securing updated revenue records, a false defence is taken in the written statement that plaintiff had no financial capacity and he was not ready and willing to perform his part of the contract.

24. The next question that needs consideration is the hardship pleaded by defendants 1 and 2. The hardship pleaded by defendants cannot be considered having found that the conduct of the defendants has been grossly unfair. The defendants pending consideration of suit for specific performance have entered into an agreement with one P.G. Satyanarayana, who in turn has filed a suit in O.S.No.157/2014 and the matter is settled in Lok Adalath. Pending consideration of the regular appeal, one Kurubara Nagappa had filed an impleading application claiming that the said P.G. Satyanarayana has further executed an agreement to sell. If these significant details are looked into, defendants 1 and 2 have used all possible means to deny the relief to the plaintiff. All these significant details are rightly appreciated by the appellate Court.

25. The claim of the plaintiff in RSA.No.1372/2023 also cannot be entertained. Defendant No.7 has purchased one acre of land under registered sale deed dated 29.9.2006. First defendant has alienated one acre of land in favour of defendant No.7 after expiry of the period stipulated vide agreement dated 15.01.2006 vide Ex.P2. The appellate Court being the final fact finding authority has recorded a categorical finding that defendant No.7 is a bonafide purchaser. This Court has also taken cognizance of cross-examination of defendant No.7 by plaintiff's counsel. Defendant No.7 has stated that he would not have purchased this property if he had known that there was a transaction between plaintiff and defendants 1 and 2. The plaintiff has failed to elicit anything worth in cross-examination of defendant No.7 to discredit the bonafides of defendant No.7. This Court is also of the view that defendant

No.7 is a bonafide purchaser insofar as one acre of land is concerned.

26. For the reasons stated supra, no substantial question of law arises for consideration in all the three appeals.

27. Hence, I proceed to pass the following:

ORDER

The appeals are dismissed.

Sd/-
JUDGE

*alb/-