

VERDICTUM.IN

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2928/2014

SHIVANNA & ORS.

Appellant(s)

VERSUS

B.S.PUTTAMADAIHAH (DEAD) THROUGH LRS.

Respondent(s)

O R D E R

1. Heard, Mr. Sharanagouda Patil, learned counsel appearing for the appellants.

The respondents are represented by Mr. Ashwin V. Kotemath, learned counsel.

2. The present appeal arises out of the O.S. No.344 of 1986 where the original plaintiff was Mr. B.S. Puttamadaiah and the original defendant No.1 was one, Eraiah. The appellants before us are the legal heirs of the defendant - Eraiah and the respondents are the legal heirs of the plaintiff - Puttamadaiah in the O.S. No.344 of 1986.

3. In the suit the prayers of the plaintiff were to the following effect:

“(a) to declare that the Plaintiff is the absolute owner in possession of the Scheduled property - amended as per the Order of the Court dated 24.04.1989;

(b) permanent injunction restraining the defendant, his agents, servants or anybody on his behalf from interfering with plaintiff's peaceful possession and enjoyment of the suit property;

(c) Recovery of court costs and for grant of such other

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reliefs as the Hon'ble Court deems fit to grant under the circumstances of the case."

4. The subject matter of the suit was certain land in Bavakal Village in Mandya District. Shivanna was the owner of the said land. The land owner entered into a sale agreement on 19.04.1982 with the plaintiff - Puttamadaiah for consideration of Rs.1,500/- and the said sale agreement dated 19.04.1982 came to be registered on 27.08.1983 after receipt of the balance consideration. The plaintiff's case is based on the sale agreement dated 19.04.1982 (Ex.P1) and the registered sale deed dated 27.08.1983 (Ex.P2).

5. On the other hand, the case of the defendant is based on an unregistered deed by the same vendor Shivanna with Eraiah - defendant No.1 on 16.07.1983 (Ex.D1). But when the vendor refused to execute the sale, the same was compulsorily registered on 24.10.1986 under the provisions of Sections 73, 74 and 75 of the Registration Act, 1908. The pleaded case of the defendant in the written statement was that the original owner Shivanna had executed an absolute sale deed dated 16.07.1983 after receipt of substantial sale consideration but since the vendor did not turn up for registration, the registration of the sale deed was done on 24.10.1986 under Section 73 of the Registration Act.

6. Initially, the respondent filed the suit with prayer for injunction only but later the relief for declaration was added to the suit. On 05.02.1994, the suit came to be decreed by the learned Civil Judge at Mandya where the Court concluded that the plaintiff has proved the execution of the agreement dated 19.04.1982 (Ex.P1) but also the subsequent sale deed on 27.08.1983

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(Ex.P2). On that basis, the Court held that when the vendor had already sold the land, the alleged sale deed dated 16.07.1983 (Ex.D1) in favour of the defendant, could not have inured any benefit to the buyer. It was therefore concluded that the plaintiff was the *bona fide* purchaser for value and acquired title to the suit property by virtue of the Agreement (Ex.P1) and the sale deed (Ex.P2). The suit was accordingly decreed against the defendant declaring the plaintiff to be the owner in possession of the suit property. Injunction order was also issued restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

7. The aggrieved defendant then filed appeal before the District Judge at Mandya challenging the judgment dated 05.02.1994 in favour of the plaintiff. The Appellate Court formulated an additional point for consideration as to whether the defendant could prove that the sale deed dated 16.07.1983 (Ex.D1) was executed by Shivanna and what is the impact of the said sale deed. The Court referred to the chronological dates of the Agreement(Ex.P1), Ex.P2 deed relied by the plaintiff and the Ex.D1 sale deed relied upon by the defendant. It was then concluded that *"the sale deed in favour of plaintiff do not convey title and sale deed in favour of defendant conveys title to defendant it is prior in point of time and it will prevail over the sale deed in favour of the plaintiff. So, the plaintiff is not the owner of the property, as by the time Ex.P2 has come into existence the vendor has no title to convey it in favour of plaintiff, in view of it being already conveyed under the earlier sale deed executed in favour of defendant. So, the*

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plaintiff is not the owner of the property." Having upheld the transaction in favour of the defendant, the District Judge held that the defendant is entitled to possession of the property from the plaintiff. The suit for declaration for title and for permanent injunction was then dismissed. Moreover, although the defendants never sought any declaration as to title, the plaintiff was directed to hand over possession to the defendants.

8. The aggrieved plaintiff then moved the High Court to challenge the Appellate Court's judgment under Section 100 of the Code of Civil Procedure, 1908. The question before the Court was to whether the First Appellate Court was correct in reversing the judgment and decree of the Trial Court by ignoring the earlier sale deed dated 19.04.1982 (Ex.P1) in favour of the plaintiff and whether the learned District Judge could have directed the plaintiff to deliver the possession of the suit property to the defendant, in the suit filed by the plaintiff.

9. The High Court considered the evidence of PW1 and PW2 and the vendor (PW3) on the Ex.P1 and P2 documents. The Court also adverted to the evidence of DW1, DW2 and DW3 on the Ex.D1 Sale deed dated 16.07.1983, which was the basis of the claim by the defendant. The testimony of the vendor Shivanna (PW3) indicated that he executed the sale in favor of the plaintiff under Ex.P1 document and after receiving the balance consideration of Rs.500, Ex.P2 document was executed transferring title of the suit land in favour of the plaintiff.

10. On the other hand, the evidence of the defendant no.1 was also considered in reference to Ex.D1 Sale Deed and the circumstances in

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which the said sale deed came to be executed. Looking to the evidence of the vendor who is common for both the plaintiff and the defendant, the High Court opined that as the vendor has categorically denied the execution of Ex.D1 sale deed in favour of the defendant and instead supported the Ex.P1 and P2 in favour of the plaintiff, the view taken in favour of the plaintiff by the Learned Trial Court was found to be well merited. The evidence of the defendant to the effect that the plaintiff is in possession of the suit land was also taken into account. With such consideration, the High Court proceeded to grant relief in favour of the plaintiff while allowing his appeal and setting aside the judgment dated 05.02.1994 of the Appellate Court.

11. The submission made by Mr. Sharanagowda Patil, learned counsel appearing for the appellants and Mr. Ashwin V. Kotemath, learned counsel appearing for the respondents are considered. What is important to note here is that the First Appellate Court declared title in favour of the defendant although the defendant never put forth any such claim in the Civil Suit. The suit was filed by the plaintiff seeking declaration and injunction and the Appellate Court after dismissing the suit could not have then issued the declaration of title and possession, in favour of the defendant, particularly when the defendant never claimed any such relief from the Civil Court. It is well-settled in law that the principle of moulding of reliefs could at best be applied as an exception. This Court in *Om Prakash Gupta v. Ranbir B. Goyal*, (2002) 2 SCC 256 laid down the following conditions where the relief could be moulded:

“11. The ordinary rule of civil law is that the rights

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of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied:

(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise."

12. As noted by the High Court, the Appellate Court failed to note any subsequent facts or law for granting Declaration. More surprisingly even while noticing that the plaintiff is in possession of the suit land, the learned District Judge as the Appellate Court ordered the plaintiff to handover possession of the suit land in favour of the defendant.

13. As was noted earlier, the vendor Shivanna has stood by the sale agreement dated 19.04.1982 which came to be registered on 27.08.1983 after receiving the balance consideration from the plaintiff. The sale deed dated 16.07.1983 was not registered until 24.10.1986. The suit came to be filed on 31.10.1986 seeking injunction against the defendant over the suit land which was the subject matter of Ex.P1, Ex.P2 and Ex.D1 transactions. The vendor Shivanna in his evidence stated that the Ex.D1 could not be finalised as the buyer was not ready with the consideration sum. In these circumstances, the Trial Court granted relief to the

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plaintiff which has since been restored by the High Court under the impugned judgment dated 06.01.2009, by interfering with the reversal of the decree, by the Appellate Court.

14. On consideration of the basis on which relief was granted to the plaintiff by the Trial Court and by the High Court, no error is noticed. The appeal is accordingly dismissed. Parties to bear their own cost.

.....J.
(HRISHIKESH ROY)

.....J.
(SANJAY KAROL)

NEW DELHI;
NOVEMBER 8, 2023.

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ITEM NO.101

COURT NO.8

SECTION IV-A

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

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VERSUS

B.S.PUTTAMADIAH (DEAD) THROUGH LRS.

Respondent(s)

Date : 08-11-2023 This appeal was called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE SANJAY KAROL**

**For Appellant(s) M/S. S-legal Associates, AOR
Mr. Sharanagouda Patil, Adv.
Mrs. Supreeta Patil, Adv.**

**For Respondent(s) Mr. Ashwin V. Kotemath, Adv.
Mr. Harisha S.R., AOR**

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

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

**(KAVITA PAHUJA)
COURT MASTER (SH)**

**(KAMLESH RAWAT)
ASSISTANT REGISTRAR**

[Signed order is placed on the file]