

CASE NO.:
Appeal (civil) 454-455 of 2002

PETITIONER:
Ramakrishna Rao (dead) by Lr

RESPONDENT:
Rai Murari

DATE OF JUDGMENT: 21/01/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in these appeals is to the judgment of a learned Single Judge of the Karnataka High Court who while dismissing the Second appeal filed by the respondent has given certain directions which according to the appellant could not have been given in the absence of any finding.

2. A suit for permanent injunction was filed by the appellant, with the prayer to direct the defendant, respondent herein from interfering with the peaceful possession and enjoyment over the suit schedule land. The trial court dismissed the suit but the first appellate court allowed the appeal. The High Court in the Second appeal as noted above dismissed the same but directed payment of certain amounts by the appellants to the respondent. The directions in this regard read as follows:

"Now the defendant's grievance is that the plaintiff could not have the benefit of the property as well as money paid by the defendant's wife on 19.6.1983. In equity and in law, inasmuch as agreement is found to be valid by the first Appellate Court, it is the duty of the plaintiff to return the money of Rs.5,000/- together with the interest at 12% per annum. Such amount shall be charged in the property. The plaintiff is directed to pay the same within a period of six months and the decree of injunction shall come into operation only after payment is made. Subject to the above direction, the second appeal is dismissed."

3. Subsequently, the figure of Rs.5,000/- was substituted with a figure of Rs.32,000/-. The High Court proceeded on the basis as if the suit for injunction was on the ground that plaintiff had entered into an agreement with defendant's wife on 19.6.1983. It was further observed that on the basis of the agreement the defendant's wife claimed to have been put in possession of the land and the right to property cannot be

taken away by the plaintiff by way of injunction or otherwise. To say the least, this shows complete non application of mind. This is not the case of the plaintiff in the suit but as a matter of fact it was the defendant's case. To add to the vulnerability, the High Court found that the agreement was found to be valid by the first appellate court and, therefore, it was the duty of the plaintiff to return the amount with interest at the rate of 12% per annum. Even on a deep scanning of the first appellate court's order it is noticed that there was no such finding recorded. On the contrary, in paragraphs 19 to 21 of the first appellate court's order, it is clear that the first appellate Court found that the stand of the plaintiff about the alleged existence of an agreement for sale was not established. It is relevant to take note of what has been stated in the aforesaid paragraphs:

"19. In this connection it was urged on behalf of the plaintiff that the document is a cooked up one as the wife of the defendant was not in a position to afford such a huge amount. It is an admitted fact that there has been a loan transaction between the plaintiff and the defendant and for recovery of the said amount a suit has been filed which has been decreed by the court of Munsif. The suit had been filed in O.S.No. 118/84. According to the plaintiff a sum of Rs.11,500/- was paid in august, 1983 and for non payment of balance amount O.S.No.118/84 has been filed against him. It was urged that the defendant was not in a position to pay the said amount and it was quite impossible to enter into an agreement for purchase of the land at the rate of Rs.2,000/- per acre. It is stated by D.W.2 that his wife who was the owner of the land at Hokrani village has been sold by her, but neither the wife of the defendant has been examined before the court nor any other material is produced to show that she was in a position to pay the amount so as to purchase the suit land along with non-suit land.

20. It can also be seen here that the plaintiff has denied the execution of the document and has refused the said transaction. To enforce such transaction no action has been taken by the wife of the defendant for specific performance of agreement of sale against the plaintiff though it has come to the knowledge that the said agreement has been refuted by the plaintiff.

21. The perusal of the document at Ex.D-2 itself goes to show that Sy.No.715 appearing in the document at two places has been over written. It has also been mentioned therein that in the month of May of next year by taking the balance amount, the document has to be taken. In spite of lapse of time as contended so far no action has been taken against the plaintiff, so the right of equity accrued to the wife of the defendant and the defendant who claims through her, has been defeated by lapse of time."

4. No one appears for the respondent.

5. A review petition was filed highlighting these aspects by the appellants, but the same came to be rejected by the High Court. Since the High Court proceeded on totally untenable premises and recorded findings which are contrary to materials on record and findings recorded, the direction for refund of money is clearly indefensible and is set aside.

6. The appeals are allowed to the aforesaid extent with no order as to costs.

JUDIS