

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8866-8868 OF 2003

A PRAMEELA REDDY

.....

APPELLANT

VERSUS

KARNATAKA MANGAMMA

.....

RESPONDENT

O R D E R

1. This appeal by way of special leave is against the concurrent findings of fact recorded by the trial court and by the High Court in first appeal decreeing the suit filed by the respondent. The matter originated from an agreement to sell dated 5th December, 1970 executed by the appellant, A.P. Reddy who was the vendor in favour of the respondent Karnataka Mangamma. 2. Three suits in all were filed interse the parties; two by the appellant herein, one OS No. 187/1990 for perpetual injunction, a second OS No. 648/1985 filed by the respondent Karnataka Mangamma for specific performance of the agreement to sell dated 5th December, 1970 and the third OS No. 108//88 by the

appellant for eviction of the respondent. The trial court framed the following issues:

"OS No. 648/1985

(1) Whether the agreement of sale dated 05.12.1970 is true, valid and binding on the defendant?

(2) Whether the plaintiff is entitled to the specific performance as prayed for?

(3) To what relief?

OS No. 187 of 1990

(1) Whether the plaintiff is entitled to perpetual injunction as prayed for?

(2) To what relief?

OS No. 108 of 1988:

(1) Whether the defendant is in permissive possession of the suit house?

(2) Whether the possession of the defendant in the suit house is in part performance of the agreement of sale dated 05.12.1970?

(3) Whether the suit claim is barred by adverse possession?

(4) To what relief?"

3. The first two suits were decreed by the trial court whereas the third suit was dismissed. These orders have been confirmed by the High Court in appeal. The present appeal is the outcome of the orders of the High Court.

4. At the very outset, Mr. M.N. Rao, the learned senior counsel for the appellant-A.P. Reddy, has pointed out that one of the issues that ought to have been raised and decided was the validity of the agreement to sell dated 5th December, 1970 in the light of the transfer of the property in dispute in violation of the lease agreement dated 10th December, 1969 and the various documents filed in the suit and it was thus appropriate that the matter be remanded to the trial court or the High Court for re-decision.

5. Mr. Rao has also challenged the concurrent findings of fact recorded by the courts against the appellant herein.

6. Mr. Vishwanath Shetty, the learned senior counsel for the respondent has, however, pointed out that the primary issue raised before the trial court and the High Court was with regard to the validity of the agreement dated 5th December, 1970 as the appellant had denied having executed it and there was no reference whatsoever in the pleadings with regard to the validity of the aforesaid agreement in the background of the lease agreement dated 10th December, 1969, and to remand the case for decision afresh on this limited issue after a gap of forty years could not be justified and would amount to a travesty of justice.

7. We have heard the learned counsel for the

parties and also have gone through the records carefully. It would perhaps be true to say that the validity of the agreement dated 5th December, 1970 could have been the subject matter of a challenge in the background of the lease agreement dated 10th December, 1969 which forbade a transfer to a third party. We are, however, not called upon to determine this fact as admittedly this issue has been raised for the first time at the stage of special leave. We are therefore not inclined to grant permission to raise this additional plea in this Court at this belated stage.

8. We thus see no reason to interfere in these appeals.

9. The appeals are dismissed in the aforesaid terms.

JUDGMENT

.....J
[HARJIT SINGH BEDI]

.....J
[C.K. PRASAD]

NEW DELHI
FEBRUARY 09, 2010.