IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 4TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR SECOND APPEAL NO. 200069 OF 2017 (DEC)

BETWEEN:

PARVATI
W/O PARAMESHWAR DHUTTARGAON
AGE: 54 YEARS,
OCC: HOUSEHOLD,
R/O: SHARAN SIRASAGI,
NOW AT PRESENT: H.NO.11-1940,
MSK MILL AREA, KALABURAGI – 585 102.

…APPELLANT

(BY SRI CHAITANYAKUMAR CHANDRIKI, ADVOCATE)

AND:

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

BHIMRAYAGOUDA
S/O LATE SHIVARAYAGOUDA PATIL
AGE: 64 YEARS,
OCC: AGRI,
R/O: MADARI (K) VILLAGE,
TQ: AFZALPUR,
DIST: KALABURAGI – 585 102.

…RESPONDENT

(BY SRI SHIVARAYAGOUDA S.E.ASTAGI, ADVOCATE FOR C/R)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 02.07.2012 PASSED BY THE V ADDITIONAL CIVIL JUDGE (JR.DN), AT KALABURAGI IN

O.S.NO.312/2011 AND ALSO SET ASIDE THE JUDGMENT AND DECREE DATED 21.11.2016 PASSED BY THE LEARNED III ADDITIONAL SENIOR CIVIL JUDGE AT KALABURAGI IN REGULAR APPEAL NO.91/2012 CONSEQUENTLY BE PLEASED TO DISMISS THE SUIT FILED BY THE PLAINTIFF, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS REGULAR SECOND APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE)

This appeal is arising out of a concurrent finding filed by the defendant in this appeal.

2. The suit is one for declaration of title and injunction. The suit property is the land bearing Sy No.149 measuring 35 guntas in Sharan Sirasagi Taluk, Gulbarga District.

3. The plaintiff claimed that, he has purchased the suit property under the registered sale deed dated 22.08.1997. The plaintiff purchased the property from Amareshwar son of Bhubaneshwara Chakaraboorthy. The suit is filed on the premise that the defendant is interfering with the possession of the plaintiff.

4. The defendant contested the suit and took a contention that, on 27.03.1997, he had entered into an agreement to purchase the property from very same Amareshwar son of Bhubaneshwara Chakaraboorthy. The defendant also took a contention that he was put in possession of the property under the agreement of sale dated 27.03.1997. Before the Trial Court, the defendant did not produce the said agreement. Based on the sale deed in favour of the plaintiff which is duly registered, the suit is decreed.

5. The defendant filed First Appeal and in the first appeal, he filed an application under Order XLI Rule 27 of Cr.Pc, to produce the alleged agreement for sale dated 27.03.1997. The plaintiff filed objections to the said application. The application as well as the appeal were heard on merit. The appeal and the application for production of addition documents are dismissed. Aggrieved by the aforementioned concurrent findings, the defendant is in this second appeal.

6. Learned counsel appearing for the defendant / appellant would urge that, the Trial Court did not give a proper

opportunity to contest the case. For the reasons beyond its control and the defendant was prevented from producing the agreement of sale dated 27.03.1997. He would further submit that the agreement of sale dated 27.03.1997, would reveal that the defendant was put in possession of the property and the plaintiff was aware that the defendant is in possession of the property, as such, he is not a bonafide purchaser and the plaintiff not being in the possession, is not entitled to relief of declaration of title and injunction. It is also submitted that the defendant had obtained necessary permission to put up the structure in the suit land and this factor would demonstrate that defendant is in possession.

7. This Court has perused the impugned Judgment and decree passed by the Trial Court as well as the First Appellate Court.

8. Admittedly, before the Trial Court, the defendant has not produced any documentary evidence. It is also an admitted fact that the Amareshwar son of Bhubaneshwara Chakaraboorthy was the owner of the property, both plaintiff and the defendant claiming under Amareshwar son of

Bhubaneshwara Chakaraboorthy. However, the plaintiff's claim is based on a registered sale deed. The defendant's claim is though unregistered agreement for sale.

9. Agreement for sale does not confer any right, title and interest over the property. However, the question is whether the defendant is in possession of the property based on the unregistered agreement for sale. The aforementioned agreement for sale dated 27.03.1997 is drawn on a stamp paper of Rs.5/-. Under Article 5(e) of the Karnataka Stamp Act, in case the possession is delivered, the purchaser is required to pay the stamp duty as chargeable for conveyance. Thus, the agreement for sale dated 27.03.1997 is not drawn on a sufficient stamp paper. Hence, the document is inadmissible in evidence.

10. It is further relevant to note that the agreement for sale dated 27.03.1997 is unregistered and when the property was purchased by the plaintiff in the month of August 1997, the name of the plaintiff is not entered in the property records. Hence, the defendant cannot contend that the plaintiff was aware of his alleged agreement for sale dated 27.03.1997.

11. However, it is relevant to note that in case the defendant had entered into an agreement for sale on 27.03.1997, and the vendor has sold the property to some other persons after having collected the amount from the defendant, then, the defendant's remedy is to sue the vendor. The defendant is at liberty to pursue such remedy against vendor as advised in law, notwithstanding the dismissal of the appeal.

12. Under these circumstances, this Court does not find any reason to interfere with the impugned judgment and decree passed by the Trial Court and the First Appellate Court. No substantial question of law would arise in this appeal.

13. Hence, the appeal is ***dismissed.***

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

THM
List No.: 1 Sl No.: 42