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REVANASIDDAYYA

v

GANGAMMA @ SHASHIKALA & ANR.

B

(Civil Appeal No. 5039 of 2009)

DECEMBER 05, 2017

[ABHAY MANOHAR SAPRE AND NAVIN SINHA, JJ.]

C

Suit: Two suit by parties against each other – Suit for a declaration and possession – Suit for specific performance – Original owner sold land to appellant – On part performance of the agreement appellant placed in possession of the land – Death of the original owner before the execution of sale deed – Suit for a declaration and possession in relation to the suit land by

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respondent-LR's of the original owner, against the appellant – Dismissed insofar as the relief of possession but granted declaratory decree in respondents' favour of their ownership over the suit land – Appellant filing suit for specific performance of the agreement which was dismissed by trial court – Thereafter, first

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appeal by respondent – High Court decreed suit for possession against the appellant in relation to the suit land – On appeal, held: Possession of the appellant on the suit land, after the dismissal of his suit for specific performance, became unauthorized and illegal thereby entitling the respondents to claim back the same from the appellant on the strength of their ownership – Appellant was,

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however, entitled to defend his possession over the suit land by taking recourse to the provisions of s. 53-A of the 1882 Act but once his suit for specific performance stood dismissed, the protection available u/s. 53-A no longer available – Thus, the trial court as also High Court were justified in declaring the respondents as owners of the suit land and the High Court was

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justified in passing a decree for possession against the appellant – Appellant directed to restore back the vacant possession of the suit land to the respondents – Respondents directed to refund the earnest money to the appellant within the stipulated period, else would carry interest at the rate of 6% p.a. on the said sum till payment – Transfer

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of Property Act, 1882 – s. 53-A.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5039 A
of 2009.

From the Judgment and Order dated 25.10.2006 of the High Court
of Karnataka at Bangalore in RFA No.242 of 2004.

Trideep Pais, Pranav Jain, Ms. Sanya Sud, Ms. Anjana B
Chandrashekar, Advs for the Appellant.

Ankolekar Gurudatta, Tomy Chacko, Shantha Kumar Mahale,
Rajesh Mahale, Advs for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by C
defendant No.1 against the final judgment and order dated 25.10.2006
passed by the High Court of Karnataka at Bangalore in Regular First
Appeal No.242 of 2004 whereby the High Court allowed the first appeal
filed by respondent No.1(plaintiff) and modified the judgment/decreed of
the Trial Court dated 09.02.2000 passed by the IIIrd Additional Civil D
Judge, Dharwad in O.S. No. 151 of 1993 and accordingly passed a
decree for possession of the suit land against the appellant in relation to
the suit land.

2. In order to appreciate the issue involved in the appeal, which lie
in a narrow compass, few relevant facts need mention herein below. E

3. The appellant is defendant No.1 whereas respondent No.1 is
the plaintiff and respondent No.2 is defendant No.2 in a suit out of which
this appeal arises. Plaintiff and defendant No.2 are the legal
representatives of Veerabasayya, who was the original owner of the
suit land. F

4. The dispute in this appeal relates to the land bearing R.S. No.
177/3A+3B admeasuring 7 acres 37 guntas, R.S. No.161/2A admeasuring
12 acres 36 guntas. Situated at Shirol Village, R.S. No.24/5, admeasuring
5 acres 02 guntas situated at Kallapur, R.S. No.35/1, admeasuring 1
acre 22 guntas and R.S. No.35/2 admeasuring 3 acres 10 guntas situated
at Budihal (hereinafter referred to as "suit land"). G

5. The respondents' father - Veerabasayya was the original owner
of the suit land. He entered into an agreement (Ex-P-1) on 06.11.1986
to sell the suit land to the appellant for a total consideration of
Rs.1,75,000/-. In terms of the agreement, the appellant paid a sum of H

A Rs.1,00,000/- to Veerbasayya towards earnest money and was, accordingly, placed in possession of the suit land by him. The sale deed of the suit land was to be executed within 3 months. In the meantime, Veerbasayya died on 06.08.1988. The respondents being his legal representatives inherited the suit land and became its owners.

B 6. On 14.09.1993, the respondents herein filed a suit against the appellant(defendant No.1) being O.S. No.151/1993 in the Court of IIIrd Additional Civil Judge, Dharwad for a declaration and possession in relation to the suit land.

C 7. According to the respondents, they, being the owner of the suit land by virtue of inheritance, are entitled to claim possession of the suit land from the appellant(defendant No.1). It was alleged that the agreement dated 06.11.1986 executed between the parties in relation to the suit land for its sale by the respondents' late father to the appellant expired long back by efflux of time inasmuch as the appellant too never took any steps to enforce the agreement while it was enforceable in law and continued to remain in possession of the suit land and enjoyed its usufructs to the detriment of the respondents' interest in the suit land. It is essentially on these averments, the respondents claimed declaration of their title over the suit land and possession from the appellant.

D 8. The appellant contested the suit by filing the written statement. E According to the appellant (defendant No.1), he was in lawful possession of the suit land pursuant to the agreement dated 06.11.1986 and hence the respondents are not entitled to claim a relief of declaration of their title over the suit land or even possession of the suit land from the appellant.

F 9. Parties adduced evidence. The Trial Court, by judgment/decree G 09.02.2000, dismissed the suit insofar as the relief of possession was concerned but decreed the suit by granting a declaratory decree in respondents' favour of their ownership over the suit land. In other words, the Trial Court held that the respondents are the owners of the suit land but are not entitled to claim possession of the suit land.

H 10. After the disposal of the respondents' suit, the appellant, in the year 2000, filed a suit against the respondents being O.S. No. 153/2000 seeking specific performance of the agreement dated 06.11.1986(Ex-P-1) from the respondents in relation to the suit land. The appellant's suit for specific performance was dismissed in 2009 and the appeal filed by

the appellant against the dismissal of his suit was also dismissed by the District & Sessions Judge, Gadag in R.A. No.31 of 2009 on 16.04.2012. Thereafter, it was not pursued by the appellant. A

11. The respondents, felt aggrieved of the judgment/decree of the Trial Court dated 09.02.2000, filed first appeal being RFA No. 242/2004 in the High Court of Karnataka. So far as the appellant is concerned, he did not file any cross appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") nor filed any cross objection under Order 41 Rule 22 of the Code in respondents' first appeal to challenge the finding of ownership of the respondents, which was against the appellant. B

12. Therefore, the only question, which arose before the High Court, was as to whether the Trial Court was justified in dismissing the suit insofar as it relates to claim for possession of the suit land. C

13. By Judgment/decree dated 25.10.2006, the High Court allowed the respondents' first appeal, modified the judgment/decree of the Trial Court and passed a decree for possession of the suit land against the appellant in relation to the suit land. It was held that the respondents are entitled to claim possession of the suit land from the appellant. In this way, the respondents' entire suit stood decreed by the High Court. D

14. Felt aggrieved of the impugned judgment/decree passed by the High Court, the appellant(defendant No.1) has filed the present appeal by way of special leave in this Court. E

15. Heard Mr. Trideep Pais, learned counsel for the appellant and Mr. Ankolekar Gurudatta and Mr. Shantha Kumar Mahale, learned counsel for the respondents. F

16. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to uphold the findings of the High Court but, at the same time, modify the impugned judgment and issue directions for ensuring its compliance by the parties to this appeal as indicated below. G

17. In our considered opinion, one of the effects of the dismissal of appellant's suit/appeal, which was filed for specific performance of the agreement, was that the appellant was not entitled to retain possession of the suit land. In other words, the possession of the appellant on the suit land, after the dismissal of his suit for specific performance, became H

A unauthorized and illegal thereby entitling the respondents to claim back the same from the appellant on the strength of their ownership.

18. The appellant was, however, entitled to defend his possession over the suit land by taking recourse to the provisions of Section 53-A of the Transfer of Property Act, 1882 (hereinafter referred to as “T.P. Act”) but once his suit for specific performance stood dismissed, the protection available under Section 53-A of the T.P. Act was no longer available to him.

19. So far as the present appeal is concerned, it does not arise out of the suit filed by the appellant against the respondents but arises out of a suit filed by the respondents against the appellant. We cannot, therefore, examine the legality and correctness of judgment/decree passed in appellant’s suit/appeal but can certainly examine its effect while examining the legality and correctness of the impugned judgment.

20. In our considered opinion, the Trial Court as also the High Court were justified in declaring the respondents as owners of the suit land and were also justified in passing a decree for possession against the appellant.

21. It is for the reasons that firstly, the appellant never disputed the respondents’ ownership over the suit land and indeed rightly. Secondly, since the respondents’ late father had placed the appellant in possession of the suit land pursuant to part performance of the agreement in question (EX-P-1), the appellant could defend his possession against the true owner (respondents) on the strength of such agreement subject to his proving the requirements of Section 53-A of the T.P. Act.

22. Since the appellant’s suit/appeal for specific performance was dismissed, his possession over the suit land became unauthorized. It is for these two reasons, the High Court was justified in passing a decree for possession against the appellant in relation to the suit land. We, therefore, find no justification to set aside the findings of the High Court. It is in conformity with the legal principles applicable to the fact of this case.

23. This leaves us to examine only one question, which, in our opinion, arises in the case but does not appear to have been dealt with in two suits filed by the parties against each other. In the interest of justice, we consider it necessary to deal with the question with a view to give

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quietus to the litigation which is pending between the parties for the last 3 decades. A

24. As mentioned above, it is not in dispute that the appellant had paid a sum of Rs.1,00,000/- to the respondents' late father by way of earnest money for purchasing the suit land. It is also not in dispute that the respondents' late father had placed the appellant in possession of the suit land in 1986. It is also not in dispute that since then the appellant continued to remain in possession of the suit land though, in the meantime, suffered impugned decree for dis-possession. B

25. In our opinion, in the light of such factual undisputed scenario emerging in the case, the appellant is held entitled to claim refund of earnest money of Rs.1,00,000/- from the respondents. One cannot dispute the legal position that once the bargain to sale/purchase of any land fails, the unsuccessful buyer becomes entitled in law to claim refund of earnest money from the seller under Section 22 of the Indian Specific relief Act. Similarly, the appellant is also, in turn, liable to restore the possession of the suit land pursuant to the impugned judgment/decree suffered by him and which we have upheld. C D

26. It is for these reasons and with a view to do complete justice between the parties, we invoke our power under Article 142 of the Constitution and, accordingly, direct the respondents to refund a sum of Rs.1,00,000/- to the appellant within 3 months from today. Failure to refund Rs.1,00,000/- to the appellant within 3 months will carry interest at the rate of 6% p.a. on the said sum till payment. E

27. We further direct the appellant to restore back the vacant possession of the suit land to the respondents in terms of the impugned judgment/decree within 3 months from the date of this judgment. F

28. With these directions, the appeal stands finally disposed of.