

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10327 OF 2011

MUNISHAMAPPA

APPELLANT(S)

VERSUS

M.RAMA REDDY & ORS.

RESPONDENT(S)

O R D E R

1. This appeal assails the correctness of the judgment and order dated 10.11.2010, passed by the High Court of Karnataka at Bangalore, whereby the Second Appeal preferred by the defendant-respondent was allowed, and the suit for specific performance of contract filed by the appellant was dismissed.
2. On 28.05.1990, the appellant and the respondents entered into an agreement to sell, in which the property in question was to be sold for Rs. 23,000/-, and the entire sale consideration was paid before the execution of the Agreement to Sell, and possession of the property in question was also handed over to the appellant. It was also agreed that from the time of execution of the Agreement to Sell, the respondents would have no rights left and it would be the appellant who would have all the rights over the property in question. However, due to the prohibition on registration of the sale deed, it was

stipulated that the sale deed would be executed once this restriction was lifted. The Agreement to Sell dated 28.05.1990 contained all the above facts duly incorporated therein. The prohibition on the sale was due to bar contained in Section 5 of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1996 (hereinafter referred to as the "Fragmentation Act").

3. Even at the time of the execution of the Agreement to Sell, there was a serious likelihood of the Fragmentation Act being repealed. Soon thereafter i.e. on 05.02.1991, the Fragmentation Act stood repealed. Thereafter, the appellant claims to have repeatedly requested the respondents to execute the sale deed, which was merely a formality since the entire sale consideration had already been paid by the appellant, and they had taken the possession of the property in question, which they continued to hold. Despite the same, the respondents continued to delay the execution of the sale deed. Ultimately, the appellant sent a legal notice to the respondents on 03.09.2001, according to which the respondents had finally refused to register the sale deed on 28.08.2001.

4. When the sale deed was not executed despite the notice, the appellant instituted the suit for specific performance on 01.10.2001. In response, the respondent filed written statement denying the execution of the Agreement to Sell.

Both parties led oral as well as documentary evidence. However, the Trial Court vide judgment dated 28.09.2004 dismissed the suit. The Trial Court primarily based its decision on the finding that the execution of the Agreement to Sell was doubtful. It also held that the suit was filed beyond the period of limitation.

5. The Regular First Appeal, preferred by the appellant, was allowed vide judgement dated 14.01.2008. The First Appellate Court held that the suit was within the limitation period, and the appellant had proved the execution of the Agreement to Sell. There was no inconsistency in the evidence of appellant's witnesses (PW1-PW3). The respondent no.1, who was examined as DW1, admitted during the cross-examination that he had executed the Agreement to Sell and had put his signatures thereon. On such findings, the First Appeal was allowed, and the suit was decreed.

6. The respondents preferred Second Appeal before the High Court, which came to be allowed by the impugned judgment dated 10.11.2010, only on the finding that the Agreement to Sell was in violation of the Fragmentation Act, and therefore void. It is the said judgment of the High Court which is assailed in the present appeal.

7. Judgment of the Trial Court clearly reveals that the following issues were framed:

1. Whether the plaintiffs prove that the defendants are

the owners of the suit property and they have executed the Agreement of Sale on 28.05.1990 agreeing to sell the suit property for Rs. 23,000/- and they have received the entire Sale consideration as contended in para 2 of the plaint?

2. Whether the plaintiff proves that he demanded the defendants to execute the Sale Deed but they have failed to execute the same?
3. Whether the defendants prove that he has been ready and willing to perform his part of the contract?
4. Whether the defendants prove that the suit is barred by time and the suit is not maintainable as contended in para 9 & 10 of their written statement?
5. Whether the plaintiff proves that he is entitled for the relief for specific performance of contract?
6. To what Order or Decree?
8. There was no issue framed with respect to the violation of the Fragmentation Act, and it was not pleaded in the written statement filed by the respondent. The defence taken by the respondent was that he never executed the Agreement to Sell. However, in his deposition during the cross-examination, he admitted to his signatures on the Agreement to Sell. Thus, in the absence of any issue framed, and given that neither party has pleaded any violation of Section 5 of the Fragmentation Act, the High

Court apparently fell in error in holding that Agreement to Sell was in violation of Section 5 of the Fragmentation Act.

9. Section 5 of the Fragmentation Act reads as under: -
5: Sale, Lease, etc:-

(1)

(a) No person shall sell any fragment in respect of which a notice has been given under sub-section (2) of Section 4, except in accordance with the provisions of clause (b).

[(b) Subject to the provisions of Sections 39 and 80 of the Karnataka Land Reforms Act, 1961 (Karnataka Act 10 of 1962), whenever a fragment is proposed to be sold, the owner thereof shall sell it to the owner of a contiguous survey number or recognised sub-division of a survey number (hereinafter referred to as the contiguous owner). If the fragment cannot be so sold to the contiguous owner, for any reason, the owner of the fragment shall intimate in the prescribed form, the reasons therefore along with an affidavit in support thereof to the Tahsildar and also send copies of such intimation and affidavit to the Sub-registrar, in the prescribed manner and may thereafter sell such fragment to any other person.]

(2) Notwithstanding anything contained in any law for the time being in force or in any instrument or agreement, no such fragment shall be leased to any person other than a person cultivating any land, which is contiguous to the fragment.

(3) No such fragment shall be sub-divided or partitioned."

10. The Agreement to Sell is not a conveyance; it does not transfer ownership rights or confers any title. What is prohibited or barred under the Fragmentation Act was the lease/sale/conveyance or transfer of rights. Therefore, the Agreement to Sell cannot be said to be barred under

the Fragmentation Act. The appellant filed the suit for specific performance after the repeal of the Fragmentation Act. The suit could have been decreed without there being any violation to the law once the Fragmentation Act itself had been repealed in February 1991. Further, the High Court did not hold that the suit was barred by Section 5 of the Limitation Act. The First Appeal Court had considered this aspect and having decided the said issue in favour of the appellant, we need not go into that question at this stage. What is further noticeable is that the respondents received the full consideration and had also transferred the possession of the property in question, as such other defences may not be available to them. Even the issue of readiness and willingness on the part of the appellant would not be relevant.

11. For all the reasons recorded above, the appeal deserves to be allowed. The impugned order and judgment of the High Court dated 10.11.2010 is hereby set aside, and the judgment of the First Appellate Court dated 17.04.2008, decreeing the suit of the appellant, stands restored.

12. There shall be no order as to costs.

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

..... .J.
[VIKRAM NATH]

..... .J.
[RAJESH BINDAL]

NEW DELHI;
NOVEMBER 02, 2023.

ITEM NO.114

COURT NO.11

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

Civil Appeal No(s). 10327/2011

MUNISHAMAPPA

Appellant(s)

VERSUS

M.RAMA REDDY & ORS.

Respondent(s)

Date : 02-11-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAM NATH
HON'BLE MR. JUSTICE RAJESH BINDAL

For Appellant(s) Mr. Shailesh Madiyal, AOR
Mr. Shailesh Madiyal, Adv.
Mr. Vaibhav Sabharwal, Adv.
Ms. Divija Mahajan, Adv.
Mr. Akshay Kumar, Adv.

For Respondent(s) Mrs. Vaijayanthi Girish, AOR
Mr. Girish Ananthamurthy, Adv.

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

The appeal is allowed in terms of the signed
order.

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

(SONIA BHASIN)
COURT MASTER (SH)

(RANJANA SHAILEY)
COURT MASTER (NSH)

[Signed Order is placed on the file]

