

## **D.R. Rathna Murthy vs Ramappa on 8 October, 2010**

**Equivalent citations: 2010 AIR SCW 7159, 2011 (2) AIR JHAR R 664, (2011) 2 MPLJ 507, (2011) 2 ICC 502, (2011) 3 CIVLJ 781, (2011) 98 ALLINDCAS 30 (SC), (2011) 2 ALL WC 1162, (2010) 4 CIVILCOURTC 662, (2011) 2 LANDLR 376, (2011) 3 MAH LJ 44, (2011) 4 MAD LJ 548, 2011 (1) SCC 158, (2011) 2 RECCIVR 414, (2010) 2 CLR 1077 (SC), (2011) 1 WLC(SC)CVL 77, (2010) 4 CURCC 122, (2010) 10 SCALE 625, (2011) 1 KCCR 285, 2011 (85) ALR SOC 23 (SC)**

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**Bench: B.S. Chauhan, P. Sathasivam**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6396 OF 2002

D.R. Rathna Murthy

...

Appellant

Versus

Ramappa

...Respondent

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been filed against the judgment and order dated 2nd April, 2002 passed by the High Court of Karnataka at Bangalore in R.S.A No. 446 of 1996, reversing the judgment of the First Appellate Court dated 10.3.1999, passed in RFA No.133 of 1995; and restoring the judgment and decree of the trial court dated 15.11.1995 in O.S. No. 122 of 1992. The trial court had dismissed the suit of the plaintiff/appellant (hereinafter called the appellant) for specific performance.

2. Facts and circumstances giving rise to this appeal are that the appellant, D.R. Rathna Murthy, had purchased the land in question vide registered sale deed dated 23rd April, 1986 from one A.M. Venkatachalapathy Setty for a consideration of Rs.

10,000/-. On the very next day, the appellant sold the said land vide registered sale deed dated 24th April, 1986, to the defendant/respondent (hereinafter called the respondent) for consideration of Rs.10,000/- only and delivered the possession to him. In pursuance of the said sale deed dated 24th April, 1986, the respondent is in possession of the suit land. The appellant subsequently served a legal notice upon the respondent in the year 1991-1992 demanding the reconveyance of the suit property on the ground that registered sale deed executed in favour of respondent dated 24th April, 1986 was a conditional sale deed and appellant had a right to repurchase the sale land for the same consideration of Rs.10,000/- within a period of ten years from the date of execution of the sale deed.

3. The respondent did not make any response to the said legal notice, thus, the appellant filed Original Suit No. 122 of 1992 before the court of Munsiff and JMFC Court, Mulbagal, seeking the relief of specific performance. The said Suit was contested by the respondent contending that there was an absolute sale deed in his favour and it was not a conditional sale deed, the term of reconveyance had been fraudulently inserted by the appellant after the execution of the document.

Manipulation had been done at several places in the said sale deed after the execution and the appellant had put in the word "Avadhi", which means tenure, just to make the same a conditional sale deed. The trial court considered the case of both the parties and dismissed the Suit vide judgment and decree dated 15th November, 1995.

4. Feeling aggrieved, the appellant approached the First Appellate Court by filing RFA No.133/1995, and the appeal was allowed vide judgment and decree dated 10th March, 1999. The First Appellate Court held that it was a conditional sale deed, thus, the Court directed the respondent to execute the sale deed in favour of the appellant. The respondent approached the High Court by filing the Regular Second Appeal i.e. R.S.A. No. 446 of 1999 under Section 100 of Code of Civil Procedure, 1908 (hereinafter referred to as 'C.P.C.') and the said appeal has been allowed by the High Court vide judgment and order dated 2nd April, 2002. Hence, this appeal.

5. Shri Naveen R. Nath, learned counsel appearing for the appellant has submitted that the sale executed by the appellant in favour of the respondent was a conditional sale deed and thus, he had a right to repurchase the land any time within a period of ten years from the date of the execution of the sale deed. The appellant exercised his option within the period prescribed in the conditional sale

deed. The trial court has erred in dismissing the suit, however, the First Appellate Court after proper appreciation of the entire evidence on record came to the conclusion that it was a conditional sale deed and not a case of absolute sale. The High Court ought not to have reversed the said findings of fact as it is not permissible to appreciate the evidence in second appeal, and no substantial question of law was involved in the appeal. The High Court recorded a totally perverse finding that it was a case of absolute sale. Hence, the appeal deserves to be allowed.

6. On the contrary, Shri Girish Anantha Murthy, learned counsel appearing for the respondent, has vehemently opposed the appeal contending that the sale deed in favour of respondent was an absolute sale deed and it is not a conditional sale deed. The word "Avadhi" was inserted in the margin of said deed at three places and a term of reconveyance within a period of ten years was added in the same after its execution and prior to registration. Such an insertion of said word "Avadhi" at three places and the addition of the last clause providing for reconveyance was without the consent and knowledge of the respondent; therefore, he cannot be bound by the said terms. In case of contradictions between the oral evidence of the witnesses of both the sides, the First Appellate Court should not have re-

appreciated the entire evidence and thus, there was no occasion for the First Appellate Court to reverse the findings of fact recorded by the trial court. The judgment and order of the High Court does not require any interference, the appeal lacks merit and, accordingly, is liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the record.

Undoubtedly, the High Court can interfere with the findings of fact even in the Second Appeal, provided the findings recorded by the courts below are found to be perverse i.e. not being based on the evidence or contrary to the evidence on record or reasoning is based on surmises and misreading of the evidence on record or where the core issue is not decided. There is no absolute bar on the re-

appreciation of evidence in those proceedings, however, such a course is permissible in exceptional circumstances. (Vide *Rajappa Hanamantha Ranoji v. Mahadev Channabasappa & Ors.*, AIR SC 2000 2108; *Hafazat Hussain v. Abdul Majeed & Ors.*, (2001) 7 SCC 189; and *Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors.*, JT 2010 (5) SC 534)

8. The sale deed dated 24th April, 1986, is a registered document.

The document is admitted by the other side. Most of the contents are also admitted. However, it is disputed that the word "Avadhi" and last clause have been inserted subsequent to execution of the document. In such a fact-situation, the probative value of that part of the document is required to be assessed. It becomes a case as if the respondent had never intended to have conditional sale deed. He never intended to enter into a contract to which certain part was not even known to him. The part of the contract as had been inserted after his signature i.e., after execution of the document cannot be binding upon him. If such averments are accepted, it becomes a clear cut case of manipulation/fraud by the appellant. (Vide *Dularia Devi v.*

Janardan Singh & Ors., AIR 1990 SC 1173)

9. The appellant has examined himself and two other witnesses as PW.1 to PW.3. The other persons had been the scribe and attesting witnesses to the document. Copies of the said sale deed were produced and marked as Ex. P-1 to P-4. The respondent examined himself as DW-1. Two other witnesses including one attesting witness were also examined by him in defence. The trial court framed four issues :

- 1) Whether plaintiff proves that under sale deed dated 24.4.86 he has got right to purchase the suit schedule property?
- 2) Whether plaintiff further proves that he is entitled for the specific relief of specific performance of contract?
- 3) Whether the defendant proves that suit is not maintainable and not complied with the mandatory provisions required under Section 16(3) of the Specific Relief Act?
- 4) To what relief the parties are entitled?

10. The trial court appreciated the evidence of the parties and their witnesses and came to the conclusion that the word "Avadhi" and the last part of the sale deed were inserted after the execution of the document making it a conditional sale deed from absolute sale deed.

The trial court while reaching this conclusion relied upon the deposition of Gopalakrishna (PW.2), the attesting witness of the sale deed, wherein he had admitted in cross-examination that there was no clause as to after how many years the suit land has to be repurchased and the word "Avadhi" was written in the margin after completion of the document. The last part i.e. Ex. D-2 was added after the execution of the sale deed i.e. Ex. P-4, thus, it was evident that the appellant and his scribe inserted the word "Avadhi" in Ex.P-4 and also inserted the portion Ex.D-2 and it is so evident even to the naked eyes. In view of the aforesaid findings, the suit was dismissed. The First Appellate Court had unnecessarily laboured to find fault with the trial court's judgment and without realising that there was contradiction in the oral testimony of two marginal witnesses, re-appreciated the entire evidence and reached the contrary conclusion. The High Court realising that the findings of facts recorded by the First Appellate Court were perverse, proceeded with appreciation of evidence and came to the conclusion that the trial court was right in holding that the word "Avadhi" had been inserted at three places in the margin and last part of the sale deed Ex.D-2 in Ex.P-4 had been added subsequent to the execution of the sale deed. The findings so recorded by the High Court are based on a proper appreciation of evidence and the statutory provisions applicable in the case. Admittedly, there had been interlineations in the sale deed.

11. Section 20 of the Registration Act, 1908 reads as under:

"Documents containing interlineations, blanks, erasures or alterations.-

(1) The registering officer may in his discretion refuse to accept for registration any document in which any interlineations, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineations, blank, erasure or alteration. (2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineations, blank, erasure or alteration."

It appears that vide Karnataka Act No. 41 of 1984, Clause 2 of Section 20 has been deleted, w.e.f. 7th November, 1986, however, corresponding provisions in Karnataka Registration Rules, 1965 (hereinafter called the Rules), providing for similar requirement have not been amended. Rule 41 of the said Rules provided examination of a document by the Registering Officer and made an obligation on his part that if there are unattested interlineations, alterations, erasures or blanks, which the Registering Officer considers should be attested, by the signatures of the executant, he shall not alter the document himself in any way.

12. Rule 42 of Rules reads as under:

"Manner of noting interlineations, etc.- Each important interlineations, erasure or alteration occurring in a document shall, whenever possible, be caused to be noted or described at the foot of the document and to be signed by the executant before the document is accepted for registration.... "

Therefore, Rule 42 mandatorily requires that if there is any interlineation, erasure, alteration etc., it must be mentioned and described at the foot of the document and must be duly signed by the executant before the document is accepted for registration.

13. In the instant case, we have, ourselves examined certified copy of the said sale deed, and found that the provisions of Rule 42 have not been complied with. Nothing has been endorsed at the foot of the sale deed, nor it bears signatures of the executant. The word "Avadhi" has been inserted at three places in the margin of the sale deed. It has not be attested by the executant. The part Ex. D-2 had been inserted in Ex.P-4 in an unusual manner. The entire sale deed has been scribed in double space while the part Ex.D-2 is in single space. It was necessary to do so as the parties had already signed the document. Had it been written in ordinary course, it could have gone below the signatures of the parties in the sale deed. Therefore, it is crystal clear that such insertion had been made to convert the absolute sale deed into a conditional sale deed. Thus, we are of the view that the trial court and the High Court have rightly believed the testimony of the respondent that there was no mention of Ex.D-1 and D-2 in Ex.P-4 and the appellant was not entitled for reconveyance of the suit property. The manner in which interlineations have been made in the document itself reveal that addition was made subsequent to the execution of the document otherwise there was enough space to insert such a clause in the same manner in which the entire sale had been scribed. This particular clause had to be squeezed in a small space and to adjust the same before the signature already made by the appellant. The First Appellate Court committed grave error in not properly appreciating the evidence of D.R. Rathna Murthy (PW.1) and Gopalakrishna (PW.2) in this regard, though the Court took note of the admission made by Gopalakrishna (PW.2), the attestator, that no

time was fixed for reconveyance, thus, the term "Avadhi" was written in 'margin' and also Ex.D-2 was written after Ex.P-4 has completely been written.

14. D.R. Rathna Murthy (PW.1) had also admitted that he sold the land to the respondent as he was in dire need of money to pay to his Vendee. He had himself purchased the property only one day before i.e. on 23rd April, 1986. We fail to understand if the appellant was not having money, why did he purchase the property from his vendor on 23rd April, 1986 and in order to pay him the sale consideration sold it to the respondent on the very next day i.e. on 24th April, 1986 for the same amount. There is nothing on record to show as under what circumstances the sale deed had been executed in favour of the appellant by his vendor without receiving the sale consideration and how could he be put in possession.

15. The First Appellate Court failed to appreciate that there was no shara (noting) in respect of interlineations in the sale deed. The respondent had deposed as under:

"At that time there was no mention in respect of conditional sale deed. In front of sub registrar nothing was spoken about the conditional sale deed. At the time of purchase the suit land was fallen land. After purchase I formed the land and improved its fertility. I spent about 10 to 15,000/- for the improvement of the land. I grow ragi and ground nut crops. I dig one Well in the suit land. I spent Rs.20,000/- to dug the Well. Prior to filling of this suit plaintiff did not approach me with a request to execute sale deed in his favour. No panchayat was held in respect of the suit lands. Neither witnesses nor scribe intimated me about the Avadhi transaction in respect of suit lands. At the time of change of revenue records the plaintiff did not file any objections contending that the sale is conditional one. I came to know about the Avadhi only after filing of this suit. I sent reply notice to the plaintiff's legal notice. After sale the plaintiff is not related to suit land. I have not agreed for re sale of suit land".

Had it been a case of conditional sale, the appellant could have asked the respondent to wait for mutation or raise the objection before the Revenue Authorities in spite of the fact that mutation is a revenue entry and does not refer to the title of the land. Had it been the case of conditional sale deed enabling the appellant to repurchase the land any time within ten years, the respondent could not have spent huge amount of his life savings for improving the land, nor would he have dug a Well in the suit land spending twenty thousand of rupees. The aforesaid circumstances make it clear that the respondent had never agreed for reconveyance.

15. The interlineations had been made at four places in the sale deed. Word "Avadhi" had been mentioned at three places in the margin of the sale deed. The appellant did not attest the said word by putting his signatures at the time of registration. Attestation testifies/certifies the genuineness of the document. Attestation and execution are different acts, one following the other. Execution includes delivery and signing of the document in the presence of the witnesses and also the whole series of acts or formalities which are necessary to render the document valid. Attestation of sale deed is imperative. In the instant case, we find that the animus to attestation remain totally absent.

It is settled legal proposition that the document may be admissible but probative value of the entries contained therein may still be required to be examined in the fact and circumstances of a particular case. (Vide State of Bihar & Ors. v. Sri Radha Krishna Singh & Ors., AIR 1983 SC 1984; and Bharatha Matha & Anr.

(Supra).

16. The case is required to be examined from another angle also.

The appellant had purchased the land for a consideration of Rs.10,000/-. On 23rd April, 1986, he sold the land on the very next date for a sum of Rs.10,000/- reserving his right to purchase the land for the same consideration within a period of ten years. In normal circumstances, the vendor would not agree for reconveyance for the same consideration for the reason that the value of the land generally goes upwards and within a period of ten years it could have at least become double. (See Sardar Jogender Singh v. State of U.P., (2008) 17 SCC 133; and Satish & Ors. v. State of U.P. & Ors., (2009) 14 SCC 758).

17. The aforesaid circumstances make it abundantly clear that the appellant has made inter-lineations after the document stood executed.

The said additions were made without the consent and knowledge of the respondent. In fact the mind of the respondent did not actuate with his hand while putting his thumb impression on the said sale deed at the time of registration. Thus, the additions so made by the appellant cannot be binding on the respondent. The additions in question are surrounded by the suspicious circumstances of a grave nature and, therefore, the same are required to be ignored. The contract being severable, the terms of contract included by these additions being void, cannot be taken note of.

In view of the above, we find no force in the appeal and it lacks merit and, is accordingly, dismissed. There shall be no order as to costs.

.....J. (P. SATHASIVAM) .....J. (Dr. B.S. CHAUHAN) New Delhi, October 8, 2010