P.S. Ranakrishna Reddy vs M.K. Bhagyalakshmi And Anr on 20 February, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1256, 2007 AIR SCW 1383, (2007) 53 ALLINDCAS 238 (SC), (2007) 2 CTC 357 (SC), 2007 (10) SCC 231, 2007 (3) SCALE 409, (2007) 4 ESC 2699, (2008) 1 BANKCLR 234, 2007 (2) CTC 357, 2007 (1) HRR 439, (2007) 114 FACLR 682, (2007) 4 SERVLR 134, (2007) 2 CURLR 612, (2007) ILR (KANT) 1625, (2007) 56 ALLINDCAS 519 (CAL), (2007) 1 RENTLR 745, (2007) 4 MAD LJ 193, (2007) 2 SUPREME 641, (2007) 2 RECCIVR 290, (2007) 2 CIVILCOURTC 304, (2007) 1 RENCJ 74, (2007) 1 ALL RENTCAS 839, (2007) 2 CALLT 54, (2007) 1 WLC(SC)CVL 784, (2007) 4 MAD LW 218, (2007) 67 ALL LR 465, (2007) 2 ALL WC 1614, (2007) 2 CURCC 38, (2007) 2 KANT LJ 561, (2007) 3 SCALE 409

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Bench: S.B. Sinha, Markandey Katju

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           CASE NO.:
Appeal (civil)  6925 of 2000

PETITIONER:
P.S. Ranakrishna Reddy

RESPONDENT:
M.K. Bhagyalakshmi and Anr

DATE OF JUDGMENT: 20/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
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J U D G E M E N T S.B. SINHA,J.

Defendant No. 1 in the suit is Appellant before us. He was admittedly owner of a residential house admeasuring 40 ft. x 30 ft bearing No. 148 (New Plot No. 78), 8th Cross, N.R. Colony, Bangalore. Respondent No. 1 has been in possession of the suit property as a tenant on a monthly rent of Rs. 115/-. The appellant admittedly had taken loan from Respondent No. 1 herein from time to time, the details whereof are as under :

"23.4.79 Rs. 8000 27.4.79 Rs. 4000 10.5.79 Rs. 2900 11.5.79 Rs. 100"

Admittedly, the parties entered into an agreement for sale on 11.05.1979. The aforementioned sum of Rs. 15,000/- received by the appellant was treated to be the amount of advance paid out of the amount of consideration fixed in the said agreement of sale i.e Rs. 45,000/-. The relevant terms of the said agreement are as under :

> "Whereas the first party is the absolute owner of house bearing No. 148, 8th cross N.R. colony, Bangalore- 19 more fully described in the schedule hereunder, having acquired the same under registered gift deed, executed by Mrs. B.N. Vijaya Deva.
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> Whereas the second party has offered to buy and the first party has agreed to sell to the second party the schedule property for a sum of Rs. 45,000/- (Rupees fourty five thousand only.) The first party hereby agreed to sell the schedule property to the second party on the following terms and conditions.
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> a) A sum of Rs. 15,000/- (Rupees fifteen thousand only) has been paid this day by the second party to the first party which he hereby acknowledges out of the said price of Rupees Forty Five thousand.
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> b) A further sum of Rs. 5,000/- (Rupees five thousand only) in respect of the balance of the price shall be paid by the second party to the first party within one year from this date, i.e., 11-5-79.
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> c) The remaining balance of the consideration for the sale, i.e., Rs. 25,000/- (Rupees twenty five thousand only) shall be paid by the second party to the first party within five years from this date.

On payment of the full consideration of Rs.

45,000/- to the first party by the second party in the manner aforesaid the first party shall execute a registered deed of sale in favour of the second party conveying the schedule property to the second party. The expenses for conveyance for stamp and registration shall be borne by the second party only but the first party shall apply to the competent authorities for permission to sell the property to the second party and take other steps necessary for the purpose.

xxx xxx xxx The first party shall notify the tenants in the property of the fact of sale at the time the sale deed is executed in the manner mentioned above and call upon them to vacate the property and render all assistance and help to the second party to obtain in vacant possession of the schedule property.

In case the first party shall commit breach of the agreement, he shall, besides refunding the sum he has received under this agreement, to the second party, shall in addition pay a sum of rupees ten thousand as damages. In case the second party commits breach of this agreement she shall forfeit a sum of Rs. ten thousand out of the amounts paid."

Although a period of five years was fixed for execution of the sale deed on payment of the balance sum, admittedly, the appellant herein has received a further sum of Rs. 5,000/- from Respondent No. 1.

It is furthermore not in dispute that the respondents served a notice upon the appellant on or before 29.5.1981 alleging that he had been making attempts to sell the property to third parties.

Appellant was called upon to execute a registered deed of sale on receipt of the balance amount and as he did not agree thereto, the respondent No. 1 filed a suit for specific performance of the said agreement of sale dated 11.05.1979.

The said suit was decreed by the learned Trial Judge by a judgment and decree dated 05.04.1989. A first appeal preferred thereagainst by the appellant has been dismissed by the High Court by reason of the impugned judgment.

Mr. G.V. Chandrashekhar, learned counsel appearing on behalf of the appellant, submitted that the learned Trial Judge as also the High Court committed a serious error in construing the said document as an agreement for sale in stead and place of an agreement for loan. It was urged that having regard to the fact that diverse amounts had been taken by the appellant from the respondents as also the fact that similar agreements for sale were entered into by and between the appellant and other persons categorically demonstrate that he had merely borrowed some amount and the purported agreement for sale was not meant to be acted upon. The learned counsel urged that in view of the default clauses contained in the agreement, the same could not have been construed to be an agreement for sale. Strong reliance in this behalf has been placed on Dadarao and Another v. Ramrao and Others [(1999) 8 SCC 416].

In any event, it was urged that it is not a fit case where the Courts below should have exercised their discretionary jurisdiction under Section 20 of the Specific Relief Act, 1963.

Mr. S.N. Bhat, learned counsel appearing on behalf of the respondents, on the other hand, supported the judgment.

Original relationship of the parties as landlord and tenant is not in dispute. The fact that the appellant intended to convey his right, title and interest in respect of the said property is also not in dispute. As noticed hereinbefore, he entered into more than one agreement in respect of the self-same property and took advances in respect thereof from more than one person.

The agreement in question has been described as an agreement for sale. Appellant admittedly was owner of the property. The agreement shows that there had been negotiations between the parties as a result whereof the respondent herein had offered to buy and the appellant had agreed to sell the said property for a sum of Rs. 45,000/-. The terms and conditions stipulated therein were arrived at as a result of the negotiations between the parties.

No part of the agreement supports the contention of Mr. Chandrashekhar that the same was not meant to be acted upon. It was signed by the parties. Two witnesses who had attested the signature of the parties to the agreement were examined before the Trial Court. It may be that despite the said agreement, Respondent No. 1 was allowed to continue to remain in possession of the premises in question as a tenant and not in part performance of the said agreement for sale, but it was not necessary for the parties to adopt the latter course only. The parties, on a plain reading of the agreement, apparently intended to continue their relationship as landlord and tenant till a regular deed of sale was executed.

A document, as is well known, must be read in its entirety. The intention of the parties, it is equally well settled, must be gathered from the document itself. All parts of the deed must be read in their entirety so as to ascertain the nature thereof.

The purported default clause, to which our attention has been drawn by Mr. Chandrashekhar, does not lead to the conclusion that the same was a contract of loan. By reason thereof, the respective liabilities of the parties were fixed. In the event, the provisions of the said contract were breached, the damage which might have been suffered by one party by reason of act of omission or commission on the part of the other in the matter of performance of the terms and conditions thereof had been quantified. The quantum of damages fixed therein was the same for both the parties. The submission of Mr. Chandrashekhar that in view of the fact that parties had agreed that in the event of breach on the part of the appellant, the respondent would be entitled to claim damages for a sum of Rs. 10,000/- only and, thus, the said agreement for sale was not meant to be acted upon cannot be accepted. If the said contention is accepted, the damages quantified in the event of any breach on the part of Respondent No. 1 cannot be explained. It is clear that in the event of commission of any breach on the part of respondent, the appellant was entitled to forfeit the entire amount of advance. The very fact that the parties intentionally incorporated such default clause clearly goes to show that they intended to lay down their rights and obligations under the contract explicitly. They, therefore, knew the terms thereof. They understood the same. There is no uncertainty or vagueness therein.

The decision of this Court in Dadarao (supra), whereupon reliance has been placed by Mr. Chandrashekhar is wholly misplaced. The term of the agreement therein was absolutely different. We need not dilate on the said decision in view of the fact that in a subsequent decision of this Court in P.D' Souza v. Shondrilo Naidu [(2004) 6 SCC 649], it has been held to have been rendered per incuriam, stating:

> "34. In Dadarao whereupon Mr Bhat placed strong reliance, the binding decision of M.L. Devender Singh4 was not noticed. This Court furthermore failed to notice and consider the provisions of Section 23 of the Specific Relief Act, 1963. The said decision, thus, was rendered per incuriam.
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> 35. Furthermore, the relevant term stipulated in Dadarao was as under: (SCC p. 417, para 2) Tukaram Devsarkar, aged about 65, agriculturist, r/o Devsar, purchaser (ghenar) Balwantrao Ganpatrao Pande, aged 76 years, r/o Dijadi, Post Devsar,

vendor (denar), who hereby give in writing that a paddy field situated at Dighadi Mouja, Survey No. 7/2 admeasuring 3 acres belonging to me hereby agree to sell to you for Rs 2000 and agree to receive Rs 1000 from you in presence of V.D.N. Sane. A sale deed shall be made by me at my cost by 15-4-1972. In case the sale deed is not made to you or if you refuse to accept, in addition of earnest money an amount of Rs 500 shall be given or taken and no sale deed will be executed. The possession of the property has been agreed to be delivered at the time of purchase. This agreement is binding on the legal heirs and successors and assigns.(emphasis supplied) Interpreting the said term, it was held: (SCC p. 418, paras 6-7)

6. The relationship between the parties has to be regulated by the terms of the agreement between them. Whereas the defendants in the suit had taken up the stand that the agreement dated 24-4-1969 was really in the nature of a loan transaction, it is the plaintiff who contended that it was an agreement to sell. As we read the agreement, it contemplates that on or before 15-4-1972 the sale deed would be executed. But what is important is that the agreement itself provides as to what is to happen if either the seller refuses to sell or the purchaser refuses to buy. In that event the agreement provides that in addition to the earnest money of Rs 1000 a sum of Rs 500 was to be given back to Tukaram Devsarkar and that no sale deed will be executed. The agreement is very categorical in envisaging that a sale deed is to be executed only if both the parties agree to do so and in the event of any one of them resiling from the same there was to be no question of the other party being compelled to go ahead with the execution of the sale deed. In the event of the sale deed not being executed, Rs 500 in addition to the return of Rs 1000, was the only sum payable. This sum of Rs 500 perhaps represented the amount of quantified damages or, as the defendants would have it, interest payable on Rs 1000.

7. If the agreement had not stipulated as to what is to happen in the event of the sale not going through, then perhaps the plaintiff could have asked the Court for a decree of specific performance but here the parties to the agreement had agreed that even if the seller did not want to execute the sale deed he would only be required to refund the amount of Rs 1000 plus pay Rs 500 in addition thereto. There was thus no obligation on Balwantrao to complete the sale transaction.

36. Apart from the fact that the agreement of sale did not contain a similar clause, Dadarao does not create a binding precedent having not noticed the statutory provisions as also an earlier binding precedent."

We may furthermore notice that recently in Jai Narain Parasrampuria (Dead) and Others v. Pushpa Devi Saraf and Others [(2006) 7 SCC 756], this Court categorically opined that a stipulation in regard to payment of damages by one party of the contract to the other does not establish that the same was not an agreement for sale stating:

> "59. One of the learned Judges of the High Court also held that the said agreement dated 12-6-1984 was in fact an agreement for obtaining loan. There was no warrant for such a proposition. Clause 7 of the agreement on the basis whereof such a finding was arrived at reads as under:
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> "(7) That it is further agreed that in case any defect in the right or title of the parties of the first part or the said Company is found or any other encumbrance or legal hurdle is found in respect of the said house property then in both the circumstances the second party shall have option for the refund of advance money of Rs. 10 lakhs together with interest @ 18% per annum."

60. It is interesting to note that the sale deed dated 24-2-1979 whereby Sarafs purchased the property also contains an identical clause. Such types of clauses normally are found in the agreement so as to enable the vendee to protect his interest against the defects in the vendor's title, if any. The agreement records the valuation of property at Rs. 11 lakhs. The respondents relying on or on the basis of another purported agreement dated 4-6-1984 executed by Sarafs in favour of their son- in-law, Original Defendant 5, S.K. Mittal stated that the property was worth Rs. 25 lakhs. The trial court, in our opinion, correctly arrived at an opinion that the said agreement was a sham one. Original Defendant 5 did not file any suit for specific performance of contract. The said agreement for sale had not been acted upon by the parties. Reliance placed on the said agreement by a learned Judge of the High Court was, therefore, unwarranted."

The contention of the appellant has been rejected both by the learned Trial Judge as also by the High Court upon assigning sufficient and cogent reasons. The agreement has been held to have been executed by the parties in support whereof large number of witnesses had been examined. The High Court, in particular in its judgment, has categorically opined that when the respondents served a notice upon the appellant on 29.05.1981, it was expected of the appellant to raise a contention that the said agreement was a sham one or nominal one and was not meant to be acted upon but it was not done. Failure on the part of the appellant to do so would give rise to an inference that the plea raised in the suit was an afterthought.

The findings of facts by both the Courts are concurrent ones and in our opinion no case has been made out to interfere therewith by this Court.

Submission of Mr. Chandrashekhar to the effect that having regard to the rise in price of an immovable property in Bangalore, the Court ought not to have exercised its discretionary jurisdiction under Section 20 of the Specific Relief Act is stated to be rejected. We have noticed hereinbefore that the appellant had entered into an agreement for sale with others also. He had, even after 11.5.1979, received a sum of Rs. 5,000/- from the respondent. He with a view to defeat the lawful claim of Respondent No. 1 had raised a plea of having executed a prior agreement for sale in respect of self-same property in favour of his son-in-law who had never claimed any right thereunder or filed a suit for specific performance of contract. The Courts below have categorically arrived at a finding that the said contention of the appellant was not acceptable. Rise in the price of an immovable property by itself is not a ground for refusal to enforce a lawful agreement of sale.

[See P.D' Souza (supra) and Jai Narain Parasrampuria (supra)] For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. In the facts and circumstances of this case, however, there shall be no order as to costs.