

Karnataka High Court

Tahera Bi vs G Ramesh on 24 August, 2009

Author: L.Narayana Swamy

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of

I RFA NO.472/2002

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS ON THE 24th DAY OF AUGUST 2009
BEFORE

THE HON'BLE MR. JUSTICE L.NARAYANA SWEPTIX/iI_OY...G_G'~..Vv
REGULAR FIRST APPEAL No.472 OF 2nd Q:_(._.)#_'2;V'V"'~.0: _

SMT. TAHERA BI
WIFE OF KYUSUFF BARY
MAJOR *

JANAB YZYAKUB
SON OF K.YUSUFF;RARY'* _ A
MAJOR ~ = A

sMT.NAF1sAB1 RE 0
WIFE OF 1s:.m\$UFi: B.AR'Y ..

SON OF _K.YUSUFF»*BARY
MAJOR A _

BARE" *

V RSON 'QF_fD.DINABBA
A

7_ALLAjRL"fi'1::ai3s1D1NO OF UPPALLI VILLAGE,

KANOAVARA POST, CHIKMAGALUR
TALOK AND DISTRICT CHICKMAGALUR
A APPELLANTS

V. SR1: SHARANAPPAfiLWI'1'UR es: N.S BHAT, ADV.)

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The plaintiff though was ready and wilting to perform his
part of the contract, the defendant No.1 for one or the

other pretext denied the same. It is later learnt that*.the
defendant No.1 has sold the property to defendantsy'Vt';2__'__'ti)
Violating the conditions of the agreement the"? t
plaintiff filed the suit for specific per;forI:Iieltn(:'e.r, it ' ' K i
(ii) All the defendants filedjafi 'eomtr'n.01--1_
statement denying the plaint Va'uet:nent.s;._ exee_'i_ltioVn"'of5the it
agreement, receipt of V :i?s.705t*3UC'L/Iii Vwttand haiidihg over
possession of the suit spending of
Rs.25.00(.l/-- The first defendant's
husband was the and he used to borrow money
from the" plainti-ffand father to do contract work,
av'VdefenrdVantE""'N0::i.__and filer husband borrowed Rs.25,000/-, i
signatures on the blank stamp papers
V it and also c-heqtites. Though the cheques were given in the
the defendant. they have not been encashed.
defendant delayed to repay the amount, the
T "-plaintiff has created the agreement. On 17/6/1994 the
'defendant entered into an agreergxent with defendants 2 to

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6 and on 21/ 11/1994 sold the same under three different
sale deeds to defendants 2 to 6 and possession was also
handed over on receipt of Rs. 1,5(),000/--. Hence;

prayed for dismissal of the suit.

(iii) On behalf of the plaintiff, G K

Manjegowda, Somashekhara are

and documents EXP} to P9-..__areV"ernarigeciut the

defendants side defendant Uillrne'1*..V:t_F'arooq and
defendant No.6 K Yusuff iyeiie as I)W--1 and
2 and documents ExiD1

(iv) Zlfhe Tritai,-féourt. ffonsidering the above materials
on record pleased to"-...c.decreed the suit directing the
._,defendaIntseA. 1(a) to 6 to execute the sale deed in
and directing the defendant No.1(a) to
deposited in the Bank by the plaintiff
and onkfajingreftof the defendants Ma) and 2 to 6 to execute
saiegdeed, the plaintiff could apply and obtain the sake
appointing Commissiofler from the Court at his

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cost. Being aggrieved, the defendants 2 to 6 have filed this
appeal.

4. I have heard the learned counsel for the parties:

5. The point that arises for my;..consideratioin. liirthis ll'
appeal is as to whether the judgmentpal51@i*~decl*ee
the Court below suffers from _ V

6. It is submitted for the
appellants that in spite__V_ 2 to 6

specifically conteiitionwin the written statement

that the sold the property in their

favour, the plaintiff not make necessary amendment

finaking suitable prayer in the suit. No doubt it

is of the judgment that the defendants 2

V it to 6 are not the bona fide purchasers of the suit schedule

V"B:ut it is without a proper prayer in the suit. In

the" circumstances, the impugned judgment and decree are
to be set aside and the matter requires to be
remanded to the Trial Court with liberty reserved to the
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parties to file amendment application and to adduce
additional evidence both documentary and oral if they are
so advised.

'7. In the result, this appeal is allowed. The judgment and decree are hereby
stands remitted to the Trial Court for reconsideration. The parties are at liberty to
amendment and lead evidence if they are so advised. The parties are directed to
maintain status quo.

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