

Karnataka High Court

Smt Ningamma vs Smt H K Jayanthi W/O H L Karibasappa on 4 November, 2010

Author: A.S.Pachhapure

3 WP E2350/09 81

VV1' 14990/09

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF NOVEMBER 2010

BEFORE

THE HONBLE JUDGE IN CHARGE A.S.PACHHAPURE REV. ' *V:-fii 5 _

WRIT PETITION NO.12350 OF 2009 ('C}ivi--~:(~ji?Q1~i: 4- _ 0'

AND .,

WRIT PETITION NO. 14990 GE 2009; ((3vi.\/.i~.~.C'.P('i)'i A ;_s T

IN WRIT PETITION NO. 1235001? 2009-. (GM;C?C'3'.s«: ::

BETWEEN K % 0 0 0

Smt. Ningamma,

Aged about 76 years, _

W/O Late Veerappai '

R/at Bychanahalily V}/illaige, 0 '

KushalnagarVV'TgIwfi;;:_

Somwairpet Taluk, '

Koclagu... DI:su-ict'; - _ *

- PETITIONER/S

[Sri. B.S.N'agaraj,"Ad'V';) = V

ANQQO "

.HIK.Jayanihi

" _W'~,./_c.>i H':I,.VKaribasappa

- _ IAgedv.,absV'u'E 40 years,

' R/ai.;sA%i"5Block

Si_ddai.€1h Puranaika Extension

Kushalnagar Town

I _ S'emwarpetTaluk,

V " Kodagu District.

2% 0 Sr1'.B.V.Suresha

Aged about 39 years,

53/ 0 Late Veerappa

R/at Bychanahally Village.

Opp:Pe€:r0l Bunk,

2 XV?' 12350/09 &

WP 14990 /09

Kushalnagar T own.

Somwarpet. Taluk,

Kodagu District.

3. Sri Rajeev

Aged about 45 years

S/0 B.S.Radha{rishIla, Deed Writer

R/ at Kushalnagar Town,

Somwarpet Taluk,

Kodagu District.

{Sri. G.BalakrishIla Shastri. Adv.) T A V '

IN WRIT PETITION NO.14990 0952009 (GM;cP_§:1 '

BETWEEN

Smt. Ningar__nI'I1"a,_ _.

Aged about ''76 years, ~

W/0 Later..Veer2ip}i+1_, ._

R/at Bychariah5a1_ily '{{iiiag'e,z'

Kushainagzir T0WI'i';- T "

Sornwarpet Taluky, ._ 1

Kodagu District. ' "

" PETITIONER/S

IL Sri. H.i,.Karibasappa

Aged -?lb'0l.1t 43 years.

R/a._t, 4"? Biock.

n I Sicldaiah Puranaika Extension

' L " ~,. 'Kushalnagar Town

..*S0rr1Warpet Taluk,

Kodagu District.

" Sri. B.V.Suresha

Aged about 39 years.

S/0 Late Veerappa

.f.-r.RE;sIPoIsmIm.s1

3 VVP 12350/09 81
WP 14990/09

R/at Bychanahally Village.
Opp. Petrol bunk
Kushalnagar Town.
Somwarpet. Taluk,

Kodagu District.

3. Sri Rajeev

Aged about 45 years 1 ' « i_
S/ o B.S.Radhakrishna. Deed Writ_er..
R/at Kushalnagar Town, 4'
Somwarpet Taluk, T
Kodagu District.

..l 'rLést3oN;oE:NT/s

{Sri. G.Balakrishna Shalstry, ~

These Writ }\$\$fe"tit.iorls are filed url'cle--r' Article 226 of the
Constitution "o'f.__h'i.dila 'Vp«r_a.y"ir.lg '~--toyqu_ash the order dated
9.4.2009 p'-a,sseg_d'_.» in l.'.A.lE~Io.V1'~Atand VII in O.S.No.28 &
29/200.3,. on_ the' fill-:;_of thev. CiVii--~J.u_d'ge (Jr. DVn.] and JMFC,
at SonjIwarpletg in 'which«V.iailco\2\zi.ng the application of the
defendant No.1 toa-;1}.end"*tche~.Written statement a copy of the
said order is=sub'njlitted_ at~.Alle:»{--J and etc.

Writ ..I}letitioVlls having been heard and reserved,

foizpronodlrilcement of Orders, this day, the Court

' made 'the. fol] o'u{ir1--g:

ORDER

"l'l3el* petitioner is the plaintiff, whereas the it j'respo;i--'idents are the defendant Nos.l t.o 3 in the
suit _bearing O.S.No.28/2003 seeking the relief of declaration that the sale deed dated 16.04.2001
registered in the

4 WP 12350/O9 8:

VVP l 4990/O9 office of Sub--Registrar, Somwarpet is an irnfalid document and is not binding upon
the plaintiff-4jar1;Ci«.;fo.r cancellation of the said sale deed.

2. Likewise, the plaintiff ;,also..4ir1}st'it'ited. suit in O.S.No.29/2003. it?iS__ the""ca'se of.'tViie:;;}.laili1tiff if that they have never executed:sa_le of the defendants at any rneasiiring one acre out of Survey {lrummanakolli Village, 'Alter the written staterrientsl allegations made, the Trial :C\$Aourt -' and PW~l was under examination. " V V' thisjiincture, the defendants filed an the provision of Order 6 Rule 17 CPC r/W-.\$ec__~ of C.P.C. for deletion of the Word in Page No.1 and 13111 Line afterword's "several odisciissions regarding price" and for insertion of another l paragraph in the written statement in both the suits. As "could be seen from the pleadings, it reveals that 40 o.' /__, 4 \, iv]: ,,,, W 5 'NP l2350/O9 81 WE' 149530/O9 cents of land in the suit Survey No.76 was sold to one defendant and 60 cents was sold to another defendant in the said suit. The plaintiff□petitioner fil'€d"«d_'li€l' objections to this application contending admission made by the first defendant fl is being withdrawn by the amen'drnen't therefore, it was her corite'ii.itionAl"that.vppthelilproposedl"V amendment cannot be. granted./hiUri-xothese 'grounds, she sought for dismissal of the 4__ he counsel for the parties and record, has allowed the application first defendant in both the suits to~amend>_.the Virritten statement and aggrieved by l these petitions have been filed by the plai.ntilfi'llu."j:..

have heard the learned Counsel appearing petitioner and also the respondents. It is eonterition of the petitioner that there was an admission the part of the defendant No.1 in both. the suits to

5.! z""y .4 N.

6 WP 12350/O9 82.

WP 14990/O9 the effect that the plaintiff had quoted Rs.70,000/-- for one acre of land and the defendant No.1 had finally agreed to purchase one acre of land at This Portion of the written statement has to "-.3,:3'€~ and the contention that the plaintiff 'had 'ioffe-e,d»'pri_ce" Rs.5,65,000/-- in addition to other: facts the execution of agreement oi□saie and"the persons who were present as attestiiig persoris,.etVc7;~,duringAA execution of the sale deed is sought to inserte_'d._'in the Written statement. €to""heì',,:th'e'admission made by the being' withdrawn from the proposed „amend.mient'gandsuch an amendment cannot be granted. uh'

-this aspect of the matter, the counsel the decision of the Apex Court in the 'V..pcase'of□H_EERAIAL v. KALYAN MAL & ores. reported in A (Civil) 41, wherein the Apex Court held that in} case where there is admission in the written statement, the amendment seeking to Withdraw such admission cannot be allowed, if such withdrawal would f '~.' W "M .- V 7 \VP 12350/O9 8:.

WP 1.4990/O9 amount to totally displacing the case of plaintiff--____and which would cause him irretrievable prejudiced.

7. Now, as could be seen from if in the pleadings of the parties, it:-is""a'--sp&ecific.the"; plaintiff that she never sold measyuring acre out of revision Survey at any time. It is her CORiff3.11tiOiilllthi□; docurnent is bad for want of consideration.-lhylt 'is; als_o_:ll1ervcontention that the defe11dant'xi\I:yf;,ilging cases has taken disadvantage also claims that there was fraud--

played' - » .loy.the"defendants and they got the land throigh. lllthlej deed dated 15.04.2001. Accoizdiing to Ifthe..__1Z)lai.11tiff, there is no question of 1'eceiVi11g'~any"sale consideration by the defendants at thenltirne alleged sale transaction. Whereas, the '.V.defendalln1_t No.1 in the written statement in both the A though initially claimed that the plaintiff proposed to purchase the land for Rs.70.000/-- per acre if has sought: for its deletion contending that the land was re , ../. < '-w,,g 8 \VP 12350/09 & WE' E4990/09 agreed to be purchased for an amount of Rs.E3,65,000/~ and there were agreements for sale between the parties-

8. In my considered opinion, it daesi.□r:1ot amount to any admission and in the eircum'st.anees M cannot be said that the admissi:on"is« In that View of the matter, theA:4'deC.ision».':;_fhthe Court referred supra is not""a}T5pi1Cat)Ie._to.et'he".faets on hand.

9. These petitions" any merit.

Hence; they accordingly.

Sdf;

JUDGE m»;.__V