

ONCE THE EXECUTION OF AN AGREEMENT TO SELL AND PART PAYMENT OF SALE CONSIDERATION BY WAY OF AN ADVANCE WAS ADMITTED BY THE VENDOR, THERE WAS NOTHING FURTHER REQUIRED TO BE PROVED BY THE VENDEE IN A SUIT FOR SPECIFIC PERFORMANCE

INTRODUCTION:

The Apex Court in a decision in **P. Ramasubamma v/s V. Vijayalakshmi and Others**¹ observed that once the execution of an agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the vendee.

FACTS:

The Appellant had entered into an agreement dated 12th April, 2005, with Respondent No. 1 to purchase the suit property for a sale consideration of Rs. 29 lakhs ("**said Agreement**"). An amount of Rs. 20 lakhs, was paid as and by way of an advance under the said Agreement.

The Respondent No. 1 had prior in time, executed a general power of attorney in favour of the Respondent No. 2 and the Respondent No. 2 was present at the time when the Appellant entered into the said Agreement with the Respondent No. 1.

On 25th March, 2008, the Respondent Nos. 1 and 2 approached the Appellant and her husband and sought further payment of an amount of Rs. 6 lakhs.

The Appellant made the payment of Rs. 6 lakhs towards sale consideration and an endorsement to that effect was made by Respondent No. 1 on the said Agreement, acknowledging the receipt of Rs. 6 lakhs.

However, despite repeated requests and demands made by the Appellant thereafter, the Respondent No. 1 did not execute a sale deed in favour of the Appellant.

It was learnt by the Appellant that the Respondent No. 2 had misused the power of attorney executed by Respondent No. 1 in favour of Respondent No. 2 and had clandestinely executed two sale deeds dated 3rd May, 2010, in favour of Respondent Nos. 3 and 4 to defraud the Appellant.

Pursuant thereto, the Appellant through its advocates served a legal notice on the Respondents on 17th June, 2010, calling on Respondent No. 1 to execute a sale deed in favour of the Appellant by receiving the balance sale consideration of Rs. 3 lakhs.

As the Respondent No. 1 did not take any steps to execute the sale deed, the Appellant filed a suit for specific performance of said Agreement ("**said Suit**") against all the Respondents.

The Respondent No. 1 filed a written statement, wherein the execution of said Agreement was

¹ Civil Appeal No. 2095 of 2022

admitted by the Respondent No. 1. The Respondent No. 1 had specifically stated therein, that she was ready and willing to perform her part of the contract.

The Respondent Nos. 2 to 4 filed separate written statements, wherein a common defense was taken that the said Agreement was a created document.

The Respondent Nos. 2 to 4 *inter alia* contended that the said Agreement was a bogus document and that no sale consideration was paid by the Appellant.

The Trial Court arrived at the finding that the Respondent No. 1 being an absolute owner of the suit property, had admitted the execution of the said Agreement in favour of the Appellant and had also admitted the receipt of substantial amounts as part of the sale consideration. The Trial Court proceeded to hold that the sale deed executed by Respondent No. 2 in favour of Respondent Nos. 3 and 4 was not binding on the Respondent No. 1 or the Appellant. Therefore, the Appellant was entitled to the relief of specific performance of contract and get vacant possession of the suit property. In view of the above finding, the Trial Court decreed the said Suit and passed a decree for specific performance.

Being aggrieved and dissatisfied with the judgment and decree passed by the Trial Court, the Respondent Nos. 3 and 4 preferred an appeal before the Karnataka High Court.

The Karnataka High Court allowed the appeal and quashed and set aside the decree passed by the Trial Court ("**Impugned Order**").

Being aggrieved and dissatisfied with the Impugned Order passed by the Karnataka High Court, the Appellant preferred an appeal before the Apex Court.

ISSUES FOR CONSIDERATION:

The main issues for consideration before the Apex Court *inter alia* were as follows:

- i) Whether the Appellant proves that on 12th April, 2005, the Respondent No. 1 executed the said Agreement to sell the suit property for a total consideration of Rs. 29 lakhs?
- ii) Whether the Respondent Nos. 2 to 4 prove that the said Agreement is a created document and by virtue of the same no consideration had been passed?
- iii) Whether the Appellant is entitled for a decree of specific performance of contract?

SUBMISSIONS ON BEHALF OF THE APPELLANT:

It was submitted on behalf of the Appellant that the Karnataka High Court had committed a grave error in quashing and setting aside the decree passed by the Trial Court for specific performance of the said Agreement.

It was submitted on behalf of the Appellant that the execution of the said Agreement and the payment of substantial amounts by the Appellant under the said Agreement were admitted by the Respondent No. 1, original owner of the suit property, pursuant to which the Trial Court passed the decree of the specific performance of the said Agreement.

It was further submitted that the Karnataka High Court had not appreciated or considered the fact that the original of power of attorney dated 28th January, 1997, executed by the Respondent No. 1 in favour of the Respondent No. 2, was handed over to the Appellant at the time of execution of

the said Agreement and was produced by the Appellant in the said Suit.

Reliance was placed on several decisions of the Apex Court in *Lala Durga Prasad and Anr. Vs. Lala Deep Chand and Ors.*², *Soni Lalji Jetha and Ors. Vs. Soni Kalidas Devchand and Ors.*³, *R.C. Chandiok and Anr. Vs. Chuni Lal Sabharwal and Ors.*⁴, *Dwarka Prasad Singh and Ors. Vs. Harikant Prasad Singh and Ors.*⁵ and *Rathnavathi & Anr. Vs. Kavitha Ganashamdas*⁶.

It was submitted that the sale deed executed in favour of Respondent Nos. 3 and 4 by the Respondent No. 2 was a sham document created in order to defeat the right of the Appellant pursuant to the said Agreement and further that the same was executed after the said Agreement.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

None appeared on behalf of Respondent Nos. 2 to 4 and therefore the Apex Court proceeded with the appeal exparte.

JUDGMENT:

The Apex Court held that once the execution of said Agreement and the payment/receipt of substantial sale consideration by way of an advance was admitted by the vendor, nothing further was required to be proved by the Appellant.

The Apex Court opined that the Trial Court had rightly decreed the said Suit for specific performance of the said Agreement.

The Apex Court observed that receipt of substantial advance sale consideration mentioned in the said Agreement was specifically admitted by the Respondent No. 1.

The Apex Court further observed that that the Trial Court had come to the finding that the stamp papers for the said Agreement were purchased in the name of Respondent No. 2 and therefore the Respondent No. 2 was aware and in the knowledge of the said Agreement.

The Apex Court placed reliance on *Lala Durga Prasad & Ors. (supra)* and *Rathnavathi & Anr. (supra)*.

The Apex Court observed that the Trial Court had rightly declared that sale deeds dated 3rd May, 2010, executed by the Respondent No. 2 in favour of Respondent Nos. 3 and 4, were not binding on the Appellant and Respondent No. 1. The Apex Court opined that the Karnataka High Court had committed a grave error in reversing the decree passed by the Trial Court by ignoring the vital facts of the case which were either admitted or proved.

The Apex Court allowed the appeal by restoring the judgment and decree passed by the Trial Court and quashed and set aside the Impugned Order passed by the Karnataka High Court.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

² 1954 SCR 360

³ (1967) 1 SCR 873

⁴ (1970) 3 SCC 140

⁵ (1973) 1 SCC 179

⁶ (2015) 5 SCC 223