



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS SECOND APPEAL NO.142 OF 2023 (RO)

BETWEEN:

SRI. N. CHIKKA MARAPPA
S/O HOSAHATTI NANJAPPA,
AGED ABOUT 66 YEARS,
R/AT KOTHANUR VILLAGE, NANDI HOBLI,
CHIKKABALLAPURA TALUK,
CHIKKABALLAPURA DISTRICT.

...APPELLANT

(BY SRI R.SHASHI KUMAR, ADVOCATE)

AND:

SRI. VENKATARAJU .T
S/O THIMMANNA,
AGED ABOUT 64 YEARS,
R/AT KOTHANUR VILLAGE, NANDI HOBLI,
CHIKKABALLAPURA TALUK,
CHIKKABALLAPURA DISTRICT.

...RESPONDENT

THIS MSA IS FILED UNDER SECTION 43 RULE (1)(u) OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 03.10.2023 PASSED IN RA No. 54/2022 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, CHIKKABALLAPURA, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 01.12.2021 PASSED IN OS No.68/2015 ON THE FILE OF THE I ADDITIONAL CIVIL JUDGE AND JMFC, CHIKKABALLAPURA, DECREETING THE SUIT FOR SPECIFIC PERFORMANCE.





THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This second appeal is filed by the plaintiff calling in question the judgment and decree dated 03.10.2023 in R.A.No.54/2022 passed by II Addl. Senior Civil Judge and JMFC at Chikkaballapura, questioning the order of remand to the trial Court.

2. The ranking of the parties are referred to as before the Trial Court for convenience and easy reference.

3. Brief facts of the case are that, the defendant being the owner of the schedule property, on 06.02.2014 has entered into an agreement of sale with respect to the schedule property by agreeing to convey the same in favour of the plaintiff for a total consideration of Rs.1,00,000/- (Rupees One Lakh only) and as on the date of the agreement the defendant has received a sum of Rs.90,000/- (Rupees Ninety Thousands only) as advance before the witnesses. The



agreement is duly registered before the Sub-Registrar, Chikkaballapura on 10.02.2014. The family members of the defendants have also signed as witnesses. In terms of the aforesaid agreement, the defendant has agreed to register the sale deed in favour of the plaintiff after receiving balance consideration of Rs. 10,000/- within two months and after obtaining the necessary documents like revenue 11 E sketches for registration and the defendant has also agreed other condition mentioned in the agreement. But the defendant has not executed the sale deed, thus the plaintiff filed the suit for specific performance of contract.

4. The trial Court decreed the suit of the plaintiff and directed the defendant to execute the registration of sale deed after receipt of balance sale consideration. The defendant has challenged the said judgment and decree before the First Appellate Court and the First Appellate Court has allowed the appeal of the defendant and remanded the case to the trial Court for fresh consideration in accordance



with law. The plaintiff has challenged the said order by filing the instant second appeal.

5. Learned counsel for the appellant-plaintiff submitted that the decree of specific performance granted by the trial Court was executed in the Execution Petition and sale deed was executed and the plaintiff was put into possession over the suit schedule property during the pendency of the appeal before the First Appellate Court. Subsequently, the First Appellate Court has set aside the decree of specific performance granted by the trial Court and now by virtue of this, the defendant is interfering with the possession of the plaintiff. Therefore, prays to set aside the order of the First Appellate Court.

6. The trial Court has decreed the suit filed for specific performance. During the pendency of the appeal in RA.No.54/2022, the plaintiff executed the decree of specific performance in the Execution Petition and the sale deed was executed and the plaintiff was put into possession over the suit schedule property. Subsequently, the First Appellate



Court has set aside the judgment and decree passed by the trial Court and remanded the case to the trial Court.

7. Upon considering the reasons assigned by the trial Court, there is no ground made out to call for interference with the order passed by the First Appellate Court. If the defendant is interfering with the possession of the plaintiff, then the plaintiff will have remedies somewhere else as per the law, but not in this appeal. The First Appellate Court has remanded the matter for fresh consideration. Therefore, there is no ground made out to interfere with the order passed by the First Appellate Court. Hence, the appeal filed by the plaintiff is liable to be dismissed. Accordingly, appeal is ***dismissed.***

I.As., if any pending, do not survive for consideration and it is accordingly disposed of.

Sd/-
JUDGE

PB
List No.: 1 Sl No.: 24