

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 4258-4259/2019
(ARISING FROM SLP(C) NOS. 28779-28780/2016)

ABDUL GAFFOR SAB (D) BY LRS & ANR.

APPELLANT(S)

VERSUS

MASAVALLI RAMAPPA (D) BY LRS. AND ORS.

RESPONDENT(S)

O R D E R

1. Delay condoned. Leave granted.
2. This case has a chequered history. An agreement to sell was entered into on 23.03.1984 between one B. Hussain Sab and one Masavalli Ramappa with respect to suit schedule properties for a sum of Rs.1,05,000/-. A sum of Rs.30,000/- was paid at the time of the agreement to sell. Thereafter on 21.06.1984, a sum of Rs.10,000/- and on 19.12.1984 a sum of Rs.9,000/- was paid. B. Hussain Sab died on or about 12.09.1985. Abdul Gaffoor Sab, son of B. Hussain Sab, filed a suit on the basis of relinquishment made by the daughters of B. Hussain Sab in his favour with respect to the entire property and mutation of the name of Abdul Gaffoor Sab has been made in the revenue records. Abdul Gaffoor Sab filed Original

Suit No.161/1985.

3. On 21.03.1986, a notice was served by Masavalli Ramappa calling upon Abdul Gaffoor Sab to execute a registered sale deed of Survey No.54 and 78 A and house property. The third item of the property being Survey No.87 A, which was included in the agreement to sell, was not included in the notice. Yet another notice was issued by Masavalli Ramappa on 10.04.1987 to the children of Late B. Hussain Sab. In the year 1987, O.S. No.161/1985 was filed before the Court of Munsif Hadagali, which was ordered to be returned as the property was under valued for presentation to the appropriate Court. It was not presented again and a fresh suit being O.S. No.37/1991 was filed by Abdul Gaffoor Sab. Masavalli Ramappa filed a suit for specific performance of Agreement to Sell, which was registered as O.S. No.56/1991.

4. The Trial Court clubbed both the suits and decreed the suit being O.S. No.37/1991 filed by the appellants and they were declared to be the absolute owners, whereas the O.S. NO.56/1991 filed by Masavalli Ramappa for specific performance of the Agreement to Sell dated 23.03.1984 was dismissed by clearly recording a finding that Masavalli Ramappa/plaintiff has not been able to prove his readiness and willingness to perform his part of the contract and he was not having any arrangement of money also. The appeals were preferred before the High Court. The High Court has allowed the appeal filed on behalf of the respondents and

dismissed the appeal filed by the appellant.

5. After hearing learned counsel for the parties and considering the fact that the Trial Court has given a specific finding with respect to the material aspect that the plaintiff/Masavalli Ramappa in C.S. No.56/1991 has not been able to establish readiness and willingness to perform his part of the contract and he was not having arrangement for money. The High Court has not reversed this finding. We have considered the merits of the findings. The findings recorded by the Trial Court seems to be impeccable and based on proper appreciation of the evidence. As such, we have no hesitation to allow this appeal on the aforesaid ground alone. However, as the refund of the earnest money has been claimed and a sum of Rs.49,000/- was paid way back in the year 1984 and now 38 years have passed, it will be appropriate to direct the respondents to refund a sum of Rs.2,00,000/-, which has been rightly offered by the learned counsel appearing on behalf of the appellant also. The said amount of Rs.2,00,000/- be paid within a period of three months from today.

6. The suit filed by the appellant(s) for possession is decreed and the suit filed by the respondent(s) for specific performance stands dismissed. The judgment and decree of the Trial Court stands restored with the aforesaid modification.

7. The appeals are allowed to the extent indicated above.

8. There shall be no orders as to costs.

9. Pending application(s), if any, shall stand disposed of.

.....J.
[ARUN MISHRA]

.....J.
[NAVIN SINHA]

NEW DELHI;
APRIL 24, 2019.

ITEM NO.5

COURT NO.4

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).28779-28780/2016

(Arising out of impugned final judgment and order dated 05-02-2015 in RFA No. 13/2002 05-02-2015 in RFA No. 11/2002 passed by the High Court of Karnataka Circuit Bench at Dharwad)

ABDUL GAFFOR SAB (D) BY LRS & ANR.

PETITIONER(S)

VERSUS

MASAVALLI RAMAPPA (D) BY LRS. AND ORS.

RESPONDENT(S)

(IA 1/2016-C/DELAY IN FILING, 3/2016-C/DELAY IN REFILING)

Date : 24-04-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s) Mr. Ankolekar Gurudatta, AOR

For Respondent(s) Mr. Pranav Jain, Adv.
Ms. Anjana Chandrashekar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned. Leave granted.

The appeals are allowed in terms of the signed order.

(NARENDRA PRASAD)
COURT MASTER

(JAGDISH CHANDER)
COURT MASTER

(Signed order is placed on the file)