

ITEM NO.18

COURT NO.7

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). 35931/2016

(Arising out of impugned final judgment and order dated 27-03-2015 in RFA No. 1114/2009 passed by the High Court Of Karnataka At Bengaluru)

B.V. GOWDA

Petitioner(s)

VERSUS

COL. FRANCIS A.M. MACHADO & ORS.

Respondent(s)

WITH

Diary No(s). 4789/2019 (IV-A)

(IA No.25183/2019-CONDONATION OF DELAY IN FILING and IA No.25184/2019- EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 31-07-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Mr. Ashok Bannidinni, AOR
Mr. Purushottam Sharma Tripathi, Adv

Mr. Mallikarjun S. Mylar, Adv
Mrs. S. Usha Reddy, AOR

For Respondent(s) Mr. Siddharth Dias, Adv.
Mr. Devansh Gandhi, Adv.
Mr. Puneet Sharma, AOR

Mr. Ashok Bannidinni, AOR
Mr. Purushottam Sharma Tripathi, AOR

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

Delay condoned.

These petitions arise out of final judgment and order dated

27.3.2015 passed by the High Court of Karnataka, Bengaluru in RFA No.1114 of 2009 and 987 of 2009.

The original-defendants had challenged the judgment and decree passed by the XIIIth Additional City Civil Judge, Bengaluru in O.S. No.15115 of 2000 decreeing the suit for specific performance filed by Respondent No.1 herein. The judgment and decree so challenged, was affirmed by the High Court while dismissing said RFA Nos.1114 of 2009 and 987 of 2009 preferred by the original-defendant No.1 and original-defendant Nos. 2 & 3 are subsequent purchasers from original-defendant No.1.

The agreement in question, was dated 3.9.1999 in which the agreed consideration amount for the transaction was stated to be 9.60 lakhs, out of which one lakh was paid on the date of the agreement. It is a matter of record that subsequently Rs.30,000/- was also paid towards consideration. The agreement was dependent on certain conditions, inter alia that the first defendant shall perfect his title and get a sale deed in his favour from Bangalore Development Authority. Such sale-deed in favour of first defendant was executed on 5.10.1999. Thereafter, a notice was issued by first defendant on 22.11.1999 and by first defendant's lawyer on 25.11.1999. However, by a subsequent sale deed dated 9.2.2000, the suit property was sought to be conveyed in favour of defendants 2 and 3 for a sum of Rs.4.8 Lakhs, at half the price at which the property was agreed to be sold in favour of the plaintiff.

The subsequent suit filed seeking specific performance of the

agreement dated 3.9.1999 was decreed on all counts. It was found that the breach was on the part of the first-defendant and the plaintiff was ready and willing to perform his obligations.

With the assistance of the learned counsel, we have gone through the record and considered rival submissions. On merits, we do not find any reason to take a different view in the matter.

However, considering the fact that the subsequent purchasers (original-defendant Nos. 2&3) had erected some construction upon the land, we direct the first respondent (original-plaintiff) to make over a sum of Rs.5 lakhs to defendants 2 & 3 within four weeks from today. Except for the modification as stated above, rest of the judgment and order under appeal stand affirmed.

The special leave petitions are dismissed.

Since soon after the judgment and decree passed by the trial court, the requisite amount was deposited by the plaintiff in the trial court, the first-respondent shall be entitled to withdraw the said amount with interest accrued thereon.

Pending applications, if any, shall also stand disposed of.

(INDU MARWAH)
COURT MASTER

(SUMAN JAIN)
BRANCH OFFICER