

**SUPREME COURT OF INDIA                      REPORTABLE**  
**Bench: Justices Vikram Nath and Rajesh Bindal**  
**Date of Decision: 2nd November 2023**

CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 10327 OF 2011

**MUNISHAMAPPA**

**...APPELLANT(S)**

**VERSUS**

**M.RAMA REDDY & ORS.**

**...RESPONDENT(S)**

**Legislation:**

Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1996 (Fragmentation Act)

**Subject:** Civil appeal challenging the High Court's judgment in a case involving specific performance of a contract for sale of property, with key focus on the application of the Fragmentation Act and issues of legality and limitation.

**Headnotes:**

Specific Performance of Contract – Dispute over execution of sale deed for property sold in 1990 – Suit filed after repeal of the Fragmentation Act – High Court judgement setting aside first appellate court's decree for specific performance reversed by Supreme Court. [Paras 1, 3-4, 10-11]

Validity of Agreement to Sell – Agreement to Sell executed in 1990, before the repeal of the Fragmentation Act – High Court erroneously held agreement void due to alleged violation of Fragmentation Act – Supreme Court found that the agreement was not a conveyance and thus not barred under the Fragmentation Act. [Paras 6, 8-10]

Limitation Period and Execution of Sale Deed – Respondents delayed execution of sale deed – Suit filed by appellant within the limitation period – First Appellate Court's finding that suit was within limitation upheld. [Paras 4-5, 10]

Admission of Agreement Execution – Respondent admitted during cross-examination to executing Agreement to Sell – Supreme Court held that such admission, along with full consideration and transfer of possession, negated other defenses by respondents. [Paras 4, 10]

Decision – Supreme Court allowed the appeal – High Court's judgement set aside, and the First Appellate Court's decree for specific performance restored – No order as to costs. [Paras 10-12]

**Referred Cases: None.**

**ORDER**

1. This appeal assails the correctness of the judgment and order dated 10.11.2010, passed by the High Court of Karnataka at Bangalore, whereby the Second Appeal preferred by the defendant-respondent was allowed,

and the suit for specific performance of contract filed by the appellant was dismissed.

2. On 28.05.1990, the appellant and the respondents entered into an agreement to sell, in which the property in question was to be sold for Rs. 23,000/-, and the entire sale consideration was paid before the execution of the Agreement to Sell, and possession of the property in question was also handed over to the appellant. It was also agreed that from the time of execution of the Agreement to Sell, the respondents would have no rights left and it would be the appellant who would have all the rights over the property in question. However, due to the prohibition on registration of the sale deed, it was stipulated that the sale deed would be executed once this restriction was lifted. The Agreement to Sell dated 28.05.1990 contained all the above facts duly incorporated therein. The prohibition on the sale was due to bar contained in Section 5 of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1996 (hereinafter referred to as the "Fragmentation Act").
3. Even at the time of the execution of the Agreement to Sell, there was a serious likelihood of the Fragmentation Act being repealed. Soon thereafter i.e. on 05.02.1991, the Fragmentation Act stood repealed. Thereafter, the appellant claims to have repeatedly requested the respondents to execute the sale deed, which was merely a formality since the entire sale consideration had already been paid by the appellant, and they had taken the possession of the property in question, which they continued to hold. Despite the same, the respondents continued to delay the execution of the sale deed. Ultimately, the appellant sent a legal notice to the respondents on 03.09.2001, according to which the respondents had finally refused to register the sale deed on 28.08.2001.
4. When the sale deed was not executed despite the notice, the appellant instituted the suit for specific performance on 01.10.2001. In response, the respondent filed written statement denying the execution of the Agreement to Sell.

Both parties led oral as well as documentary evidence. However, the Trial Court vide judgment dated 28.09.2004 dismissed the suit. The Trial Court primarily based its decision on the finding that the execution of the Agreement to Sell was doubtful. It also held that the suit was filed beyond the period of limitation.

5. The Regular First Appeal, preferred by the appellant, was allowed vide judgement dated 14.01.2008. The First Appellate Court held that the suit was within the limitation period, and the appellant had proved the execution of the Agreement to Sell. There was no inconsistency in the evidence of appellant's witnesses (PW1-PW3). The respondent no.1, who was examined as DW1, admitted during the cross-examination that he had executed the Agreement to Sell and had put his signatures thereon. On such findings, the First Appeal was allowed, and the suit was decreed.
6. The respondents preferred Second Appeal before the High Court, which came to be allowed by the impugned judgment dated 10.11.2010, only on the finding that the Agreement to Sell was in violation of the Fragmentation Act, and therefore void. It is the said judgment of the High Court which is assailed in the present appeal.
7. Judgment of the Trial Court clearly reveals that the following issues were framed:
  1. Whether the plaintiffs prove that the defendants are the owners of the suit property and they have executed the Agreement of Sale on 28.05.1990 agreeing to sell the suit property for Rs. 23,000/- and they have received the entire Sale consideration as contended in para 2 of the plaint?
  2. Whether the plaintiff proves that he demanded the defendants to execute the Sale Deed but they have failed to execute the same?
  3. Whether the defendants prove that he has been ready and willing to perform his part of the contract?
  4. Whether the defendants prove that the suit is barred by time and the suit is not maintainable as contended in para 9 & 10 of their written statement?
  5. Whether the plaintiff proves that this is entitled for the relief for specific performance of contract?
  6. To what Order or Decree?
8. There was no issue framed with respect to the violation of the Fragmentation Act, and it was not pleaded in the written statement filed by the respondent. The defence taken by the respondent was that he never executed the Agreement to Sell. However, in his deposition during the cross-examination, he admitted to his signatures on the Agreement to Sell. Thus, in the absence of any issue framed, and given that neither party has pleaded any violation of Section 5 of the Fragmentation Act, the High Court

apparently fell in error in holding that Agreement to Sell was in violation of Section 5 of the Fragmentation Act.

9. Section 5 of the Fragmentation Act reads as under: -

5: Sale, Lease, etc:-

(1)

(a) No person shall sell any fragment in respect of which a notice has been given under subsection (2) of Section 4, except in accordance with the provisions of clause (b).

[(b) Subject to the provisions of Sections 39 and 80 of the Karnataka Land Reforms Act, 1961 (Karnataka Act 10 of 1962), whenever a fragment is proposed to be sold, the owner thereof shall sell it to the owner of a contiguous survey number or recognised sub-division of a survey number (hereinafter referred to as the contiguous owner). If the fragment cannot be so sold to the contiguous owner, for any reason, the owner- of the fragment shall intimate in the prescribed form, the reasons therefore along with an affidavit in support thereof to the Tahsildar and also send copies of such intimation and affidavit to the Sub- registrar, in the prescribed manner and may thereafter sell such fragment to any other person.]

(2) Notwithstanding anything contained in any law for the time being in force or in any instrument or agreement, no such fragment shall be leased to any person other than a person cultivating any land, which is contiguous to the fragment.

(3) No such fragment shall be sub-divided or partitioned.”

10. The Agreement to Sell is not a conveyance; it does not transfer ownership rights or confers any title. What is prohibited or barred under the Fragmentation Act was the lease/sale/conveyance or transfer of rights. Therefore, the Agreement to Sell cannot be said to be barred under the Fragmentation Act. The appellant filed the suit for specific performance after the repeal of the Fragmentation Act. The suit could have been decreed without there being any violation to the law once the Fragmentation Act itself had been repealed in February 1991. Further, the High Court did not hold that the suit was barred by Section 5 of the Limitation Act. The First Appeal Court had considered this aspect and

having decided the said issue in favour of the appellant, we need not go into that question at this stage. What is further noticeable is that the respondents received the full consideration and had also transferred the possession of the property in question, as such other defences may not be available to them. Even the issue of readiness and willingness on the part of the appellant would not be relevant.

11. For all the reasons recorded above, the appeal deserves to be allowed.

The impugned order and judgment of the High Court dated 10.11.2010 is hereby set aside, and the judgment of the First Appellate Court dated 17.04.2008, decreeing the suit of the appellant, stands restored.

12. There shall be no order as to costs.

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

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