REVAPPA GURUSIDDAPPA

v.

THAKUBAI MADHAVARAO PATIL AND ORS.

SEPTEMBER 4, 1996

[K. RAMASWAMY AND FAIZAN UDDIN, JJ.]

Specific Relief Act, 1963 :

Agreement for purchase of land—Payment of Earnest money—Subsequently property sold to another party—Suit for specific performance—Trial-Court refusing to grant relief of specific performance—Directed refund of earnest money with interest—First appellate court granting specific performance—On second appeal High Court upheld the plea of the proposed purchaser that he was ready and willing to perform his part of the agreement—Remitted the matter to the district Court for framing the issue—Held : High Court rightly remitted the matter to District Court and hence no interfere called for.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 19053 of 1996.

From the Judgment and Order dated 25.3.96 of the Karnataka High Court in R.S.A. No. 196 of 1996.

Santha Kr., V. Mahale and P. Mahale for the Petitioner.

The following Order of the Court was delivered :

Delay condoned.

This special leave petition has been filed against the remand order of the High Court of Karnataka made on March 25, 1996 in R.S.A. No. 196/90. The admitted position is that the first respondent had entered into an agreement on March 11, 1983 to purchase 3 acres 28 gunthas of land for a consideration of Rs. 12,000 and he had paid Rs. 2,000 as earnest money. The petitioner-second defendant purchased the self-same property on July 8, 1983 for a consideration of Rs. 6,000 and had the sale deed registered. The first respondent filed the suit for specific performance. The trial Court finding that the petitioner had purchased the property and it

A would cause irreparable damage to him if decree for specific performance being would be granted, had directed refund of the earnest money with interest. The first respondent carried the matter in appeal. The appellate Court set aside the decree of the trial Court on the finding that the petitioner had not pleaded that he was a *bona fide* purchaser for value
B without notice of the prior agreement of sale. It also had held that the refusal to grant relief of specific performance on that ground was not valid in law. Accordingly, it reversed the decree of the trial Court and granted specific performance. In the second appeal, the High Court while upholding the pleading of the respondent that he was ready and willing to perform his part of the agreement and that he had led the evidence in that behalf,
C remitted the matter to the district Court to frame an issue on the basis of a previous judgment and the issue in this behalf was required to be settled. We need not go into the correctness of the remand order since the first respondent has not filed any SLP against that order. Suffice it to state that the petitioner has no cause for grievance in this mater for remanding the
D matter. In view of the finding that he is a subsequent purchaser, as found by the trial Court itself, and that the High Court has remitted the matter to frame the issue whether the first respondent was ready and willing to perform his part of the contract and decide the matter on the basis of the evidence already on record, we do not think that there is any error of law committed by the High Court in remitting the matter.

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The SLP is accordingly dismissed.

G.N. Petition dismissed.