



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 4TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

REGULAR FIRST APPEAL NO.100061 OF 2020 (SP/DE/IN)
C/W REGULAR FIRST APPEAL NO.100062 OF 2020

IN RFA NO.100061/2020

BETWEEN:

ARUN SANNAPPA BHOVI
S/O. SANNAPPA BHOVI,
AGED ABOUT 46 YEARS,
OCC: AGRICULTURE,
R/AT: KAUIJALAGI, TQ. GOKAK,
DIST: BELAGAVI-590002.

- APPELLANT

(BY SRI MALLIKARJUNSWAMY B. HIEMATH, ADVOCATE)

AND:

KAREPPA GHULAPPA KURUBGATTI,
S/O. GHULAPPA KURUBGATTI,
AGED ABOUT 53 YEARS, OCC: AGRICULTURE,
R/AT: RADERHATTI, TQ GOKAK,
DIST: BELAGAVI-590002.

- RESPONDENT

(BY SRI PRASHANT MATHAPATI, ADVOCATE)

THIS RFA IS FILED UNDER SEC. 96 READ WITH ORDER 41
RULE 1 OF CPC., 1908, PRAYING TO SET ASIDE THE JUDGMENT AND
DECREE DATED:13.12.2019 PASSED IN O.S.NO.525/2017 ON THE
FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, GOKAK, AND CONSEQUENTLY DECREE
THE SUIT OF APPELLANT AND ETC.



IN RFA NO.100062/2020

BETWEEN:

ARUN SANNAPPA BHOVI SON OF SANNAPAP BHOVI
AGE ABOUT 46 YEARS, OCC.: AGRICULTURE,
RESIDING AT KAUALAGI, GOKAK TALUK,
BELAGAVI DISTRICT-590002.

- APPELLANT
(BY SRI MALLIKARJUNSWAMY B. HIEMATH, ADVOCATE)

AND:

KAREPPA GHULAPPA KURUBGATTI,
SON OF GHULAPPA KURUBGATTI,
AGE ABOUT 53 YEARS, OCC: AGRICULTURE,
RESIDING AT RADERHATTI, GOKAK TALUK,
BELAGAVI DISTRICT-590002.

- RESPONDENT
(BY SRI PRASHANT MATHAPATI, ADVOCATE)

THIS RFA IS FILED UNDER SEC. 96 READ WITH ORDER 41
RULE 1 OF CPC., 1908, PRAYING TO, SET ASIDE THE JUDGMENT
AND DECREE DATED:13.12.2019 PASSED IN O.S.NO.526/2017 ON
THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND
JUDICIAL MAGISTRATE FIRST CLASS, GOKAK, AND CONSEQUENTLY
DECREE THE SUIT OF APPELLANT AND ETC.,

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 25.11.2024 COMING ON FOR PRONOUNCEMENT OF
JUDGMENT, THIS DAY, **SREENIVAS HARISH KUMAR J.,**
DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA



CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

Though these two appeals arise from separate judgments in O.S. No. 525/2017 and O.S. No. 526/2017 on the file of II Addl. Sr. Civil Judge, Gokak, we are of the opinion that the appeals may be disposed of by common judgment.

2. The parties in both the suits are same. In O.S. No. 525/2017 the plaintiff pleaded that the defendant executed an agreement of sale in his favour on 27.03.2014 agreeing to sell the land to an extent of 2 acres 4 guntas out of 7 acres 8 guntas in Sy. No. 509/4 of Koujalagi village, Gokak taluk for a sale consideration of Rs.16,00,000/- and received earnest money of Rs.15,00,000/- from him. It was agreed between the parties that the balance should be paid within two years from the date of agreement and the defendant should execute the sale deed. The plaintiff was ready to pay the balance and obtain the sale deed but the defendant went on postponing. On 14.11.2017, plaintiff issued a notice to the defendant who received it and issued an evasive reply. Therefore the plaintiff instituted suit for specific performance.



3. The defendant pleaded that the document dated 27.03.2014 was not an agreement of sale, rather it was a security document for the loan that he obtained from the father of the plaintiff. He stated that the plaintiff's father and he were class-1 contractors. He wanted Rs.15,00,000/- to disburse wages to his labours and therefore contacted the plaintiff's father for financial assistance. At that time, the plaintiff and his father put a condition that defendant had to execute an agreement of sale as a security for the loan and thus the agreement came into existence. He also stated that the plaintiff and his father were lending money to villagers on interest and were taking documents towards security for the loan. His further contention was that on 24.08.2016 he availed loan of Rs.20,00,000/- from Shashidhar Gangadharappa Malavad of Ramadurg offering 10 acres of land in sy. No. 160, and out of this amount he paid Rs.12,50,000/- towards portion of the principal and Rs.3,78,000/- towards interest, i.e., totally he made payment of Rs.16,28,000/-. He made this payment in the presence of one Laxmappa Siddappa Pachyapur, Tippanna Shivalingappa Bijjannavar, Erappanna Mudukappa Milanatti and Erappa Basappa Kalli. When defendant insisted on a receipt for



the payment made by him, the plaintiff and his father did not issue receipt and told that since the payment was made in the presence of four persons and that they were close friends there was no need for a receipt. Thereafter the defendant requested the plaintiff and his father to receive balance of Rs.2,50,000/- and return the agreement of sale but they did not. Stating further that the suit property was worth Rs.10,00,000/- to Rs.15,00,000/- per acre at that time and that he alone had no right to enter into agreement of sale with anybody as the property belonged to the joint family, he prayed for dismissing the suit.

4. In O.S. No. 526/2017, the plaintiff sought for a judgment and decree of specific performance based on agreement of sale dated 27.03.2014 executed by the defendant in his favour in respect of 4 acres 32 guntas of land in sy. No. 55/4 of Reddihatti village, Gokak Taluk. The consideration was Rs.16,00,000/- and earnest money paid was Rs.15,00,000/-. Demand notice came to be issued on 14.11.2017. It was agreed that the sale transaction must be completed within two years on payment of balance Rs.1,00,000/-.



5. The defendant took up the same defence as he had taken in O.S. No. 525/2017 and stated that he repaid Rs.14,50,000/- towards portion of principal along with interest of Rs.5,22,000/- after availing hand loan of Rs.20,00,000/- on 24.06.2016 from one Erappa Ramappa Mellikeri on the security of his land measuring 6 acres out of 18 acres 25 guntas in Sy. No. 160.

6. The trial court framed the following issues in both the suits.

In O.S. No. 525/2017:

"1. Whether the plaintiff proves that the defendant has offered to sell the suit property for Rs.16,00,000/-?

2. Whether the plaintiff proves that the defendant has received earnest money of Rs.15,00,000/- and executed the sale agreement dated 27.3.2014?

3. Whether the plaintiff proves that he is always ready and willing to perform his part of contract?

4. Whether the defendant proves that he borrowed a hand loan of Rs.15,00,000/- and executed the suit document as a security of loan amount?

5. Whether the defendant proves that the sale agreement is created by plaintiff?

6. Whether the defendant proves that the suit is barred by limitation?

7. Whether the plaintiff is entitled for the relief of specific performance?

8. What order or decree?"



In O.S. No. 526/2017:

- "1. Whether the plaintiff proves that the defendant has offered to sell the suit property for Rs.16,00,000/-?*
- 2. Whether the plaintiff proves that the defendant has received earnest money of Rs.15,00,000/- and executed the sale agreement dated 27.3.2014?*
- 3. Whether the plaintiff proves that he is always ready and willing to perform his part of contract?*
- 4. Whether the defendant proves that he borrowed a hand loan of Rs.15,00,000/- and executed the suit document as a security of loan amount?*
- 5. Whether the defendant proves that the sale agreement is created by plaintiff?*
- 6. Whether the defendant proves that the suit is barred by limitation?*
- 7. Whether the plaintiff is entitled for the relief of specific performance?*
- 8. What order or decree?"*

7. The findings on the issues are as follows:

In O.S. No. 525/2017:

- Issue No. 1: In the negative*
Issue No.2: In the negative
Issue No.3: In the negative
Issue No.4: In the affirmative
Issue No.5: In the negative
Issue No.6: In the negative
Issue No.7: In the negative
Issue No.8: As per final order for the following:

In O.S. No. 526/2017:

- Issue No. 1: In the affirmative*
Issue No.2: In the affirmative
Issue No.3: In the affirmative



*Issue No.4: In the negative
Issue No.5: In the negative
Issue No.6: In the negative
Issue No.7: In the negative
Issue No.8: As per final order for the following:*

8. The trial court dismissed both the suits and hence the appeals by the plaintiff.

9. We have heard the arguments of Sri Mallikarjunswamy B. Hiremath, learned counsel for the appellant/plaintiff in both the appeals and Sri Prashant Mathapati, learned counsel for the respondent/defendant.

10. It is the argument of Sri Mallikarjunswamy B. Hiremath that the way the trial court has answered the issues in both the suits indicate total non application of mind. The clear case of the plaintiff is that defendant executed two agreements of sale on 27.03.2014. He does not dispute receiving earnest money of Rs.15,00,000/- in respect of two agreements. On the same set of facts, in one suit the trial court has held that the agreement and plaintiff's readiness and willingness have been proved, but in the other suit contrary findings are given. The



defendant has taken a specific contention about loan transaction and stated to have repaid the money. The evidence shows that defendant did not agree to put his signature on the agreement unless Rs.15,00,000/- was remitted to his bank account. His specific defence about repayment of loan cannot be accepted because he relies upon oral testimonies of witnesses; it was a bare defence without any substance and if really he had repaid the money he should have insisted on a receipt to be issued. The trial court has not believed the defence of repayment of loan. In that view, the trial court could have ordered for refund of the earnest money with interest in as much as the plaintiff has sought the alternative relief of refund of earnest money. He further argued that the main reason for dismissal of the suit is not on findings on the issues but wrong mentioning of the date of cause of action in the plaint. It is true that in the plaint it is wrongly stated that cause of action arose in the month of February, 2011 when the plaintiff came to know about execution of sale deed in favour of defendant no.2. In the suit, only one



defendant is there. The agreement came into existence on 27.03.2014. Therefore what was stated in the plaint in the cause of action paragraph was purely a typographical error which the trial court, having noticed it, could have directed the plaintiff to rectify the same. These reasons clearly indicate that the trial court has failed to appreciate the evidence properly. The appeals, therefore deserve to be allowed.

11. Meeting the arguments of Sri Mallikarjunswamy B. Hiremath, Sri Prashant Mathapati replied that the answers of PW1 in both the suits clearly indicate that the transaction dated 27.03.2014 was not an agreement of sale. It is not in dispute that defendant is a contractor. When he was in need of money, he approached the plaintiff for loan and on the latter's insistence, the defendant executed two agreements of sale. The defendant repaid major portion of loan leaving a balance of meager amount. The defendant was ready to make payment of balance. To the legal notices issued by the



plaintiff before institution of the suits, the defendant replied suitably making it clear that it was a loan transaction and that he had made repayment of major part of loan. Defendant examined three witnesses in both cases to prove that repayment of loan was made in their presence. Plaintiff did not issue receipt having received money, but the independent witnesses have established the fact of repayment made by defendant. In this view of the matter, the plaintiff is not entitled to claim refund of the money. He thus argued for dismissal of the appeals.

12. In O.S. No. 525/2017 the trial court has recorded the reasons that the oral and documentary evidence shows that the plaintiff and his father asked the defendant that they would lend money to him if he would execute a document towards security. The evidence shows that defendant has been able to prove that he borrowed hand loan of Rs.15,00,000/- and executed the suit document as a security for the hand loan, but the defendant has not placed any material to show that he paid Rs.12,50,000/-



towards part payment of principal amount, and interest in the presence of the witnesses. Thus the plaintiff has failed to prove that defendant has offered to sell the suit property for Rs.16,00,000/- and executed the agreement of sale on 27.03.2014 by receiving earnest money of Rs.15,00,000/-. When the plaintiff has failed to prove that the defendant offered to sell the suit property, question of readiness and willingness to perform his contract does not arise and accordingly issues 1 to 3 and 5 are answered in negative and issue no.4 in the affirmative.

13. In O.S. No. 526/2017, the findings are that the oral and documentary evidence show that plaintiff has proved that defendant offered to sell the suit property for Rs.16,00,000/- and executed the agreement of sale dated 27.03.2014 by receiving Rs.15,00,000/- as earnest money. The plaintiff has further proved that he is always ready and willing perform his part of the contract and on the other hand defendant has failed to prove that he borrowed hand loan of Rs.15,00,000/- from the plaintiff



and executed the agreement of sale as a security for the hand loan. The defendant has further failed to prove that the plaintiff has created the agreement of sale and accordingly issues 1 to 3 are answered in the affirmative and issues 4 and 5 in the negative.

14. In the background of the arguments advanced by the learned counsel for the appellant and the respondent and with reference to the findings of the trial court, the points that arise for discussion is:

- (1) What could be the nature of transactions between the parties?*
- (2) Has the trial court committed an error by not ordering refund of earnest money to the plaintiff in relation to both the suits?*

15. The obtaining picture from reappreciation of evidence is this: in O.S. No. 525/2017 the agreement of sale is marked Ex.P.2 and in O.S. No. 526/2017 Ex.P.1 is the agreement of sale. They are registered instruments. In both suits the plaintiff adduced evidence as PW1. His



answers in the cross examination are very important. In O.S. No. 525/2017, PW1 gave clear admissions that when the defendant approached him for loan, his father was also present, that the defendant was told at that time by him and his father that they would lend money if a registered instrument was executed by him and that instead of executing a loan document, they obtained agreement of sale. It was also further elicited from him that he obtained an agreement of sale from Shivappa Hanamanthappa Tolannavar and that his younger brother had also obtained an agreement of sale from the said Shivappa Hanamanthappa Tolannavar.

16. In O.S. No. 526/2017 he was suggested that between him and the defendant there existed no other transaction except the transactions pertaining to two cases; he denied this suggestion but answered that there was a money transaction in relation to which he had documents in his possession. He did not admit that the transaction between him and the defendant was actually a



loan transaction. His another admission is that before institution of suits he issued notice to the defendant as the cheque said to have been issued by the defendant to him was not honoured. In regard to this, he was further questioned that the cheque issued by the defendant was in relation to the transaction involved in the two suits. He denied the suggestion but admitted that after filing the suits, he instituted a complaint against the defendant in relation to dishonour of cheque.

17. The plaintiff examined three more witnesses to prove that the transaction was an agreement of sale. PW2 and 4 are the attestors to the agreement and PW3 is the scribe. They might have stated that the defendant executed two agreements of sale in favour of the plaintiff in their presence, but their evidence pales into insignificance for the reason that from the answers that PW1 has given in the cross examination in both suits, clear inference can be drawn that the transaction between him and the defendant was not a contract for buying immovable properties, but it



was a loan transaction. This inference can be drawn because in O.S. No. 525/2017, PW1 was cross examined for the first time on 14.01.2019 when he gave clear admissions that he obtained agreement of sale in relation to a loan transaction. But when he was subjected to cross examination on 23.09.2019 in O.S. No. 526/2017, he was questioned in the way he was cross examined in the other suit. By that time it appears that he might have become alert to deny all the suggestions relating to loan transaction. So, if the answers of PW1 in both suits are collated, it is not impossible to draw an inference that the actual transaction between him and the defendant was a loan transaction. It is noteworthy here that his transactions with other villagers do provide an impetus to the actual transaction between the plaintiff and the defendant resembling a loan transaction.

18. The above being the inferences that can be drawn, it is quite strange that learned judge of the trial court has drawn contrary conclusions in both suits on the same set



of facts and evidence. This only demonstrates the perfunctory and lackadaisical approach of the trial court. Therefore point no.1 is answered holding that the transactions between the parties under two agreements of sale appear like loan transactions.

19. Point No.2: Of course in both the suits the trial court judge has held that defendant has failed to prove repayment of money as contended by him in the written statement. DWs2 to 4 in both the suits are same and they have stated that defendant repaid money to the plaintiff in their presence. Their testimonies cannot be relied upon for the simple reason that when the plaintiff insisted on a document to be executed for the money lent by him, the defendant should have been careful enough to obtain document from the plaintiff if really he had repaid the money. Endorsements on the original agreements could have been made. He stated that he borrowed money by offering his other property as security in order to repay the loan to the plaintiff. In this regard documents could



have been produced. No such evidence is forthcoming. In this view, there is no probability in the defendant's case about repayment of loan. The findings of the trial court are correct.

20. In spite of above findings, where the trial court has gone wrong is in not ordering refund of the amount received by defendant even though the plaintiff has claimed alternative relief of refund of earnest money. Reasons are not forthcoming for not granting alternative relief. It was the submission of respondent's counsel that refund was not ordered because plaintiff failed to prove the agreement in one suit. If this were to be the approach of the trial court, again it is incorrect because when the defendant admits to have received a certain sum of money under two documents styled as agreements of sale, and when there is no proof of repayment of the same there is nothing wrong in directing the defendant to repay the money even though the transaction of agreements of sale is not proved. When the defendant says that it was a loan



and when it is found to have not been repaid, a direction can be given to the defendant to make repayment of the same. And in this context reliance may be placed on a judgment of the Supreme Court in the case of Firm Srinivas Ram Kumar Vs. Mahabir Prasad and Others reported in AIR (38) 1951 SC 177. It is held:

"9. As regards the other point, however, we are of the opinion that the decision of the trial Ct. was right & that the H. C. took an undoubtedly rigid & technical view in reversing this part of the decree of the Subordinate Judge. It is true that it was no part of the result pltf's case as made in the plaint that the sum of Rs.30,000 was advanced by way of loan to the defts. second party. But it was certainly open to the pltf. to make an alternative case to that effect & make a prayer in the alternative for a decree for money even if the allegations of the money being paid in pursuance of a contract of sale could not be established by evidence. The fact that such a prayer would have been inconsistent with the other prayer is not really material. A pltf. may rely upon different rights alternatively & there is nothing in the Civil P. C. to prevent a party from making two or more inconsistent sets of allegations & claiming relief thereunder in the alternative. The question, however, arises whether, in the absence of any such alternative case in the plaint it is open to the Ct. to give him relief on that basis. The rule undoubtedly is that the Ct cannot grant relief to the pltf.



on fact, a case for which there was no foundation in the pleadings & which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the pltf. could have made, was not only admitted by the deft. in his written statement but was expressly put forward as an answer to the claim which the pltf. made in the suit, there would be nothing improper in giving the pltf. a decree upon the case which the deft. himself makes. A demand of the pltf. based on the deft's own plea cannot possibly be regarded with surprise by the latter & no question of adducing evidence on these facts would arise when they were expressly admitted by the deft. in his pleadings. In such circumstances, when no injustice can possibly result to the deft., it may not be proper to drive the pltf., to a separate suit. As an illustration of this principle, reference may be made to the pronouncement of the Judicial Committee in Mohan Manucha v. Manzoor Ahmad, 70 I. A. 1: (A. I. R. (30) 1943 P. C. 29). This appeal arose out of a suit commenced by the pltf. applt. to enforce a mtge. security. The plea of the deft. was that the mtge. was void. This plea was given effect to by both the lower Ct. as well as by the P. C. But the P. C. held that it was open in such circumstances to the pltf. to repudiate the transaction altogether & claim a relief outside it in the form of restitution under S. 65, Contract Act. Although no such alternative claim was made in the plaint, the P. C. allowed it to be advanced & gave a decree on the ground that the resp. could not be prejudiced by such a claim at all & the matter ought not to be left to a separate suit. It may be noted that this relief was allowed to the applt. even



though the appeal was heard ex parte in the absence of the resp.”

21. In the above decision there was no prayer for alternative relief, yet the Hon’ble Supreme Court held that refund could be ordered. Here there is a prayer for alternative relief and therefore nothing prevented the trial court from ordering the refund of money that the defendant had received from the plaintiff.

22. The trial court has also given another reason for dismissing both the suits. As rightly argued by Sri Mallikarjunswamy B. Hiremath the cause of action stated by the plaintiff appears to be a typographical error which the counsel for the plaintiff might not have noticed. The trial court, having noticed it could have directed the plaintiff’s counsel to set right the mistake by amending the plaint. There was no need to give undue importance to wrong statement made in the plaint that the cause of action arose in the month of February 2011. Entire plaint must be read to understand the facts giving rise to cause



of action. Now in the appeals, learned counsel for the plaintiff-appellant was permitted to amend the complaints on the applications made under Order VI Rule 17 CPC. The cause of action was correctly stated to have arisen on 30.11.2017 when the plaintiff received reply to his legal notice.

23. From the above discussion we arrive at a conclusion that the appeals deserve to be allowed and now the following order:

ORDER

Appeals are allowed with costs.

The judgment and decree dated 13.12.2019 in both the suits are set aside.

Instead of granting the relief of specific performance, the plaintiff is held to be entitled to refund of the sums he had paid to the defendant.

In relation to O.S. No. 525/2017 the defendant is directed to refund a sum of Rs.15,00,000/- to the plaintiff



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with interest of 8% p.a. on the said sum from the date of suit till realization.

In relation to O.S. No. 526/2017 the defendant is directed to refund a sum of Rs.15,00,000/- to the plaintiff with interest of 8% p.a. on the said sum from the date of suit till realization.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE**

BVV
LIST NO.: 1 SL NO.: 1