



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 18TH 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. 100144 OF 2018 (SP)

BETWEEN:

- 1 . M/S. DALMIA CEMENT (BHARAT) LTD.,
HAVING ITS REGISTERED OFFICE AT
DALMIAPURAM-621151.
DISTRICT, TAMILNADU STATE,
R/BY ITS AUTHORISED SIGNATORY
(SRI. BOMMARAJU ADINARAYANA)
NOW REPRESENTED BY GOURISH S.Y.
2. M/S. DALMIA CEMENT VENTURES LTD.,
HAVING ITS REGISTERED OFFICE AT 11TH
FLOOR, HANSALAYA BUILDING, 15-
BARAKHAMB ROAD,
NEW DELHI-110001
R/BY ITS AUTHORISED SIGNATORY,
(SRI. BOMMARAJU ADINARAYANA)
NOW REPRESENTED BY GOURISH S.Y.

- APPELLANTS

(BY SRI. MALLIKARJUNSWAMY B. HIREMATH, ADVOCATE)

AND:

- 1 . SHRI. DANAPPA S/O. MALLAPPA DALAL
AGED ABOUT 58 YEARS,
OCC: AGRICULTURIST,
R/O: YADAWAD, TQ: GOKAK,
DISTRICT: BELAGAVI-591136

SHRI. IRAPPA S/O. MALLAPPA DALAL
(SINCE DECEASED BY HIS LRS.)



- 2 . SMT. SHANTAVVA W/O. IRAPPA DALAL
AGED ABOUT 57 YEARS,
OCC:HOUSEHOLD WORK,
R/O:YADAWAD, TQ:GOKAK,
DISTRICT:BELAGAVI-591136.
- 3 . SMT. SHOBAVVA W/O. REVAPPA JAMBAGI
AGED ABOUT 37 YEARS,
OCC:HOUSEHOLD WORK,
R/O:KALLUR, TQ:RAMDURG,
DISTRICT:BELAGAVI.
- 4 . SMT. MANJULA W/O. SURESH RAMATERTH
AGED ABOUT 35 YEARS,
OCC:HOUSEHOLD WORK,
R/O:MUDHOL MANTUR ROAD.
- 5 . SAVITA D/O. IRAPPA DALAL
AGED ABOUT 30 YEARS,
OCC:HOUSEHOLD WORK,
R/O:YADAWAD, TQ:GOKAK,
DISTRICT:BELAGAVI-591136
- 6 . MALLAPPA S/O. IRAPPA DALAL
AGED ABOUT 32 YEARS,
OCC:AGRICULTURE,
R/O:YADAWAD, TQ:GOKAK,
DISTRICT:BELAGAVI-591136

- RESPONDENTS

(BY MS. ARADHANA V. MANVI FOR
SRI. JAGADISH PATIL, ADVOCATE FOR R2 TO R6;
NOTICE TO R1 SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF R/W UNDER ORDER XLI RULE 1 OF THE CODE OF CIVIL PROCEDURE. 1908, PRAYING TO, SET ASIDE THE JUDGMENT AND DECREE DATED 02.01.2018 PASSED BY THE CIVIL JUDGE, PRINCIPAL SENIOR CIVIL JUDGE, GOKAK IN O.S.NO.235/2011 AND CONSEQUENTLY DECREE THE SUIT IN O.S.NO.235/2011 AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 09.12.2024 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **T.G.SHIVASHANKARE GOWDA J.**, PRONOUNCED 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 T. G. SHIVASHANKARE GOWDA)

In this appeal, the plaintiffs have challenged the judgment and decree dated 02.01.2018 passed in O.S.No.235/2011 on the file of the learned Civil Judge, Principal Senior Civil Judge, Gokak (for short, 'Trial Court').

2. For the sake of convenience, the parties shall be referred to as per their status before the Trial Court.

3. Brief facts of the case as pleaded by the plaintiffs are, plaintiffs being Public Limited Company incorporated under the provisions of the Companies Act, 1956 engaged in the manufacture of cement in the brand name of '*Dalmia*'. It has intended to establish cement plant in Karnataka State at Yadawad village in Gokak Taluk, Belagavi District. The defendants are the owners of



9 acres 28 guntas of land in R.S.No.431/1 of Yadwad village, Koujalgi Hobli, Gokak Taluk, Belgaum District, they offered to sell the said land for a total consideration of Rs.29,10,000/- @ Rs.7,500/- per gunta, thereby they have entered into an agreement of sale on 07.01.2008 and received part consideration of Rs.14,55,000/-, out of which, Rs.6,52,500/- was paid to defendant No.1, Rs.8,02,500/- was paid to defendant No.2 through cheques drawn on State Bank of India, ADB, Gokak.

4. It was agreed to obtain the sale deed, after obtaining permission from the Government as required under Section 109 of the Karnataka Land Revenue Act, 1964 (for short 'KLR Act') and to complete the sale within six months. Accordingly, application was made to the Government for seeking permission for purchase. In the meantime, a sum of Rs.3,25,000/- was paid to defendant No.1 and Rs.4,00,000/- was paid to defendant No.2 through cheque on 25.06.2008 drawn on State Bank of India-ADB, Gokak, under supplementary agreement



extending the time for performance for another six months to complete the sale. In all, the defendants have received Rs.21,80,000/-.

5. The Government granted permission under Section 109 of the KLR Act on 26.12.2008 and also passed a modified order on 26.02.2009 permitting the plaintiffs to purchase 1101.03 acres of land around the suit schedule properties. Subsequently, the plaintiff/Company requested the defendants to execute the sale deed by receiving balance sale consideration. The plaintiff/Company was always ready and willing to perform its part of contract. But the defendants for one or the other reason postponed the execution of sale deed. On 20.10.2011, notice was caused to the defendants calling upon them to receive balance sale consideration and to execute the sale deed. But they did not comply the demand and deliberately avoided the execution of sale deed. Hence, the plaintiffs filed the suit seeking specific performance against the defendants.



6. Defendant No.2 filed the written statement admitting the ownership of the suit property denying the agreement entered with the plaintiffs, receiving of part sale consideration and agreeing to execute the sale deed after the plaintiffs' obtaining permission from the Government. Three years after the agreement, suit was filed. They stated that inspite of the defendants being ready and willing to perform their part of contract as per condition No.12 of the agreement, in case the plaintiffs failed to complete the sale transaction within three months, the defendants had right to cancel the agreement. The defendants are not the exclusive owners of the suit property to enter into agreement with the plaintiff/Company. Suit property is the joint family property of the defendants, their sons, daughters and wife. The defendants are not exclusive owners of suit property to enter into agreement with the plaintiff/Company. If the decree is passed, they will be put to greater loss and hardship as their entire family is depending on the suit property. The defendants have filed



the suit in O.S.No.92/2008 for partition and separate possession of their share and the said suit was decreed and share of the members of the joint family is determined. In view of the same, the plaintiffs are not entitled to claim the relief of specific performance against defendant Nos.1 and 2.

7. The Trial Court framed the following issues:

- I. *Whether plaintiffs prove that the Government of Karnataka has granted permission under Section 109 of the Karnataka Land Revenue Act, 1961 in favour of the plaintiff No.2 to purchase 1101 acres 3 guntas of lands, on 26.12.2008 as modified on 16.02.2009?*
- II. *Whether plaintiffs prove that on 7-1-2008, the plaintiff No.1 had entered into a registered agreement of sale with the defendant No.1 and 2 in respect of the suit property measuring 9 Acres 28 guntas of land situated in R.S.No.431/1 of Yadawad village where under, the plaintiff agreed to purchase the suit land and the defendant No. agreed to sell the suit land for a sale consideration amount of Rs.29,10,000/-?*
- III. *Whether the plaintiffs prove that the plaintiff No.1 had paid, by way of advance towards said sale consideration a sum of Rs.6,52,000/- by way of cheque bearing No. 054357 to the defendant No.1; and a sum of Rs.8,02,500/- by way of cheque bearing No. 054358 both cheques dated 7-1-2008 drawn on S.B.I. ADB. Gokak*



under the said agreement of sale dated: 07-01-2008?

- IV. Whether the plaintiffs prove that on 25-06-2008, the first plaintiff had entered into a supplementary agreement with the defendants, in furtherance of the said agreement of sale, where under, the first plaintiff had paid a sum of Rs.3,25,000/-to the defendant No.1 through a cheque bearing No.056971; and a sum of Rs.4,00,000/- to the defendant No.2 through a cheque bearing No.056972-both cheque dated:25-06-2008 drawn on SBI, ADB, Gokak?*
- V. Whether the Plaintiffs prove their readiness and willingness to perform their part of obligations under the said agreement of sale?*
- VI. Whether the plaintiffs are entitled for the specific performance relief claimed?*
- VII. Whether, in the alternate, the plaintiffs are entitled for refund of earnest money if so, with what rate of interest? From what date?*
- VIII. Whether, in the alternate, and in addition to earnest money, the plaintiffs are entitled for damages? If so, to what sum the plaintiffs are entitled as damage?*
- IX. Whether the defendants prove the alleged hardship disentitling the plaintiffs from securing the relief of specific performance?*
- X. Whether the defendants prove that the suit is barred by law of limitation?*
- XI. Whether the defendants prove that the plaintiffs are not entitled for the relief of specific performance, in view of the partition suit filed by the sisters of the defendants in 0.5.No.92/2008 wherein the*



present suit property is one of the suit properties ?

XII. What decree or order?

8. On behalf of the plaintiffs, four witnesses were examined as PWs-1 to 4, 15 documents came to be marked as Exs.P1 to P15. On behalf of the defendants, DWs-1 to 3 are examined and Exs.D1 to D8 came to be marked.

9. After hearing both the parties and considering the material on record, the Trial Court answered Issue No.6 and 10 in the negative, issue Nos.1 to 5, 7 to 9 and 11 in the affirmative and while answering issue No.12 decreed the suit of the plaintiffs directing the defendants to refund the earnest money of Rs.21,79,500/- with interest @ 8% per annum. Aggrieved by the same, the plaintiffs are before this Court on various grounds.

10. Heard the arguments of Sri.Mallikarjunaswamy B.Hiremath, learned counsel for the plaintiffs and Ms.Aradhana V.Manvi on behalf of Sri.Jagadish Patil,



learned counsel on record for defendant Nos.2(a) to 2(e)/respondent Nos.2 to 6, who are the legal representatives of defendant No.2. Defendant No.1/respondent No.1 is served and unrepresented.

11. It is contended by learned counsel for the plaintiffs that the title of the defendants is not in dispute. They entered into an agreement to sell the suit property and received part consideration by executing 2 agreements. Plaintiff is the Company engaged in manufacture of cement and is running cement factory. The suit property is barren land which is not cultivable and for this reason, land was identified and the rate was consensually fixed. Even now the plaintiffs are offering Rs.10,50,000/- in addition to agreed price. In order to avoid execution of the sale deed, O.S.No.92/2008 came to be filed in the name of sisters, collusive decree was obtained. Even it is taken into consideration, the share of defendant Nos.1 and 2 is required to be sold to the plaintiffs. The Trial Court though answered all the issues



in favour of the plaintiffs, only on the ground that defendant Nos.1 and 2 are the agriculturists, now the land is proposed for mining of ore, said purpose was not mentioned in the agreement, plaintiff/Company has cancelled the agreement with land owners, in whose lands ore deposit is less, sisters of the defendants are not signatory to agreement, no hardship would be caused to the plaintiff if refund is directed with interest. It is even argued that, if the land is retained, it is a barren land not cultivable, defendants will not be benefited and sought direction to defendants to execute the sale deed by accepting the offer of additional consideration by the plaintiffs.

12. Per contra, learned counsel for the legal representatives of defendant No.2 has contended that the suit property fell to the share of defendants by virtue of decree passed in O.S.No.320/1992. On the said strength, agreement came to be executed, but the legal representatives of defendant No.2 were not parties to the



agreement and therefore, the agreement is not binding on them. For this reason, the Trial Court has rightly held that the plaintiff is entitled for refund of earnest money. The defendants are agriculturists, who are left with suit property for cultivation and to eke out their livelihood and argued in support of the impugned judgment.

13. We have given our anxious consideration to the arguments addressed by the learned counsel on both sides and perused the material on record.

14. The points that arise for our consideration are:

(i) Whether the plaintiff/Company is entitled for the relief of specific performance?

(ii) Whether the Trial Court has committed an error or illegality in ordering for refund of earnest money?



Reg.Point No.(i):

15. It is culled out from the facts and evidence on record that the parents of defendant Nos.1 and 2 are Mallappa Dalal and Boravva. Mallappa died in the year 1965 leaving behind his 3 sons and 3 daughters by name Basalingappa, Irappa, Danappa, Kalavva, Savakka (Shantavva) and Gowravva. After the death of Mallappa, the suit property devolved upon the members of joint family, which was managed by Basalingappa. After his death, Irappa was managing the family affairs.

16. In O.S.No.320/1992, a compromise was entered into between defendant Nos.1 and 2 on 21.09.1992 wherein defendant No.1/Danappa and defendant No.2/Irappa were allotted an extent of 5.14 acres and 4.14 acres in R.S.No.431/1, which was mutated in M.E.No.A-279 on 26.12.1992. Plaintiff/Company claims that the defendants became owners by virtue of said compromise and they executed agreement of sale as per



Exs.P2 and P3, which stood proved. Readiness and willingness of the plaintiff is also explained, and therefore, plaintiff is entitled to the relief of specific performance.

17. The evidence has also brought out that Savakka @ Shantavva and Gouravva filed a suit in O.S.No.92/2008 against Kalavva, Neelawva, Mallappa, Danappa and others seeking partition of their share of properties and the suit was decreed granting 7/105th share to them as noticed in Ex.D6/copy of the judgment.

18. It is also made out that the suit property was the joint family property of the defendants and their sisters. Sisters are not parties to the agreement nor they are signatories to Exs.P2 and P3 and no consideration was paid to them. In this background, even if the evidence of the plaintiff is taken into consideration that PW-1/B.Adinarayan and PW-2/S.Y.Gourish - Managers-Legal of the plaintiff/Company, it did not point out anything that the sisters of defendants have no right in the suit property being the Officers, they are not aware of the family



circumstances. Their evidence points out that acquisition is for establishment of cement factory. Their cross-examination elicited that in certain court settlements and also outside settlements, the plaintiff had cancelled the agreement and returned the lands to the land owners. The reason is that there was no ore deposit as required for the factory. PWs-1 and 2 admit partition decree in O.S.No.92/2008. They also admit that excess consideration was paid in certain cases for taking a sale deed. PW-3/Krishnappa is the attestor to Ex.P3 wherein PW-4/Ajjappa Siddappa Wadar is the attestor to Ex.P2/agreement of sale.

19. Defendant No.2(a)/Smt.Shantavva Dalal is examined herself as DW-1 and her evidence is total denial of Exs.P2 and P3 and payment of any consideration in favour of her husband. DW-2/Shankareppa Ningappa Ambaljeri is the witness examined by the defendants regarding acquisition of the property by the plaintiffs. His testimony points out that the plaintiffs have procured the



lands in Keri, Ramadurga , Senappagoudara Mudigoudara, Athani and Koujalagi villages and this person is fighting against the plaintiff/company in acquiring the agricultural land for establishment of cement factory. His evidence has no assistance to decide the lis between the parties.

20. DW-3/Ishwar Sangappa Malali, the neighbour of defendants, whose testimony points out that Mallappa Dalal had 3 sons and 3 daughters, his testimony establishes the relationship between the defendants.

21. Ex.P4 is the order of permission granted by the Government under Section 109 of KLR Act permitting the plaintiff for procurement of more than 10000 acres of land for establishment of cement factory. The finding recorded by the Trial Court is that no evidence is placed to show that the suit property was purchased for mining of ore is incorrect. The plaintiffs have cancelled the agreement with several vendors where ore deposit is less is not a ground to refuse specific performance.



22. From the above evidence, it is thus clear that the plaintiff/company had taken permission from the Government for establishment of cement factory by acquiring more than 10000 acres of land for the purpose of mining of cement ore. It is argued that the cement factory is already established and the suit property has now become barren and it cannot be cultivated. The Trial Court, only on the ground that the sisters are not parties to the agreement, has decreed the suit for refund. When defendant Nos.1 and 2 received a major portion of consideration, they cannot be allowed to take shelter under their sisters. The plaintiff/Company has proved its case conversely no hardship is demonstrated by the defendants. To the extent of their share Exs.P2 and P3 bind the defendant No.1 and 2. Accordingly, we answer point No.(i).



Reg. Point No.(ii):

23. There is a decree passed in favour of the sisters of the defendants No.1 and 2 and O.S.No.92/2008 wherein they were granted share of $7/105^{\text{th}}$ each in the suit properties. The propositus Mallappa died in the year 1965, his 3 daughters are married, they are not entitled to claim partition, but they are entitled to share at a partition between their brothers. In the earlier partition, since no share was allotted to them, division has to be effected applying the principle of notional partition. The 3 sons and Mallappa takes $1/4^{\text{th}}$ share each as the wife of Mallappa i.e. Boravva is no more. Out of $1/4^{\text{th}}$ share of Mallappa, his 3 sons and 3 daughters are entitled to equal share i.e., $1/4^{\text{th}} \div 6 = 1/24$. The defendants No.1 and 2 will get $1/4^{\text{th}} + 1/24 = 7/24^{\text{th}}$ each and together $14/24$ i.e. $7/12^{\text{th}}$ share in the suit properties.

24. Section 12 of the Specific Relief Act, 1963, permits partial grant of specific performance with an exception. Total extent of land is 9 acres 28 guntas, out



of which 7/12th share comes to 5 acres 26 guntas, which is a major portion of suit property. No land remains to the share of defendant Nos.1 and 2 in the said survey number. Hence, there is no bar for directing specific performance against them. In view of our finding on Point No.(i) defendants No.1 and 2 received the major portion of the consideration and no hardship is demonstrated, they are bound to execute the sale deed to the extent of their 7/12th share.

25. As contended by the learned counsel for the plaintiff, a sum of Rs.10,50,000/- is additionally paid by the plaintiff/Company voluntarily, same has been considered by the Co-ordinate Bench of this Court in RFA No.100089/2017. Learned counsel for the plaintiff/company has no objection for awarding proportionate share to the defendants out of Rs.10,50,000/-. The total consideration fixed for 9 acre 28 guntas at the rate of Rs.7,500/- comes to Rs.29,10,000/-. If additional consideration of Rs.10,50,000/- is added, it comes to



Rs.39,60,000/-. As discussed above, the defendants are holding 7/12th share. Their share of consideration comes to Rs.23,10,000/-. Rs.21,80,000/- was already paid to them. Hence, they are entitled to balance of Rs.1,30,000/- i.e. Rs.65,000/- each for execution of the sale deed.

26. The share of the sisters is protected. Therefore, Trial Court has committed error in ordering refund instead of directing defendants No.1 and 2 to execute the sale deed to the extent of 7/12th share by receiving balance consideration of Rs.65,000/- each. Accordingly, the judgment of the Trial Court requires modification. Accordingly we answer point No.(ii).

27. In view of our discussion on Points Nos.(i) and (ii), we hold the appeal merits consideration, in the result, the following:

ORDER

- i. Appeal is allowed in part;



- ii. The impugned judgment and decree is hereby set aside;
- iii. Defendant No.1 and legal representatives of defendant No.2 are directed to execute the sale deed to the extent of 7/12th share in the suit schedule properties by receiving balance consideration of Rs.1,30,000/- from the plaintiff/company.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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