



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 18TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.5398 OF 2011 (SP)

BETWEEN:

SRI. BASAVANNEPPA
S/O. MAHADEVAPPA GUMMAGOLA,
AGE: 69 YEARS, OCC: PENSIONER,
R/O. HULAKOPPA, TQ. KALGHATAGI,
DIST. DHARWAD-580001.

...APPELLANT

(BY SRI. CHETAN MUNNOLI, ADVOCATE)

AND:

1. SUBHAS S/O. SHIVAJI JADHAV,
AGE: 56 YEARS, OCC. AGRICULTURE,
R/O. HULAKOPPA, TQ. KALGHATAGI,
DIST. DHARWAD-580001.
2. MANJUNATH S/O. HANAMANTAPPA JADHAV,
AGE: 43 YEARS, OCC. AGRICULTURE,
R/O. HULAKOPPA, TQ. KALGHATAGI,
DIST. DHARWAD-580001.

...RESPONDENTS

(BY SRI. K.L. PATIL, ADVOCATE FOR R1 AND R2)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 28.01.2011 IN R.A.NO.93/2007 ON THE FILE OF THE II ADDL. SENIOR CIVIL JUDGE, DHARWAD, ITERINARY COURT AT KALGHATAGI, REVERSING THE JUDGMENT AND DECREE DATED 20.08.2007 IN O.S.NO.73/2005 ON THE FILE OF THE CIVIL JUDGE (JR.DN.) AND JMFC, KALGHATAGI, IN THE INTEREST OF JUSTICE AND EQUITY.



THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON 03.12.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, COURT DELIVERED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

Being aggrieved by the judgment of the First Appellate Court in R.A.No.93/2007, whereby the judgment of the Trial Court in O.S.No.73/2005 was partially modified, the plaintiff is before this Court in appeal.

2. The factual aspect that is necessary for the purpose of this appeal is as below:

a. The plaintiff and the defendants are hailing from the same village i.e., Hulkoppa of Kalghatagi Taluk. The plaintiff avers that the defendants were in need of money for payment of their family debts and therefore, they offered to sell the suit schedule property, for which the plaintiff made an offer for Rs.35,000/-. The defendants found that the said offer was highest and therefore, they agreed to sell the suit schedule property to the plaintiff for a consideration of Rs.35,000/-. Out of the said amount, a sum of Rs.30,000/- was paid by the plaintiff to the defendants on 02.05.1996 and an agreement was executed on



the same day. In the said agreement, it was stated that the defendants would execute the sale deed as and when the plaintiff would call them for such execution, after receiving the sum of Rs.5,000/- which was in balance. It was also agreed that the possession of the property has to be handed over to the plaintiff at the time of the execution of the registered sale deed.

b. Thereafter, the plaintiff had kept the balance sale consideration ready and on several occasions, requested the defendants to execute the sale deed. However, the defendants went on postponing on one or the other pretext and even the efforts by the elders did not yield any result. It was stated that the plaintiff was always ready and willing to perform his part of contract and he had kept the balance sale consideration ready.

c. It is alleged that the defendant in order to defraud the plaintiff, were trying to sell the suit schedule property to third parties and therefore, the plaintiff issued a legal notice to the defendants on 27.06.2005 and called upon the defendants to execute the sale deed within seven days by receiving the balance sale consideration amount. Since, the defendants did not give any reply, the plaintiff was constrained to file the suit seeking



specific performance of the contract of agreement of sale. The plaintiff prayed that the defendants be directed to execute the sale deed as per the agreement and for any reason if the Court comes to the conclusion that the plaintiff is not entitled for the specific performance, then the plaintiff be awarded the refund of the amount along with damages and interest.

3. The suit schedule property is described to be the house property bearing VPC No.64, present No.94 situated in ward No.1 of Hulkoppa village.

4. On service of summons, the defendants appeared before the Court and defendant No.1 filed the written statement. The defendant No.1 denied the plaint averments and set up the contentions as below:

a. The allegations of the plaintiff that the defendants were in need of money for settlement of family debts is not correct. They also denied the facts that the agreement of sale executed between the plaintiff and the defendants and that the defendants had went on postponing the execution of the sale deed.



b. The defendants contended that in the year 1996, the defendant No.1 was in need of money and therefore, when he requested the plaintiff, a sum of Rs.9,000/- was paid by the plaintiff to the defendant as a loan. As a security to the said loan, the plaintiff got the signatures of the defendants. The defendant No.1 had paid a sum of Rs.9,000/- to the son of the plaintiff i.e., Maliikarjun on 24.06.1998 and the said Mallikarjun has issued a receipt regarding the same. When the defendant demanded the return of the blank stamp paper signed by him, the said Mallikarjun had assured that he would inform his father to tear off the signed stamp papers. It is contended that the defendants are living happily and out of jealousy, the plaintiff has misused the signed stamp papers and has concocted a false agreement of sale and has filed this suit. The written statement also states that the defendants do not have any other house property and therefore, defendants selling the suit property to anybody else do not arise. For these reasons, the defendants contended that the suit be dismissed with compensatory costs of Rs.2,000/-.



5. On the basis of the above pleadings, the following issues were framed by the Trial Court:

ISSUES

- 1. Whether the plaintiff proves that the defendants have duly executed the agreement dated 02.05.1996?*
- 2. Whether the plaintiff further proves that he is ready and willing to perform his part of the contract?*
- 3. Whether the defendants proves that the suit is barred by limitation?*
- 4. Whether the Court has pecuniary jurisdiction to try the suit?*
- 5. Whether the plaintiff is entitles for the suit relief?*
- 6. What order or decree?*

6. The Trial Court recorded the testimonies of the plaintiff as PW1 and two witnesses as PW2 and PW3. Exs.P1 to P17 were marked in evidence. The defendant No.1 was examined as DW1 and one witness was examined as DW2. Ex.D1 was marked on behalf of the defendants.

7. After hearing the arguments by both the sides, the Trial Court answered issue No.1, 2, 4 and 5 in the 'affirmative', issue No.3 in the 'negative' and decreed the suit directing the



defendants to execute the sale deed in respect of the suit schedule property in favour of the plaintiff by receiving a sum of Rs.5,000/-.

8. Being aggrieved, the defendants approached the First Appellate Court in R.A.No.93/2007.

9. After hearing the arguments by both the sides, the First Appellate Court held that the Trial Court had not exercised the discretion in a proper manner and therefore, it held that the agreement has been proved and it was for specific performance of the contract. It further held that the defendants had no other house property to reside and therefore, the Trial Court had not exercised judicial discretion in a proper way and as such, it interfered with the judgment of the Trial Court directing the refund of the sum of Rs.30,000/- along with interest at 6% per annum from the date of suit till realisation.

10. Being aggrieved, the plaintiff is before this Court in second appeal.

11. This Court while admitting the appeal has framed following substantial question of law on 01.03.2017:



"Whether the Lower Appellate Court is right in holding that the discretionary power exercised by the trial Court is not in terms of principles of undue hardship or advantage to the plaintiff as per Sec.20 of the Specific Relief Act?"

12. Heard the arguments by learned counsel Sri. Chetan Munnoli appearing for the appellant and the arguments of the learned counsel Sri. K.L. Patil for the respondents.

13. The learned counsel appearing for the appellant/plaintiff submits that the contention of the defendant that the agreement was a security for the loan was ignored by the First Appellate Court. When the agreement is held to be proved, there was no other option than to decree the suit. He submits that when there is an agreement to sell the suit schedule property, the terms of the agreement have to be adhered to. The evidence does not show any circumstance which entitles the defendant to exercise discretion in their favour. There was no reason for the First Appellate Court to interfere with the judgment of the Trial Court when the agreement is held to be proved and the contention of the defendant that it was a money transaction was not acceptable. Therefore, it is contended



that the exercise of the discretion by the First Appellate Court is erroneous.

14. Per contra, learned counsel appearing for the respondents submits that the evidence on record clearly show that the defendants do not have any property to reside except the suit schedule property. This aspect is stated by them in the written statement also. The evidence of the defendants shows this aspect. The cross-examination of the plaintiff and his witnesses show that the defendants have landed properties, there is no evidence to show that they have any alternate residential premises to stay. Therefore, it is contended that the discretion exercised by the First Appellate Court in favour of the defendants is to be sustained. Hence, they have sought for dismissal of the appeal.

15. It is pertinent to note that under Section 20 of the Specific Relief Act, even though the plaintiff is entitled for a decree for specific performance, it is a discretionary remedy. Such discretionary remedy has to be exercised in a judicious manner. The discretion is circumscribed by the judicially acceptable principles. The mitigating circumstances and hardship



are to be balanced by the Court while exercising the discretionary jurisdiction. Now, the exercise of such discretion by the Trial Court as well as the First Appellate Court needs to be considered. It may be noted that the Trial Court as well as the First Appellate Court have come to the conclusion that the agreement between the plaintiff and the defendants has been proved. Both the Courts below have also given a categorical finding that though the defendant contends that it was a transaction of loan, even though there is an alleged repayment of Rs.9,000/- by the defendant, such contention of the defendant is not proved. The Ex.D1, which is the receipt, stated to be issued by the son of the plaintiff is not accepted by both the Courts to be pertaining to the suit transaction. This aspect cannot be gone into, since, it is a concurrent question of fact determined by the Courts below.

16. As noted *supra*, the averment of the plaint shows that the defendants were in need of money and therefore, the plaintiff was approached by the defendants offering these suit schedule property. The plaintiff contend that a sum of Rs.30,000/- was paid by him and an agreement of sale was



entered into between the parties. It is also worth to note that the written statement of the defendant in paragraph No.4 categorically states that the defendants do not have any other residential house except the suit schedule property and therefore, they selling the suit schedule property to somebody else do not arise. This contention in the written statement becomes the foundation for considering the discretion to be exercised by the Court.

17. In paragraph No.11 of the judgment of the First Appellate Court, it is observed that the repayment of Rs.9,000/- by the defendants to the plaintiff is not established and the one depicted in Ex.D1 appears to be in respect of some other transaction. Moreover, the Ex.D1 was held to be not proved. After coming to such conclusion, the First Appellate Court observes that PW1 had stated that the defendant has properties in Hulkoppa village. On a perusal of the entire deposition of PW1, it appears that there is an error in recording the cross-examination. The suggestions to PW2 and PW3 have been extracted by the First Appellate Court in its judgment and there is a suggestion to PW2 and PW3 that defendant do not have any



other property than the suit schedule property at Hulkoppa village. The elicitation from PW2 and PW3 that the defendants do not have any house property at Hulkoppa village gains importance in view of the pleadings that may be found in the written statement. The say of PW1 that the defendants do not have any property in Hulkoppa, cannot be accepted to be a suggestion made to him by the defendants.

18. The First Appellate Court also observes that the agreement at Ex.P3 clearly states that the possession has not been handed over to the plaintiff. This reiterates the contention of the defendants that they do not have any other property than the suit schedule property at Hulkoppa.

19. On the other hand, it is not the contention of the plaintiff that he does not have any other property than the suit schedule property at Hulkoppa.

20. The First Appellate Court also observes that though the plaintiff had stated that he was always ready and willing to perform his part of the contract, he had not placed any other material than his oral testimony. The details as to when the plaintiff had demanded execution of the sale deed were not



brought on record. The First Appellate Court also takes a view that due to lapse of more than ten years from the date of the agreement, there is huge increase in the value of the property. Therefore, it holds that direction to execute the sale deed would cause undue hardship to the defendants, particularly when the defendants are staying in the suit schedule property.

21. The First Appellate Court also relies on the judgment in the case of **Suresh Narayan Gulawani and Others V/s. Smt. Vimalabai¹**, where the factors which need to be considered while exercising the judicial discretion has been laid down. It also relies on another judgment in the case of **S. Abdul Khader V/s. Abdul Wajid and Others²**, where again, the scope and ambit of Section 20 and 21 of the Specific Relief Act, 1963 were considered.

22. When we examine the above reasoning by the First Appellate Court, it is evident that it had considered all the circumstances that were available in the present case. A perusal of the judgment of the Trial Court shows that there is nothing

¹ ILR 2005, Karnataka 3555

² (2008) 9 SCC 522



mentioned as to why it is exercising the discretion in favour of the plaintiff. Though the Trial Court considers all the issues which were raised, it do not consider as to why the discretion has to be exercised in terms of Section 20 of the Specific Relief Act in favour of the plaintiff. The reasons as to why discretion has to be exercised in favour of the plaintiff was essential for a decree for specific performance to sustain. Under these circumstances, it is not possible for this Court to hold that the Trial Court had considered the circumstances which require exercise of the discretion in favour of the plaintiff.

23. In view of the above, the First Appellate Court was justified in holding that the discretion exercised by the Trial Court is not in terms of the principles of undue hardship or advantage to the plaintiff as per Section 20 of the Specific Relief Act. Consequently, the substantial question of law is held in the 'affirmative'.

24. As a result of the above, the appeal is unmerited and hence the following:



ORDER

- i. The appeal is ***dismissed.***
- ii. The judgment and decree passed by the First Appellate Court directing the refund of the sum of Rs.30,000/- along with interest at the rate of 6% per annum is hereby confirmed.
- iii. Until the decree is satisfied, there shall be charge over the suit schedule property.

**SD/-
(C M JOSHI)
JUDGE**

RKM
CT:PA
List No.: 1 Sl No.: 56