



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 19TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.100503 OF 2017 (SP)

BETWEEN:

RAJESH S/O. MEGHRAJ JAIN,
AGE: 33 YEARS, OCC. AGRICULTURE, BUSINESS,
R/O. RAMDATTAPARTMENT,
KESHWAPUR, HUBBALLI,
DIST. DHARWAD-580032.

...APPELLANT

(BY SRI. PRASHANT S. HOSMANI, ADVOCATE)

AND:

1. KALLAPPA S/O. BASAVANTAPPA KARENNAVAR,
AGE: 52 YEARS, OCC. AGRICULTURE,
R/O. KUSUGAL, HUBBALLI,
DIST. DHARWAD-580032.

2. NEELAWWA W/O. KALLAPPA KARENNAVAR,
AGE: 47 YEARS, OCC. HOUSEHOLD WORK,
R/O. KUSUGAL,
HUBBALLI, DIST. DHARWAD-580032.

3. SHIVAPPA S/O. KALLAPPA KARENNAVAR,
AGE: 44 YEARS, OCC. HOUSEHOLD WORK,
R/O. KUSUGAL,
HUBBALLI, DIST. DHARWAD-580032.

...RESPONDENTS

(R1 TO R3-HELD SUFFICIENT)

THIS RSA IS FILED UNDER SECTION 100 R/W. ORDER 41 RULE 1 OF CPC, PRAYING TO CALL FOR THE RECORDS, PERUSE THE SAME AND MODIFY THE JUDGMENT AND DECREE IN R.A.NO.105/2015 PASSED BY THE I ADDL. SENIOR CIVIL JUDGE, HUBBALLI DATED 08.12.2016 AND THE JUDGMENT AND DECREE IN O.S.NO.420/2012 PASSED BY THE III ADDL. CIVIL JUDGE AND JMFC HUBBALLI, DATED 07.08.2015 AND DECREE THE SUIT OF THE APPELLANT IN ENTIRETY IN THE INTEREST OF JUSTICE AND EQUITY.



THIS APPEAL, COMING ON FOR ADMISSION THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER.

ORAL JUDGMENT

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

Heard the learned counsel appearing for the appellant.

2. None appears for the respondents.

3. Being aggrieved by the judgment and decree in R.A.No.105/2015 by I Additional Senior Civil Judge, Hubballi dated 08.12.2016 and the judgment and decree in O.S.No.420/2012 passed by III Additional Civil Judge and J.M.F.C., Hubballi dated 07.08.2015 whereby the suit filed by the appellant for specific performance was decreed in part directing the defendants to refund the sum of ₹1,40,000/- along with interest at the rate of 12% per annum from the date of agreement. The plaintiff is before this Court in second appeal.

4. The factual background of the case is that on 21.01.2010 defendant No.1 executed a registered agreement of sale in favour of the appellant/plaintiff concerning an agricultural land measuring 1 acre 32 guntas in R.S.No.144/4 of Kusugal



village out of a total 3 acres 24 guntas. Defendant No.1 had received a sum of ₹1,00,000/- at the time of executing the agreement of sale and thereafter, an additional sum of ₹40,000/- was paid to defendant No.1 since there was family necessity for him. A receipt was also executed for the same. When the appellant requested defendant No.1 to execute the registered sale deed by receiving the balance amount of ₹4,000/-, the defendants under one or the other pretext, postponed and avoided the execution of the sale deed. Therefore, the plaintiff was constrained to file the suit seeking the specific performance of the agreement of sale dated 21.01.2010.

5. On service of notice, all the defendants appeared through their counsels and defendant No.1 filed his written statement denying the contentions of the plaintiff. It was contended that defendant No.1 is an illiterate person and was a simpleton and he had not entered into any sale agreement with the plaintiff. It is contended that one real estate agent had taken defendant No.1 to the office of the sub-registrar and asked him to sign as a witness and by misrepresentation, the suit agreement was got executed by the plaintiff. It was alleged that



he never received any amount as advance sale consideration from time to time and therefore, defendant No.1 receiving the sum of ₹1,40,000/- do not arise and as such, the suit be dismissed.

6. On the basis of the above pleadings, the Trial Court framed the following issues:

- "i) Whether the plaintiff proves that defendant No.1 has agreed to sell suit property in favour of plaintiff for valuable consideration of Rs. 1,44,000/- vide registered agreement of sale deed 21.01.2010 in favour of plaintiff?*
- ii) Whether the plaintiff proves that plaintiff has performed his part of contract?*
- iii) Whether the plaintiff proves that defendant has failed to perform his part of remaining contract?*
- iv) Whether the plaintiff proves that plaintiff is ever ready and willing to perform his part of remaining contract?*
- v) Whether the defendant No.1 proves that the plaintiff in collusion with real estate agent obtained his signature and photograph of defendant No.1 on alleged agreement of sale by playing fraud?*



- vi) Whether the plaintiff is entitled to the remedy as prayed for?*
- vii) Whether the plaintiff is entitled to any other remedy?*
- viii) What order or decree?"*

7. The plaintiff examined himself as PW.1 and Ex.P.1 to Ex.P.7 were marked. The Defendants did not enter the witness box to adduce any evidence.

8. After hearing the arguments, the Trial Court answered issue Nos.1 to 4 in the **affirmative**, issue No.5 in the **negative** and answering issue Nos.6 and 7 **partly in the affirmative** decreed the suit directing the defendants to pay the sum of ₹1,44,000/- with interest at the rate of 12% per annum from the date of agreement, till realization.

9. Being aggrieved, the plaintiff approached the First Appellate Court and after hearing the appellant, the respondents in the appeal had not appeared despite service of notice. The First Appellate Court held that it was only the sum of ₹1,40,000/- which should have been ordered to be refunded by



the defendants to the plaintiff and accordingly, modified the decree passed by the Trial Court.

10. Being aggrieved, the plaintiff is before this Court.

11. The learned counsel appearing for the appellant would submit that the exercise of the discretion by the Trial Court as well as the First Appellate Court is erroneous. He would submit that out of the total sale consideration of ₹1,44,000/-, he had paid a sum of ₹1,40,000/- to defendant No.1 and therefore, there was no reason to hold that defendant No.1 is not liable to execute the sale deed. He further submits that exercise of the discretion by the Trial Court as well as the First Appellate Court is not on sound judicial principles and therefore, the decree to refund the earnest money paid by the appellant is incorrect. He submits that when the defendants had not adduced any evidence placing on record the hardship that they may encounter, it was not right on the part of the Trial Court and the First Appellate Court to exercise the discretion in favour of the defendants. He also points out that the conduct of the plaintiff demonstrates that he was always ready and willing to perform his part of the contract. But on the other hand, the conduct of defendant No.1



is not acceptable. He points out that earlier the name of the defendant No.1 was entered in the revenue records and later, conspicuously, defendant No.1 got entered the names of defendant Nos.2 and 3 also in the revenue records. On this ground, he submits that the appeal be admitted.

12. A careful perusal of the records would reveal that even though there was no evidence on record on behalf of the defendants, the Trial Court in paragraph No.25 of its judgment holds that the total extent of the land is 3 acres 24 guntas and it was a property acquired by defendant No.1 in a partition among his father and brothers. Therefore, it is an ancestral property in the hands of defendant No.1 and as such, defendant Nos.2 and 3 are also entitled for having their share in the suit schedule property. It was noticed that the names of defendant Nos.2 and 3 have been entered in the records, which cannot be disputed. It was observed that the share of defendant No.1 was only $1/3^{\text{rd}}$, which would come to about 1 acre 8 guntas. But the agreement was in respect of 1 acre 32 guntas. Therefore, it opines that the agreement in any way binds defendant No.1 alone and except mentioning that there was a family necessity for defendant No.1,



there is nothing else on record which is available. Therefore, the Trial Court opines that the agreement will not bind the entire claim made by the plaintiff. In that background, it came to the conclusion that the discretion cannot be exercised in favour of the plaintiff.

13. The First Appellate Court, in paragraph No.23 of its judgment records that the plaintiff is a businessman and not an agriculturalist and there is no evidence on record to show that he is an agriculturalist by profession. It notices that the plaintiff has no intention to purchase the property and therefore, it concurs with the reasoning assigned by the Trial Court.

14. It is pertinent to note that the question whether the plaintiff was a businessman or not and whether he had an intention to purchase the property or not cannot be the ground for exercising or denying the discretion. What is the discretion that is to be exercised by the Trial Court is judicial discretion but not anything else. The reasons for discretion are to be judicially acceptable. They cannot act in the vacuum. It is not under the whims and fancies of either the Trial Court or the First Appellate Court. If we examine the discretion and the reason given by the



Trial Court, no fault can be found that it had exercised a judicial discretion in that regard. Though the First Appellate Court holds that the plaintiff is a businessman and he is not an agriculturalist etc., they are not based on any evidence on record and therefore, they cannot fall in the category of judicial discretion which is enunciated by the High Court and the Hon'ble Apex Court.

15. It is also pertinent to note in the case of ***Satya Jain (dead) through LRs. and others vs. Anis Ahmed Rushdie (dead) through LRs. and others***¹, the Hon'ble Apex Court has held that escalation of the price is also one of the reasons which may be considered. Though Section 16 of the Specific Relief Act, 1963 (for short, hereinafter referred to as 'the Act') specifically says that the escalation of the price may not be a reason for denying the specific performance, the judicial pronouncements which may be found in the judgment of the Hon'ble Apex Court in the case of ***Satya Jain*** (supra) shows that there is a marked deviation from the principles laid down under Section 16 of the Act.

¹ (2013) 8 SCC 131



16. In that view of the matter, there is no reason to interfere with the discretion exercised by the Trial Court in directing the refund of the advance amount paid by the appellant to defendant No.1. Hence, no substantial question of law arises for consideration in this appeal. Consequently, the appeal is ***dismissed.***

SD/-
(C M JOSHI)
JUDGE

SSP
CT:PA
LIST NO.: 1 SL NO.: 8