



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR FIRST APPEAL NO.1005 OF 2012 (SP)

BETWEEN:

SRI. S.V. BALAKRISHNA
AGED ABOUT 46 YEARS,
S/O. VIDYANATHAN,
R/AT. DOOR NO.1538, 4TH MAIN,
6TH CROSS, VIJAYANAGARA II STAGE,
MYSURU-571107.

...APPELLANT

(BY SRI. B.S. NAGARAJ, ADVOCATE)

AND:

B.S. SARASWATHAMMA
DEAD BY HER LRS.

1. SRI. D.S. RAGHAVA,
AGED ABOUT 51 YEARS,
S/O. LATE D.V. SHANKAR,
R/AT. NO.274, 5TH MAIN,
9TH CROSS, JAYANAGARA,

YASHAVANT
NARAYANKAR

Digitally signed by
YASHAVANT
NARAYANKAR
Date: 2025.12.11
10:27:11 +0530



MYSURU-570014.

2. SRI. G. SURESH
AGED ABOUT 38 YEARS,
S/O. SRI. K. GOVINDARAJU,
R/AT. D.NO.3, 19TH CROSS,
NEAR GEO HOTEL,
SAMPANGIRAMANAGARA,
WILSON GARDEN, BENGALURU-560027.
3. SRI. V. PRAKASH
AGED ABOUT 42 YEARS,
S/O. SRI. K.VENKATESH,
R/AT.NO.21, MAGADI VENKATAPPA LANE,
SAJJAN RAO ROAD, V.V. PURAM,
BASAVANAGUDI, BENGALURU-560004.

...RESPONDENTS

(BY SRI. B. ROOPESHA, ADVOCATE FOR R1(A), R2 AND R3)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, 1908,
PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED
13.03.2012 PASSED BY THE II ADDL. SENIOR CIVIL JUDGE AT
MYSURU, IN O.S.NO.898/2008; AND ALLOW THIS APPEAL
WITH COSTS AND ETC.

THIS RFA APPEAL HAVING BEEN HEARD AND RESERVED
ON 16.10.2025, 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 dismissal in O.S.No.898/2008 by learned II-Additional Senior Civil Judge, Mysuru, dated 13.03.2012, the plaintiff is before this Court in appeal.

2. The factual matrix of the case is as below:

(a) The plaintiff contends that the defendant is the owner of the suit schedule property, which is a site bearing No.496, situated at railway layout, Bogadi-Mysuru measuring 9 mtrs East-West and 12.3 mtrs North-South. The defendant intended to dispose of the plaint schedule property to a willing purchaser and at that juncture, the plaintiff came in contact with the defendant resulting in an agreement whereby the plaintiff agreed to purchase the property for a price of ₹10,30,000/- free from encumbrances. The terms of the contract came to be reduced in writing on 05.01.2008 and the plaintiff had paid



a sum of ₹9,90,000/- and the remaining sum of ₹40,000/- was to be paid at the time of the execution of the sale deed. It was contended that the period of contract was three months from the date of execution of the agreement and the defendant promised to keep the plaint schedule property free from encumbrances. The defendant handed over the copies of the documents relating to the title of the plaint schedule property to the custody of the plaintiff. The defendant also agreed to place the plaintiff in possession of the property at the time of the sale deed. It is contended that the plaintiff was always ready and willing to perform his part of the contract and defendant had sought some time to secure the documents specified under the contract.

(b) It was further contended that later, the defendant was not prepared to pay any heed to the request made by the plaintiff and therefore, he issued a legal notice on 06.04.2008 to the defendant. The said notice was replied by the son of the defendant contending



that the property bearing No.153 situated at Nachanahalli Palya Mysuru was held by the plaintiff as Power of Attorney holder of one Nagesh Jois and M.B. Balaganapathy Bhat, the plaintiff had secured an agreement to sell the property and that, after purchasing the said property by the defendant, he had put up a compound and a small structure. Later, it was found that the property had been acquired by MUDA Authorities and the Authorities had demolished the compound wall and the structure causing huge loss to the defendant.

(c) In view of the said reply, the plaintiff issued a rejoinder notice to the defendant contending that the transaction in respect of the site bearing No.153 and the present suit property are distinct and separate and there was no connection by and between the two. It was replied by the plaintiff that the son of the defendant had approached the plaintiff and agreed to purchase the site bearing No.153 and therefore, the transactions being totally different and cause of actions being different, the



defendant should not have put forth the said contention to deny the execution of the sale deed.

(d) When the defendant did not heed to the request of the plaintiff, the plaintiff was constrained to file this suit for specific performance of the agreement of sale. Therefore, the plaintiff prayed that the decree be passed directing the defendant to execute the sale deed in respect of the suit schedule property by receiving a sum of ₹40,000/- and a perpetual injunction be issued against the defendant from alienating the plaint schedule property to anybody else.

3. On service of the summons, the defendant appeared and filed the written statement. In the written statement, apart from denying the contents of the plaint, the defendant contended the following:

(a) The suit schedule property was purchased by her son D.S. Raghava out of his hard earned money in the name of the defendant and when the plaintiff came in



contact with the defendant, a consensus was reached resulting in the plaintiff agreeing to purchase the plaintiff schedule property for a price of ₹10,30,000/-. The defendant contended that she and her son D.S.Raghava are staying together and the plaintiff, as registered general power of attorney holder of Sri. K.R. Nagesh Jois and Sri. M.V. Balaganpathi Bhat, sold the property bearing No.153 situated at Nachanahalli Pallya, Mysuru, measuring 50 ft X 80 ft.

(b) The plaintiff expressed his desire to purchase the present suit schedule property with an understanding between the plaintiff, the defendant and her son that the property held by the plaintiff be sold to the defendant's son D.S.Raghava for a sale consideration of ₹20,00,000/- and a sum of ₹10,00,000/- was paid by the said D.S.Raghava to the plaintiff. For balance sale consideration of ₹10,00,000/- the defendant has agreed to register the suit schedule property in favour of the plaintiff. As such, on 20.09.2007, plaintiff has sold the said



property bearing No.153 to the defendant's son D.S.Raghava and a registered sale deed came to be executed.

(c) The plaintiff had received the sum of ₹10,00,000/- from the defendant and her son and the agreement was executed on 20.09.2007. The time fixed for the completion of the sale transaction was two months. Since the said agreement was time barred, the plaintiff has approached the defendant and obtained her signature on 25.01.2008 for a fresh sale agreement on which the plaintiff has filed the present suit.

(d) It was further contended that the son of defendant, after taking possession of the property, constructed a residential house investing about ₹10,00,000/- and unfortunately in February 2008, MUDA Authorities demolished the same contending that the said property has been acquired by MUDA.



(e) With utter shock, the defendant approached the plaintiff and intimated the same to him and requested to return the sale consideration of ₹10,00,000/- and cancel the sale deed as well as the sale agreement in respect of the suit schedule property. Instead of complying the same, the plaintiff has issued a legal notice and ultimately has filed the present suit.

(f) Therefore, it was alleged that the plaintiff with oblique motive to make wrongful gain and to cause injury, loss and inconvenience to the defendant has filed the frivolous suit. He contends that the agreement of sale dated 20.09.2007 is a registered document and consideration is fixed as ₹10,00,000/- but not ₹10,30,000/-. Therefore, there being no consideration amount being paid by the plaintiff to the defendant, the present suit is not maintainable and is liable to be dismissed. It was contended that the property, which was sold in favour of the defendant's son by the plaintiff is part and parcel of the subject matter of the suit. It was also



contended that the suit is bad for non-joinder of necessary party.

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

ISSUES

- 1) *Whether the plaintiff proves that the defendant being the owner of schedule property as agreed to sell the same in his favour for a sum of Rs.10,30,000/- and executed an agreement of sale dated 5.1.2008 by receiving an advance of Rs.9,90,000/-?*
- 2) *Whether the plaintiff proves that he is always ready and willing to perform his part of contract?*
- 3) *Whether the defendant proves that the suit is bad for non-joinder of necessary parties?*
- 4) *Whether plaintiff proves that he is entitled for the relief of Specific Performance of Contract as prayed in the suit?*
- 5) *What order or decree?*



5. The plaintiff was examined as PW1 and Ex.P.1 to Ex.P.17 were marked. The Power of Attorney Holder of the defendant was examined as DW1 and Ex.D.1 to Ex.D.9 were marked.

6. The Trial Court has noted that since the advocates had abstained from Court proceedings, the arguments of both the sides were taken as nil and later counsel for the plaintiff has filed written synopsis through the plaintiff. On perusal of the same and the evidence on record, the Trial Court answered Issue No.1 partly in the affirmative, Issue No. 2 in the affirmative and Issue No. 3 and 4 in the negative and proceeded to dismiss the suit.

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

8. The plaintiff contends as below:

(a) Trial Court having held that the agreement dated 15.01.2008 is proved, it has erred in holding that



passing of the consideration had not been proved and such a finding is erroneous.

(b) It is admitted that sale consideration was ₹10,30,000/- and appellant had paid a sum of ₹9,90,000/- on 15.01.2008. These aspects are incorporated in the agreement and therefore, the Trial Court was in error in holding that the appellant has not proved the payment of the amount of ₹9,90,000/-.

(c) It is submitted that once it is established that there is a recital in the agreement, it was not open for the Trial Court to hold that no consideration has been paid by the plaintiff. It is submitted that the Trial Court has wrongly held that the discretion under Section 20 of the Specific Relief Act cannot be exercised in favour of the plaintiff.

9. On service of notice, the defendant appeared through her counsel. During pendency of this appeal, the defendant died and her legal heirs are brought on record.



10. On admitting the appeal, the Trial Court records have been secured.

11. The records reveal that an effort was made by the Court to inspire the parties to go for a settlement. Though the matter was referred to mediation, it was not fruitful. Thereafter, the parties themselves tried for a settlement. The defendant had agreed to sell another property to the plaintiff and in that regard, an application was also filed to implead the respondent No.2 and No.3, whose site was offered to the plaintiff on behalf of the respondent No.1. Such application, by consent of both the parties, was also allowed by this Court. But ultimately the settlement could not fructify and as such, the arguments were heard.

12. During the pendency of this appeal, the appellant has filed an application under Order XLI Rule 27 of CPC seeking to produce certain documents. In the affidavit accompanying the application, it is stated that the



encumbrance certificates in respect of the site No.153 and the photographs, which was sold to the defendant are relevant for just adjudication of the matter. Those documents having come into existence, during the pendency of the appeal, these documents are relevant and would throw light on the present status. Therefore, it is contended that the application be allowed.

13. In the light of the above contentions, the following points emerge for consideration of this Court:

(i) Whether the application filed by the appellant seeking production of additional evidence under Order XLI Rule 27 of CPC deserves to be allowed?

(ii) Whether the conclusion of the Trial Court that no consideration has been passed to the defendant is proper even though the defendant had not paid the amount of ₹10,00,000/- to the plaintiff concerning the sale of the site No. 153?



(iii) Whether the discretion exercised by the Trial Court in not granting the relief of specific performance is proper?

(iv) What order?

POINT NO.1:

14. Learned counsel appearing for the appellant submits that subsequent to the judgment of the Trial Court, certain developments have taken place and it is necessary for the plaintiff to place the same on record. He further submits that the plaintiff could not produce those documents before the Trial Court, and therefore, this is a fit case where the application filed by the plaintiff under Order XLI Rule 27 of CPC deserves to be allowed. It is submitted that this is a peculiar case where the plaintiff is seeking specific performance of agreement of sale executed by the defendant and the plaintiff has already sold his property bearing site No.153 to the son of the defendant and part consideration had passed in the said transaction. The transaction which is contemplated in the



present suit pertains to the consideration which is due to be paid by the son of the defendant in the other transaction. Therefore, he submits that when an allegation is made against the plaintiff that he had sold a site with defective title, it becomes necessary for the plaintiff to place all the relevant material on record.

15. The nature of the documents sought to be produced by the plaintiff are in the form of a gift deed alleged to have been executed by DW.1 in favour of his son regarding a portion of site No.153 sold by the plaintiff. The documents also include the encumbrance certificates of the said property, which evidences the transaction. The documents also include the photographs of the house, which is constructed by DW.1 in the site bearing No.153.

16. Learned counsel appearing for the respondent has contended that the documents which are sought to be produced by the plaintiff are no way connected to the present transaction. He submits that the documents of site



No.153 are irrelevant and immaterial for the adjudication of the present appeal. Therefore, he contends that the application filed by the appellant/plaintiff do not fall within the parameters envisaged under Rule 27 of Order XLI of CPC.

17. The provisions of Order XLI Rule 27 of CPC read as below:

"27. Production of additional evidence in Appellate Court.- (1) *The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-*

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced



*by him at the time when the decree
appealed against was passed, or*

*(b) the Appellate Court requires any
document to be produced or any
witness to be examined to enable it to
pronounce judgment, or for any other
substantial cause,*

*the Appellate Court may allow such evidence or
document to be produced, or witness to be
examined.*

*(2)Whenever additional evidence is allowed to
be produced by the Appellate Court, the Court shall
record the reason for its admission.”*

18. The Hon’ble Apex Court in the case of ***Union of India vs. Ibrahim Uddin and others***¹ has elaborately dealt with the parameters under which the additional evidence may be produced at the appellate stage. It is relevant to note that the grounds under which the additional evidence is to be produced, should strictly fall in any of the clauses of Rule 27(1). The Rule contemplates that, firstly if the Trial Court had refused to admit such

¹ (2012) 8 SCC 148



evidence, the application may be allowed. Secondly, the parties seeking to produce additional evidence should establish that despite exercise of due diligence, he could not produce it and thirdly, the Appellate Court requires such additional evidence for a just adjudication of the matter.

19. In the case on hand, it is submitted that the documents now sought to be produced are subsequent events and therefore, the plaintiff was not in a position to produce those documents before the Trial Court. Therefore, when we examine the documents, they fall within the parameters of Rule 27(1)(aa). The photographs alleged to be that of the site No.153 which has been sold to the son of the defendant (DW.1) are not of much relevance for this suit. The intrinsic value of these photographs being produced in this proceeding is only to establish that the DW.1 has constructed a bungalow in the site which is alleged to have a defective title. Therefore, the photographs are not of much importance in the case



on hand. So also, the gift deed and the encumbrance certificate depict that a portion of the said site has been transferred by DW.1 in favour of his son. In other words, it appears to be the contention of the plaintiff that at no stretch the site bearing No.153, which has a defective title, can be reverted back to the plaintiff. With this observation, the application being within the parameters of Rule 27(1)(aa), deserves to be allowed, but it is not necessary for this Court to hold that they have any intrinsic value which will have a bearing on the present appeal. With these observations, point No.1 is answered in the ***affirmative***.

POINT NOS.2 AND 3:

20. The Perusal of the reasoning of the Trial Court to refuse the specific performance of contract shows that while discussing issue No.1 it comes to the conclusion that no consideration has passed to the defendant. It notices that the plaintiff has sold site No.153 to the DW.1, who is



none else than the son of the defendant, for a consideration of ₹20,00,000/-. Later the said the site No.153 was found to have been acquired by the MUDA (Mysore Urban Development Authority) and therefore, it had a defective title. The Trial Court also observes that the sum of ₹20,00,000/- which was to be paid by the DW.1 to the plaintiff was partly paid, but an agreement of sale was executed by the defendant in respect of the balance amount to be paid. The agreement mentioned that a sum of ₹9,90,000/- has been paid by the plaintiff to the defendant and the remaining sum of ₹40,000/- was to be paid at the time of execution of the sale deed. This transaction between the parties is held to be incorrect and therefore, it comes to the conclusion that no advance amount was paid by the plaintiff to the defendant and as such the plaintiff is not entitled for relief of specific performance.

21. Let us examine the evidence placed on record by the plaintiff as well as the defendant. The plaintiff, who



is examined as PW1, states that at the time of the agreement, the price agreed was ₹10,30,000/- and the defendant should handover the same free of encumbrances. Out of the said amount, a sum of ₹9,90,000/- was paid by the plaintiff to the defendant and the balance of ₹40,000/- was to be paid at the time of the execution of the sale deed. The plaintiff contended that he reminded the defendant on several occasions but the defendant did not come forward to fulfill the terms of the contract. He states in his testimony that the site bearing No.153 of Nachanahalli was sold to the DW1 and a sum of ₹20,00,000/- was the sale consideration for Site No.153. The defendant paid the sum of ₹10,00,000/- to the plaintiff towards the sale consideration amount and the balance of ₹10,00,000/- was not paid by him and instead, the suit agreement came to be entered into. The defendant had agreed to sell the suit schedule property, which is a site measuring 30x40 feet to the plaintiff towards the balance sale consideration, which was to be



paid by the DW1 to the plaintiff. In other words, it may be said that it was an agreement meant for the balance of sale consideration of site No.153. It is contended that the said transaction in respect of Site No.153 is totally a different transaction and therefore, the contention of the defendant cannot be accepted. It is the contention of the PW1 that the defendant has used the sum of ₹10,00,000/, which was due from him in respect of the sale consideration of Site No.153 for other purposes and therefore, he had made better use of the said amount. In fact, the said amount of ₹10,00,000/- was to be paid to the plaintiff and it is the sale consideration amount of Site No.153.

22. Obviously, the PW1 has not been cross-examined by the defendant. Therefore, the say of PW1 remain unimpeached.

23. The DW1, in his testimony, states that he and his mother are living together and it is his contention that



initially the registered agreement of sale was executed by his mother in favour of the plaintiff and later, it was cancelled. The said cancelled agreement of sale pertaining to the suit schedule property is produced at Ex.D.4. The custody of Ex.D.4 is relevant to be noted. If Ex.D.4 was the agreement in favour of the plaintiff, the question arises as to how the defendant came in possession of the original agreement. Therefore, there cannot be any doubt that Ex.D.4 has been cancelled and it is admitted by DW1 in the cross examination.

24. DW1 in his testimony admits that Ex.D.1 was executed by the defendant but it is his contention that when he took possession of Site No.153 and constructed a compound wall with a small house, the MUDA Authorities came and demolished it. Therefore, he alleged that fraud had been played by the plaintiff upon the defendant by selling a site, which was acquired by the MUDA at an earlier point of time. He admits that out of the sale consideration of Site No. 153, he had paid only sum of



₹10,00,000/- to the plaintiff and the balance ₹10,00,000/- was to be paid but that was adjusted towards the value of the suit schedule property. Obviously, the testimony of DW1 shows that even though the transaction in respect of Site No.153 was completed, the transaction in respect of the suit schedule property (site No.496) was not completed, but it remained in the form of a contract as per Ex.P.1. Therefore, it is the say of the DW1 that defendant is justified in denying the execution of the sale deed in respect of the suit schedule property in favour of the plaintiff.

25. In the cross-examination, DW1 admits that the suit site was earlier purchased by one Ittira and the defendant had purchased the site from Ittira in the year 2005. All those transactions between Ittira and defendant are admitted by DW1. It is pertinent to note that the lease cum sale agreement executed in favour of Ittira by the Southern Railway Employees Co-operative House Building Society, the Katha Extract and certificate by MUDA are



produced by the plaintiff at Ex.P.7 to Ex.P.9. The custody of these documents produced on behalf of the plaintiff clearly indicates that the defendant had executed the Ex.P.7 concerning the suit schedule property in favour of the plaintiff.

26. The reason as to why Ex.D.4 came to be cancelled is not clearly available on record. Therefore, it is evident from the testimony of PW1, DW1 and the documents produced, particularly the custody of the title deeds of the suit schedule property produced, that there was an agreement between the parties in respect of the suit schedule property. The question is whether consideration is passed as mentioned in Ex.P.1. The Trial Court comes to the conclusion that there was no such consideration, which was paid. While discussing Issue No.1, it holds that the payment of advance amount of ₹9,90,000/- is not proved by the plaintiff. It overlooks the admitted facts of the case, which shows that the sale agreement as per Ex.P.1 in respect of site No.153



produced by the DW1 came to be executed. In other words, basically the transaction was in respect of the security towards the sale consideration amount, which is depicted in Ex.P1. Though Ex.P.1 mentioned the sale consideration amount to be ₹10,30,000/-, the actual amount which is admitted between the plaintiff and the defendant, particularly DW1, is a sum of ₹10,00,000/-. Therefore, admittedly the sum of ₹10,00,000/- was the balance amount, which was to be paid by the DW1 and his mother, which was in due to be paid to the plaintiff. The question is whether it can be considered as an advance amount. Evidently, the Trial Court has lost sight of this admitted fact by DW1. It is pertinent to note that the Trial Court did not delve into the fact whether the defendant was justified in withholding the payment of the balance consideration amount for the reason that a site with a defective title was sold to DW1.

27. It is pertinent to note that the selling of a site with a defective title, mentioning it to be free from all



encumbrances etc., was a different cause of action for the defendant. The defendant without exercising due diligence, has purchased the suit site No.153 of Nachanahalli. When the DW1 purchased the said site, it was incumbent for him to exercise due diligence and if the plaintiff had misrepresented about the title, remedies were available for him to make good the loss suffered by him. Obviously, the defendant has not made any counterclaim in the present suit. Therefore, the Trial Court could not have mixed up the cause of action, which was available to the defendant for the misrepresentation made by the plaintiff towards the Site No.153, which was sold by the plaintiff to the DW1. Obviously, plaintiff was the GPA holder of K.R. Nagesh Jois and Balaganapathi Bhatt. If the plaintiff was the holder of the irrevocable power of attorney of the above persons, remedy was available for the defendant to claim damages and such other reliefs. Therefore, it is evident that the Trial Court had erred in holding that



advance amount was not paid by the plaintiff to the defendant.

28. The cancellation of Ex.D.4 and execution of Ex.P.1 by the defendant with DW1, as one of the witnesses to it, clearly indicated that the defendants had acknowledged the transaction mentioned therein. It is admitted by DW1 that a sum of ₹10,00,000/- was not paid by him to the plaintiff towards the sale consideration of Site No.153. In that view of the matter, the finding of the Trial Court that there was no such advance amount paid was not sustainable. In the result, the Issue No.1 should have been answered by the Trial Court in the affirmative.

29. So far as ready and willingness is concerned, DW1 categorically admits that the plaintiff was always ready and willing to purchase the suit schedule property. The Trial Court holds that the ready and willingness has been proved by the plaintiff. This conclusion of the Trial Court on Issue No.2 is proper and is an admitted fact.



30. Coming to the question of discretion, the Trial Court holds that the relief under Section 20 of the Specific Relief Act being purely discretionary in nature, there being no passing of the advance consideration of ₹9,90,000/- it declines to exercise the said discretion. It holds that since the defendant has been prejudiced the fruits of the sale deed dated 20.09.2007 she is not liable to refund the advance amount. Again, the Trial Court mixed up the cause of action, which was available for the defendant with the cause of action of the plaintiff. The exercise of the discretion overlooks the fact that DW1 had got the sale deed executed in his favour in respect of Site No.153 without exercising due diligence and the details as to whether there was really a misrepresentation by the plaintiff was not gone into. Obviously that was not the issue, which was before the Trial Court. Hence non-exercise of the discretion by the Trial Court in favour of the plaintiff was not on sound judicial principles. In view of the fact that the agreement of sale as per Ex.P.1 was



towards the security of the balance consideration amount of Site No.153, which was sold to the defendant, the discretion has to be exercised by the Court. Evidently, the plaintiff has not sought the refund of ₹9,90,000/-, which is an admitted amount in Ex.P.1. Such alternative prayer has not been made by him. Therefore, the plaintiff, as of right, cannot seek refund of such admitted amount or the balance sale consideration amount of the transaction of the Site No.153.

31. Coming to the additional evidence, which has been placed on record, they show that though initially MUDA had demolished the compound wall, as may be seen from the records, particularly the newspaper reports, which have been marked at Ex.D8 & D9 and the letter by the Urban Development Department of the Government (Ex.D5), there appears to be a setback to the defendant for sometime. However, recently DW1 has gifted a portion of Site No.153 to his son. This may be seen from the encumbrance certificate, which is produced by the plaintiff



under Order XLI Rule 27 of CPC. It being a public document doesn't require oral testimony to corroborate it. So far as other documents like photographs are concerned, they cannot be accepted on the face value since the author is not examined. Therefore, the setback in respect of the title to the Site No.153, which was purchased by DW1, appears to have been overcome by him.

32. Under these circumstances, this is a case where the sum of ₹9,90,000/- which was agreed between the parties as per Ex.P1, in fact was different amount pertaining to the sale transaction relating to Site No.153. Though Ex.P1 mentions that a sum of ₹40,000/- was to be paid at the time of the sale deed of the suit site, the reason as to why the said ₹40,000/- was kept as a balance is not known. Obviously, the PW1 has not been cross-examined by the defendant in this regard. Therefore, it has to be accepted that the balance that was payable by the defendant and DW1 to the plaintiff was ₹9,90,000/-.



33. Normally, the refund of the advance amount may be ordered if there is an alternative prayer by the plaintiff. The plaintiff has not made any such alternative prayer for refund of the amount. It is relevant to note that the admitted facts, which are available on record as discussed supra, indicate that the defendant had withheld the part of the sale consideration amount of Site No.153 on the ground that the plaintiff had transferred a defective title. He tried to mix up the same with the present cause of action arising out of Ex.P.1. The Ex.P.1 is an admitted document by the defendant. His denial to abide by the terms of Ex.P.1 was pertaining to the transaction in respect of Site No.153. Therefore, this is a fit case where the Court should exercise the powers available under Order VII Rule 7 of CPC. Even though the plaintiff has not sought for refund of the amount, this Court can mould the relief, if that would prevent multiplicity of proceedings and grave injustice being caused. The judgment of the Apex



Court in the case of ***U.P. State Brassware Corporation Ltd., v. Uday Narian Pandey***² observes as below:

"37. It is one thing to say that the court interprets a provision of a statute and lays down a law, but it is another thing to say that the courts although exercise plenary jurisdiction will have no discretionary power at all in the matter of moulding the relief or otherwise give any such reliefs, as the parties may be found to be entitled to in equity and justice. If that be so, the court's function as court of justice would be totally impaired. Discretionary jurisdiction in a court need not always be conferred by a statute."

(Emphasis supplied)

34. It is pertinent to note that even though there is no specific prayer by the plaintiff for refund of the amount by way of alternative relief, this Court can exercise its powers vested in it under Order VII Rule 7 of CPC. The peculiarities of the present case make this court to exercise such power. Under these circumstances the appeal deserves to be allowed in the interest of justice,

² (2006) 1 SCC 479



equity and good conscience and by exercising the powers of this court under Order VII Rule 7 of CPC to mould the relief, it would be proper to direct the defendant to pay the sum of ₹9,90,000/- to the plaintiff along with interest at the rate of 12% per annum. The defendant could not have brought in passing of the defective title of Site No.153 in the present suit, without making any counterclaim. Hence, this Court is of the view that the discretion exercised by the Trial Court was not proper and hence, point Nos.2 and 3 are answered in ***negative***. Hence, the following:

ORDER

- (i) The appeal is allowed.*
- (ii) The impugned judgment of the Trial Court is hereby set aside.*
- (iii) The defendant is directed to refund the sum of ₹9,90,000/- to the plaintiff along with interest at the rate of 12% per annum from the date of agreement till payment.*



- (iv) Until such payment is made, there shall be a charge over the suit schedule property.*
- (v) After such payment as above, the original documents of the suit schedule property produced by plaintiff be returned to the defendant.*
- (vi) In the peculiar circumstances, no order as to the costs.*

SD/-
(C M JOSHI)
JUDGE

YAN – Para 1 to 13, 20 to end.
SSP –Para 14 to 19
List No.: 19 SI No.: 2