

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21st DAY OF NOVEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 524 OF 2011 (SP)

BETWEEN:

M/S SAMMAM CAPITAL LIMITED.
(FORMERLY KNOWN AS INDIABULLS
HOUSING FINANCE LIMITED),
HAVING ITS REGISTERED OFFICE
AT NO.116,1ST FLOOR,
KRISHNA ARCADE,
MARGOSA ROAD,
MALLESHWARAM
BENGALURU- 560 003
REPRESENTED BY ITS
AUTHORISED REPRESENTATIVE
MS.USHA M.

...APPELLANT

(BY SRI. CHINTAN CHINNAPPA AND DIVYA A. JAIN.,ADVOCATES)

AND:

1 . DR. THAMBIAH SUNDARAM
S/O.LATE COL THAMBIAH
AGED ABOUT 54 YEARS
R/AT.NO.910, NORTH EAST AVE,
SANTA MARIA, CA 93454
UNITED STATES OF AMERICA.

NOW CAMPING AT
NO.61, 19TH CROSS BK NAGAR
YESHWANTHPUR
BANGALORE- 560 022.

- 2 . SRI P R PARAMANAND SINGH
S/O.LATE PARAMANADA
RAMAKRISHNA SINGH
AGED ABOUT 50 YEARS.
- 3 . SMT GAYATHRI P SINGH
W/O. SRI.P.R.PARAMANADA SINGH
AGED ABOUT 38 YEARS
- 4 . MS BHAVANA P SINGH
D/O.SRI.P.R. PARAMANAND SINGH
AGED ABOUT 19 YEARS
- 5 . SMT ARUNDATHI P SINGH
D/O.SRI.P.R. PARAMANAND SINGH
AGED ABOUT 18 YEARS
- 6 . MASTER PARESH P SINGH
S/O SRI.P.R.PARAMANAND SINGH
MINOR,, REPRESENTED BY HIS
NATURAL GUARDIAN
SMT GAYATHRI P SINGH

PARTIES NOS.2 TO 6 ARE RESIDENTS OF
NO.245, HAUIDIN ROAD,
ULSOOR ROAD CROSS
BANGALORE- 560 042.

...RESPONDENTS

(BY SRI.R.B. SADASIVAPPA, ADVOCATE FOR R1,
VIDE ORDER DATED 16.01.2024,
SRI.BYREN STIEVBERG BY JOES SABASTIAN AND ASSTS.,
ADVOCATES FOR R2,R3,R4 AND R6,
SRI.B.A SOMANNA, ADVOCATE FOR R5,
R6 MINOR REPRESENTED BY R3)

THIS RFA IS FILED UNDER ORDER-XLI, RULE-1 R/W, SEC.96,
OF CPC, AGAINST THE JUDGMENT AND DECREE DATED: 21.01.2011
PASSED IN O.S.6402/2009 ON THE FILE OF THE XVII-ADDL. CITY
CIVIL JUDGE, (CCH-16), BANGALORE CITY, DECREETING THE SUIT
FOR SPECIFIC PERFORMANCE.

THIS APPEAL, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 10.10.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE UMESH M ADIGA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE UMESH M ADIGA)

This appeal is filed by a third party directed against judgment and decree dated 21.01.2011 in OS No.6402/2009 passed by 17th Additional City Civil and Sessions Court, Bengaluru (CCH-16) (for short 'trial Court').

2. Respondent No.1 herein had filed OS.No.6402/2009 against respondent Nos.2 to 6 herein for the relief of specific performance of contract. The trial Court by impugned judgment and decree, decreed the said suit and granted the relief of specific performance of the contract. The appellant, who is claiming to be a mortgagee of the subject matter in OS No.6402/2009, has filed the present appeal challenging the decree granted by the trial Court.

3. The facts in brief of the case in OS No.6402/2009 are as under:

Respondent No.1 herein Dr.Thambaya Sundaram filed a suit OS.No.6402/2009 for the relief of specific performance of the contract. According to him, defendants of the said suit were joint owners of the suit schedule property. Plaintiff and defendant No.1 were close friends and plaintiff was permanently residing in USA and whenever he used to visit India, i.e, to Bangalore, he used to meet defendant No.1. During the year 2006, when plaintiff visited India, he met the first defendant. During their discussions, defendant No.1 proposed to sell the suit property to the plaintiff. The said proposal was accepted by the plaintiff and both of them agreed to transfer the said property for Rs.21,50,000/-. Accordingly, defendant No.1 had executed an agreement of sale dated 05.07.2006, agreeing to sell the suit schedule property and he received an amount of Rs.7,70,000/- towards part of the sale consideration. Thereafter, whenever plaintiff visited India, as requested by defendant No.1, he went on paying part of the sale consideration and in all he had paid Rs.15,70,000/-. Plaintiff had repeatedly requested defendants to execute the registered sale deed in his favour, by receiving balance of sale consideration and defendants on

one or the other reason went on postponing to execute and register the sale deed. Plaintiff also came to know that defendants Nos.1 to 5, with a view to defeat the rights of the plaintiff were creating certain encumbrances on the said property. He issued notice dated 05.10.2009, calling upon the defendants to execute and register the sale deed, and in spite of service of notice, the defendants did not come forward to execute the registered sale deed in respect of the suit property in favour of the plaintiff that constrained the plaintiff to file the suit. With these reasons, plaintiff sought for the relief of specific performance of the agreement and also sought for the relief of permanent injunction restraining the defendants from selling, alienating or transferring of suit property in any mode.

4. Defendant Nos.1 to 5 appeared before the trial Court, but did not file written statement. The trial Court recorded the evidence of plaintiff, heard the arguments and by the impugned judgment decreed the suit.

5. It is the contention of the appellant that to execute the said decree, plaintiff (respondent No.1) herein

filed Ex.P.No.2559/2023 before 17th Additional City Civil and Sessions Court, Bengaluru (CCH-16) and got executed the decree passed in the above said suit.

6. The contentions of the appellants are that it is a non-banking financial institution. 2nd and 3rd respondents herein approached it with a request of sanction of loan during the year 2008. After considering the request of the second respondent, the appellant company sanctioned loan of Rs.1,37,00,000/- to the second respondent on 27.03.2008. The third respondent stood as a guarantor to the said loan. The second defendant executed an equitable mortgage in respect of suit schedule property by deposit of title deeds. Respondent No.2 and respondent No.3 were not regular in repayment of the loan instalments and the said account became a non performing account (for short NPA).

7. It is further contended that applicant issued notice to respondent No.1 and respondent No.2 under Section 13 of Act, 2002. Thereafter, applicant had also issued notice to the respondents under Section 13(4) of the Act, 2002. It is further contended that respondent No.2 and

respondent No.3, in collusion with respondent No.1, and with a *mala fide* intention to cheat the appellant, concocted and created alleged agreement of sale with a prefixing ante date of 07.10.2009. It is further contended that respondent Nos.2 to 6 herein set up the plaintiff - respondent No.1 to file a false suit. Accordingly, OS.No.6402/2009 was filed before City Civil and Sessions' Court, Bengaluru in OS No.6402/2009. It further contends that respondent Nos.2 to 6 though appeared before the court in OS No.6402/2009 did not file written statement and deliberately permitted plaintiff in the said suit (respondent No.1 herein) to get an *ex-parte* decree from the Court.

8. It is further contended by the appellant that initially in OS No.6402/2009 the present appellant was made as a party i.e. respondent No.6 with a specific averment that respondent Nos.2 to 6 herein had obtained loan from the appellant and the same has been mentioned in the pleadings. Thereafter, deliberately and with a *mala fide* intention summons were served on the appellant. They filed a memo praying to dismiss the suit against respondent-appellant herein and said memo was allowed and suit against

appellant was dismissed in OS.No.6402/2009. Thereafter respondent No.1 obtained a decree with contest.

9. The appellant further contends that the trial Court without application of mind, mechanically allowed the memo and dismissed the suit against the appellant in O.S.No.6402/2009. It is further contended that the alleged agreement of sale was fabricated by respondent Nos.2 to 6 in collusion with respondent No.1, with the intention of defrauding the appellant. To obtain an *exparte* decree, the respondents deleted the appellant's name from the array of parties before the trial Court. On the strength of the said *ex parte* decree, respondent No.1 is now claiming title over the property and, by playing fraud upon the Court, has wrongfully obtained possession of the property from the appellant. For these reasons, the appellant prays that the appeal be allowed, the judgment and decree dated 21.01.2011 passed by the learned 17th City Civil and Sessions Judge, Bengaluru, in O.S. No. 6402/2009 be set aside, and the matter be remanded to the trial Court for fresh consideration, permitting the appellant to contest the case on merits.

10. We have heard the arguments of learned advocate for both the parties.

11. Following point emerges for our determination.

i. *Whether appellant was a necessary or proper party to the suit?*

I answer the above point in the affirmative for the following reasons:

12. Appellant has filed list of dates dated 16.09.2025, which reads as under:

SL. NO.	DATE	PARTICULARS
1.	05.07.2006	A sale agreement was entered into between Respondent Nos. 1, 2 and 3 for a total sale consideration of ₹21,50,000/-, out of which a sum of ₹7,70,000/- was paid in cash as advance.
2.	27.03.2008	A loan of Rs. 1,37,00,000/-(Rupees One Crore ThirtySeven Lakh) was sanctioned by the Appellant in favour of Respondent Nos.2 and 3.
3.	06.03.2009	A demand notice under Section 13(2) of the SARFAESI Act was issued to Respondent Nos.1 to 5 by the Appellant.
4.	19.05.2009	The Appellant took symbolic possession of the property by invoking section 13(4) OF the SARFAESI Act.

5.	18.07.2009	An order was passed by the learned X ACMM, Mayo Hall, in CrI. Misc. No.56/2009 under Section 14 of the SARFAESI Act.
6.	30.07.2009	Physical possession of the schedule property was taken by the Appellant, and board was affixed on the same day on the schedule property
7.	24.09.2009	A Sale notice was issued by the Appellant
8.	29.09.2009	A Khata certificate was issued in the name of Respondent No.2.
9.	07.10.2009	An order was passed by the Hon'ble High Court in W.P. Nos.22608 & 22841/2009 filed by Respondent Nos.2 and 3 against the Appellant.
10.	07.10.2009	Respondent No.1 filed O.S. No.6402/2009 seeking reliefs of specific performance and also possession.
11.	08.10.2009	Respondent No.1 filed a memo seeking removal of the Appellant from the Original Suit No. 6402/2009 on the ground that Appellant was not a necessary party.
12.	18.12.2009	One Mr. Lokesh Filed Vakalath for all the Defendants in OS No. 6402/2009
13.	12.01.2010	One more sale notice was issued by the Appellant
14.	19.08.2010	Written Statement of Defendants was taken as nil in OS No.6402/2009
15.	28.08.2010	Advocate for Defendant filed a memo for retirement (including R2 & R3) in OS No. 6402/2009
16.	21.01.2011	Original Suit No. 6402/2009 was decreed.
17.	January-February 2011	The Appellant became aware of the decree passed in O.S. No. 6402/2009 when the Appellant intended to register the sale certificate in favour of the auction purchaser.

18.	16.03.2011	The instant RFA 524/2011 was filed by the Appellant before this Hon'ble Court.
19.	05.04.2011	This Hon'ble Court stayed the operation and execution of the Judgment and Decree dated 21/01/2011 in O.S. No. 6402/2009.
20.	24.08.2023	Instant Appeal was dismissed for non-prosecution.
21.	21.09.2023	Application filed seeking restoration of the appeal. IA No. 2/2023
22.	30.09.2023	Execution petition bearing Ex. No.2559/2023 was filed by the Respondent No.1 before CCH 16 (XVII Addl City Civil and Sessions Judge), Bengaluru.
23.	18.12.2023	Without disclosing the filing of the execution petition, the Respondents appeared before this Hon'ble Court and sought for an adjournment to file objections to the application seeking restoration.
24.	12.01.2024	Application filed seeking restoration of possession and status quo ante from the Respondents. (IA No. 1 of 2024)
25.	06.02.2024	Instant Appeal was restored
26.	23.09.2024	Appellant filed IA seeking production of additional documents under 041 R27. (IA No. 2/2024)
27.	23.09.2024	Appellant filed an application under 022 Rule 10 r/w 06 R17 seeking amendment of (IA No. 3/2024)
28.	05.06.2025	This Hon'ble Court allows the application for amendment and the application seeking production of additional documents would be considered along with the main.

13. Suit O.S.No.6402/2009 appears to have been filed on 07.10.2009, as per the copy of the plaint produced

along with the paper book, in paragraph No.11 of the plaint, it is stated that:

"Upon inquiry in the office of the 6th defendant, the plaintiff came to know that the 1st defendant had already obtained a loan and that efforts were underway to transfer the said property in their favour. It is further averred that the defendants were on the verge of alienating the said property to certain third parties through local real estate brokers...." Based on these averments, the plaintiff sought a decree of permanent injunction restraining the defendants, their agents, servants, and others from alienating, selling, mortgaging, or in any manner dealing with the suit property. As rightly pointed out by the learned counsel for the appellant, the plaintiff had impleaded the 6th defendant as one of the parties to the suit, i.e., as defendant No. 6.

14. The appellant has produced certain documents along with the application. Respondent No.1 has filed objections to the said application, particularly regarding the admissibility of those documents. In view of these contentions, let us examine whether the documents are *prima facie* acceptable. One of the documents produced is

the order sheet in O.S. No. 6402/2009. As per the order dated 08.10.2009, the plaintiff filed a memo stating that the suit against defendant No.6 may be dismissed, as he was not a necessary party to the proceedings. The said memo was allowed, and accordingly, the suit against defendant No.6 was dismissed as not pressed. This fact indicates that there were certain financial transactions between the appellant and respondent Nos.2 to 6 in respect of the suit schedule property. Therefore, defendant No.6 was initially impleaded as a party, but his name was subsequently deleted.

15. It is the contention of the appellant that when defendant Nos.2 to 6 failed to repay the loan amount as agreed, he filed CrI.Misc.Case No.56/2009 under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Act (for short 'SARFAESI Act') and obtained an order from the Court dated 18.07.2009. According to the appellant, physical possession of the suit schedule property was taken, and a notice board was installed on the said property on 30.07.2009. In document No.4 of the list, two photographs have been produced, which correspond to the sequence of events mentioned at Sl.No.6 above.

16. The appellant has produced certain documents along with I.A.No.2/2024. Subject to the admissibility and proof of these documents, let us cursorily examine whether they establish a *prima facie* case in favour of the appellant. Among the documents produced, document Nos.1 to 3 pertain to the loan transaction — including the loan application, sanction letter, and the creation of an equitable mortgage by deposit of title deeds. It is true that these documents are not properly dated. Respondent Nos.2 to 6 are stated to have executed them; however, they have neither filed any objections nor denied the execution of these documents. Of course, unless these documents are duly proved in accordance with law, the rights of the parties cannot be conclusively determined. Nevertheless, they *prima facie* indicate that there was a loan transaction between the appellant and respondent Nos.2 and 3.

17. The appellant had issued a notice dated 06.03.2009 to respondent Nos.2 and 3, calling upon them to pay the outstanding loan amount. The postal receipt evidencing dispatch of the said notice by post is also placed on record. Another notice dated 15.05.2009, issued by the appellant to respondent Nos.2 and 3, is likewise placed on

record. This notice indicates that a loan amount of Rs.1,11,60,771/- had been sanctioned and disbursed as of the said date, and the respondents were called upon to repay the same. It was also intimated to respondent Nos.2 and 3 that, in the event of default, possession of the mortgaged property would be taken by the appellant bank. The notices were sent to respondent Nos.2 and 3 by registered post, and the corresponding postal receipts have been produced. A public notice regarding the same was published in the Business Standard dated 26.05.2009, and copies of the said publication are also placed on record. However, the document produced is not fully legible or clearly readable.

18. The order passed in Crl.Misc.Case No.56/2009 by the Court of the 10th Additional Chief Metropolitan Magistrate, Bengaluru, has been produced. By order dated 18.07.2009, acting under Section 14 of the SARFAESI Act, 2002, the learned Magistrate permitted the appellant to take possession of the property within 30 days from the date of the order and directed that a compliance report be filed on or before the next date of hearing, i.e., 19.09.2009. A possession notice was also issued to respondent Nos.2 and 3. The actions initiated by the appellant in respect of the

property were duly intimated to respondent Nos.2 and 3, and copies of the relevant paper publications and other supporting documents have been placed on record.

19. The appellant has also produced copies of the orders passed by this Court in W.P.No.22608/2009 and W.P. No.22841/2009, dated 07.10.2009. The said orders reveal that the fact of respondents Nos.2 and 3 having obtained a loan from the appellant was not disputed, nor was the default in repayment of the said loan. Respondent Nos.2 and 3 had challenged the notice issued by the appellant under Section 13 of the Act, 2002. After hearing both parties, the learned Single Judge of this Court granted liberty to the petitioners (respondent Nos.2 and 3 herein) to submit a reply to the notice issued by the appellant. With that liberty, the writ petitions were disposed of.

20. The order sheet in I.R.Diary No.2585/2010 on the file of the Debt Recovery Tribunal, Bengaluru, dated 05.10.2010, filed by respondent Nos.2 and 3 has been produced by the appellant. By order dated 05.10.2010, the DRT dismissed the application filed under Section 5 of the Limitation Act seeking condonation of delay, as well as the

main petition. The said order also indicates that respondent Nos.2 and 3 did not dispute the fact of having obtained a loan of approximately Rs.1,11,00,000/- during the year 2009.

21. It is noteworthy that on 07.10.2009, the writ petitions filed by respondent Nos. 2 and 3, referred to *supra* in W.P. Nos. 22608/2009 and 22841/2009, were disposed of. On the very same day, the suit in O.S.No.6402/2009 was filed before the Court of the 17th Additional City Civil and Sessions Judge, Bengaluru.

22. The appellant contends that after respondent Nos. 2 and 3 lost their cases before this Court as well as before the Debt Recovery Tribunal, they, in collusion with the plaintiff/respondent No.1 herein, created an alleged agreement of sale, which was anti-dated to appear as if it had been executed long prior to the obtaining of the loan and the execution of documents pertaining to the deposit of title deeds and mortgage of the property for securing a loan of ₹1,37,00,000/-. Having regard to the facts of the present case and the documents placed on record by the appellant, such a possibility cannot be ruled out. According to the

appellant, O.S. No. 6402/2009 was decreed by judgment and decree dated 21.01.2011. The appellant came to know of the said decree only when it intended to register the sale certificate in favour of the auction purchaser during January/February 2011. Thereafter, the appellant filed the present appeal in R.F.A.No.524/2011 on 16.03.2011. It is further contended that due to miscommunication between the appellant and its counsel, the appeal was not properly prosecuted and was consequently dismissed for default on 24.08.2023. Taking undue advantage of this situation, respondent No. 1 filed Execution Case No. 2559/2023 before the 17th Additional City Civil and Sessions Court, Bengaluru (CCH-16) on 30.09.2023, without disclosing the true facts. It is further contended by the learned counsel for the appellant that in Execution Case No.2546/2023, respondent No.1 has cleverly included the appellant as Judgment Debtor No.6, even though the appellant was not a defendant in the original suit, O.S.No.6402/2009. By playing fraud and misrepresenting facts before the Court, respondent No.1 obtained possession of the property that had earlier been taken by the appellant through due process of law. The downloaded copy of the District Court proceedings shows

that the appellant has been mentioned as Judgment Debtor No.6. It is an admitted fact that in O.S. No. 6402/2009, respondent No.1 had filed a memo deleting the name of the appellant from the array of parties. However, while filing the execution case, the appellant's name was again included as a judgment debtor, enabling respondent No.1 to obtain possession of the property. Consequently, the subject property, which had been offered as security for the loan of ₹1,37,00,000/- taken by defendant Nos. 2 and 3, came to be taken over by the plaintiff/respondent No. 1 by virtue of the decree passed in O.S.No.6402/2009.

23. The appellant could neither recover the loan amount borrowed by respondent Nos. 2 and 3 nor enforce its rights over the mortgaged property , the subject matter of the present suit, in view of the possession having been taken over by respondent No. 1. The appellant had earlier taken possession of the said property through due process of law under the provisions of the SARFAESI Act. However, as stated above, it appears that respondent No. 1, without disclosing to the Court that Judgment Debtor No. 6 was not a party before the trial Court and that the decree was not

binding on him, obtained possession of the property through the Court.

24. There are allegations and counter-allegations regarding the documents executed by both parties. Admittedly, both the agreement of sale and the mortgage created by deposit of title deeds are unregistered documents. The appellant alleges that respondent Nos. 2 and 3, in collusion with respondent No. 1, fabricated the alleged agreement of sale. It is further contended that although the property was worth crore of rupees but it was purportedly agreed to be sold for a meagre consideration of Rs.21,50,000/-. The said suit was filed against respondent Nos.2 to 6, and although those parties initially appeared before the trial Court, they did not contest the proceedings, thereby allowing respondent No. 1 to obtain an ex parte decree. The appellant further contends that, in order to defeat its lawful rights having advanced a loan exceeding Rs.1,37,00,000/- including interest respondent Nos. 1 to 3 colluded with each other, created false documents, and filed a fraudulent suit to secure a decree and take possession of the mortgaged property. It is therefore submitted that if the appellant is given an opportunity, it can establish before the

trial Court that respondent Nos. 1 to 3 created the said documents and obtained the decree solely to defeat the appellant's legitimate rights and to wrongfully repossess the property that had been offered as security for the loan.

25. The learned counsel for respondent No. 1 contends that the documents alleged to have been executed by respondent Nos. 2 and 3 at the time of the purported loan are not reliable. They do not bear any signatures or seals, the property particulars are not mentioned, and, on scrutiny, the documents appear highly doubtful. It is further submitted that the bank, being a financial institution, did not exercise due diligence while granting a loan exceeding ₹1,11,00,000/. In particular, no valuation of the property was obtained at the time of granting the loan by way of mortgage. These facts, according to respondent No. 1, indicate that the documents were created by the appellant in collusion with respondent Nos. 2 and 3, solely to defeat the rights of the plaintiff/respondent No. 1. Therefore, the learned counsel prays that the appeal be dismissed.

26. There are allegations and counter-allegations, which can only be properly adjudicated during a full-fledged

trial. Admittedly, in OS No. 6402/2009, although the respondents appeared, they did not prosecute the case, did not file a written statement, and did not cross-examine the plaintiff, resulting in the suit being decreed without any resistance. Although the plaint contained averments against respondent No. 6 regarding the loan on the suit property and allegations of an attempt to alienate the property, respondent No. 1 initially included the appellant as a party. However, the appellant's name was subsequently deleted from the array of parties on the ground that he was not a necessary party, and respondent No. 1 obtained the decree. The said decree was later challenged before this Court. During the period between the dismissal of the appeal for default and its restoration, respondent No. 1 took possession of the property by executing the decree passed in OS No. 6402/2009. Considering all these facts and circumstances, the appellant was a necessary and proper party to the suit. Granting a decree in favor of respondent No. 1 in respect of a secured property mortgaged by respondent Nos. 2 and 3 in favor of the appellant results in manifest injustice to the appellant. To adjudicate this matter fairly, it is both just and necessary to provide the appellant an opportunity to

prosecute the case. Admittedly, the appellant was not a party to the suit during the trial and therefore had no opportunity to file a written statement, present its contentions, or lead evidence. Under these circumstances, the judgment and decree passed in OS No. 6402/2009 should be set aside, and the matter remanded to the trial Court with liberty for the appellant to be impleaded as a party. The trial Court shall provide the appellant a proper opportunity to file its written statement and thereafter decide the matter in accordance with law.

27. Both the parties to this appeal have relied on the following judgments:

Citations relied by learned counsel for the appellant are as follows:

- i. Baluram vs. P.Chellathangam and others*¹
- ii. Sumtibal and others vs Paras Finance Co,*²
- iii. Mumbai International Airport Pvt Ltd vs Regency Convention Centre Hotel Pvt Ltd and others*³

Citations relied by learned counsel for respondent Nos.1 to 4 and 6 are as follows:

- i. Nazeer Ahamad vs. State of Mysore and others*⁴

¹ (2015) 13 SCC 579

² (2007) 10 SCC 82

³ (2010) 7 SCC 417

- ii. *Management of Sundaram Industries Ltd., vs. Sundaram Industries Employees Union*⁵
- iii. *Gurpreet Singh (Minor) vs. Chatterbhuj Goel*⁶
- iv. *Ram Chandra Arya vs. Man Singh & Another*⁷
- v. *Order 32 Rule 3(4), (4-A) & 4(3) of CPC*
- vi. *Order 41 Rule 22 of CPC (First Part).*
- vii. *The Sangli Bank Ltd., vs. Chandrashekar Channabasappa Karchi and Others*⁸
- viii. *Yashchandra (D) By Lrs. v. State of Madhya Pradesh and Ors*⁹
- viii. *RFA NO.1434/2017 Order dated 21.02.2019*
- IX. *V.N.Krishna Murthy and Anr. V. Ravikumar and Ors.*¹⁰

28. Whether a party is a necessary party to a suit depends upon the facts and circumstances of each case. There is no rigid formula to determine whether a particular party is necessary; it must be decided based on the facts and circumstances of the case at hand. Both this Court and the Hon'ble Apex Court have held that a party should be added as a necessary or proper party depending on the context of the suit. The principles laid down in these judgments have been kept in mind while deciding this appeal. The appellant has filed applications seeking

⁴ (2007) 11 SCC 75 at page 80

⁵ (2014) 2 SCC 600, at page 606 para 18 & 19

⁶ 1991 SCC ONLINE P&H 574=AIR 1992 P&H 95

⁷ 1967 SCC Online SC 339 = AIR 1968 SC 954

⁸ ILR 2005 KAR 5142

⁹ AIR 2017 SC 4572

¹⁰ AIR 2020 SC 4038

permission to produce documents and additional evidence before the trial Court. Since the appellant had no opportunity to file pleadings or produce documents during the original trial, the appellant shall be at liberty to produce the said documents before the trial Court. The appellant may also be permitted to withdraw and resubmit the documents during the course of the trial, as necessary.

29. The learned counsel for respondent Nos.2 to 6 contends that, among the respondents, two were minors before the trial Court and their guardians were not appointed. Merely because the respondents did not file a written statement, it cannot be a ground to decree the suit. Proper opportunities were allegedly not provided to them to prosecute the case effectively. Therefore, it was prayed that the appeal be allowed and the judgment of the trial Court be set aside, and that the appeal itself be dismissed.

30. The contention of respondent Nos. 2 to 6 is not tenable. Although respondent Nos. 2 to 6 appeared before the trial Court, they did not file any objections. They have not disputed that respondent Nos. 2 and 3, being the parents of the minors, stood as sureties in the case. They

accepted to stand as sureties and actively participated in the proceedings, yet they did not file a written statement. Under these circumstances, they cannot now raise objections or contend before this Court that the decree passed by the trial Court is not in accordance with law. Accordingly, their contention that the decree should be set aside is untenable. Similarly, the appellant has no locus standi to file this appeal, and it is liable to be dismissed.

31. For the aforesaid discussions, appellant was a proper and necessary party before the trial Court and passing of the judgment in the absence of appellant and filing the suit by not including this appellant as a party is fatal to the suit. Therefore, for the above said reasons point No.1 is answered in the affirmative. Point No.2 for the reasons stated above, I proceed to pass following:

ORDER

- i. Appeal is ***allowed***.
- ii. The Judgment and decree dated 21.01.2011 passed by the XVII City Civil and Sessions Judge, Bengaluru in O.S.No.6402/2009 is set aside.

- iii. The matter is remanded to the trial Court with a direction to respondent No.1/plaintiff to implead appellant as a party to the suit. The trial Court shall give sufficient opportunity to the appellant to file its written statement. Thereafter, both the parties will be given liberty to lead their respective evidence and dispose of the suit in accordance with the law.
- iv. The suit is of the year 2009, therefore both the parties to the suit shall assist the Court to dispose of the matter expeditiously.
- v. To avoid further delay in serving of the notice, both the parties are directed to appear before the trial Court on **18.12.2025.**

Liberty is given to the appellant to produce the documents which are produced before this Court under Order 41 Rule 27 of CPC, before the trial Court.

All the pending application stands disposed off.

Registry is directed to send back the trial Court record along with a copy of this judgment.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(UMESH M ADIGA)
JUDGE**

AG