



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE UMESH M ADIGA

REGULAR SECOND APPEAL NO. 2091 OF 2008 (SP)

BETWEEN:

VENKATAPPA @ KADUPAPPA,
AGED ABOUT 72 YEARS,
S/O LATE GELLAPALYADA VENKATAPPA,
R/O. KAMAREDDAHALLI,
GOWRIBIDANUR TALUK- 561 208.
CHICKABALLAPUR DISTRICT.
SINCE DEAD BY LRS

- 1(A) SMT. VENKATAMMA,
AGED ABOUT 43 YEARS,
D/O VENKATAPPA @KUDUPAPPA
- 1(B) ASHWATHAMMA,
AGED ABOUT 43 YEARS,
D/O VENKATAPPA @ KUDUPAPPA
- 1(C) NARAYANAPPA,
AGED ABOUT 40 YEARS,
S/O VENKATAPPA @ KUDUPAPPA
- 1(D) NAGARAJAPPA,
AGED ABOUT 38 YEARS,
S/O VENKATAPPA @ KUDUPAPPA
- 1(E) LAKSHMAMMA,
AGED BOUT 36 YEARS,
D/O VENKATAPPA @ KUDUPAPPA
- 1(F) LAKSHMINARAYANA,
AGED ABOUT 34 YEARS,
S/O VENKATAPPA @ KUDUPAPPA

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by ANNAPURNA
G



Location: HIGH
COURT OF
KARNATAKA



ALL ARE RESIDENTS OF
KAMREDDAHALLI,
MANCHENAHALLI HOBLI,
GOWRIBIDANUR TALUK,
CHIKKABALLAPUR DISTRICT.

...APPELLANTS

(BY SRI. P.V. CHANDRASHEKAR, ADVOCATE FOR
SRI. C.M.NAGABUSHANA, ADVOCATE)

AND:

1 . CHIKKA NARASIMHAPPA
DEAD BY HIS LR'S.

1(A) SMT. RATHNAMMA
AGED 55 YEARS
W/O LATE CHIKKA NARASIMHAPPA

1(B) MUNIRAJU K.C
AGED 28 YEARS
S/O LATE CHIKKA NARASIMHAPPA

1(C) SMT. LALITHAMMA
AGED 34 YEARS
W/O NARASIMHAMURTHY
D/O LATE CHIKKA NARASIMHAPPA

R/AT KAMAGANAHALLI,
GOWDAGERE POST,
GOWRIBIDANUR TALUK
CHIKKABALLAPUR- 561 208.

2 . NARASAPPA,
AGED ABOUT 52 YEARS,
S/O LATE PAPANNA

BOTH RESIDENTS OF
KAMAREDDAHALLI
GOWRIBIDANUR TALUK
CHICKABALLAPUR DISTRICT - 561 208.

...RESPONDENTS

(BY SMT. VYNIKA CHIKKANGOUDAR, ADVOCATE FOR
R1(A TO C),
SRI. L.S. CHIKKANA GOUDAR, ADVOCATE FOR R2)



THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGEMENT AND DECREE DATED 16.06.2008 PASSED IN RA.NO.141/2003 ON THE FILE OF THE DISTRICT AND SESSIONS JUDGE, CHICKBALLAPUR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DATED 01.07.2003 PASSED IN OS.NO.449/1996 ON THE FILE OF THE PRL.CIVIL JUDGE (JR.DN.) AND JMFC, GOWRIBIDANUR.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 02.12.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE UMESH M ADIGA

CAV JUDGMENT

The plaintiff has preferred this second appeal under Section 100 of Code of Civil Procedure challenging the judgment and decree dated 16.06.2008 passed by the District Judge (C/c of Fast track Court), at Chickballapur (for short 'First appellate Court') in R.A.No.141/2003.

2. The brief facts of the case of the plaintiff/appellant are that defendant No.1 was the absolute owner of the suit property and he intended to sell the same and he executed an agreement of



sale in favour of the plaintiff dated 16.05.1996, agreeing to sell the suit property for Rs.35,250/- and received an amount of Rs.20,000/- as earnest money and had executed written agreement in this regard. It was agreed between the parties that whenever plaintiff calls upon the defendant, he shall execute registered sale deed by receiving balance amount of sale consideration. It is further averred in the plaint that plaintiff time and again requested the defendant No.1 to execute Registered Sale Deed, after receiving balance amount of sale consideration. But defendant No.1 went on postponing to execute the registered sale deed on one or the other pretext. Hence, the plaintiff was constrained to file the suit. With these reasons, plaintiff prayed to grant the decree of the relief of specific performance of the contract/agreement dated 16.05.1996.

3. The defendant No.1 denied the plaint averments and he denied execution of alleged



agreement of sale deed dated 16.05.1996 and receipt of Rs.20,000/- as earnest money. He also denied that plaintiff requested him to execute the sale deed by receiving balance of sale consideration. According to contention of defendant No.1, he sold the suit property in favour of defendant No.2 as per the agreement of sale dated 30.03.1996 executed by him in favour of defendant No.2 and delivered possession of the property in favour of defendant No.2. Therefore, defendant No.1 was not at all the owner of the property as on the date of filing of the suit. With these reasons prayed to dismiss the suit.

4. From the rival contentions of the parties, the trial Court framed the following issues:-

- "i. Whether the plaintiff proves that the defendant had executed agreement of sale in respect of schedule property and received advance of Rs.20,000/- in total consideration of Rs.32,250/-?*
- ii. Whether the plaintiff proves that the was ready and willing to perform his part of the contract?*



- iii. Whether the 2nd defendant proves that he is a bonafide purchaser?*
- iv. Whether the plaintiff is entitled for the relief sought in the suit?*
- v. What order or decree?"*

5. The trial Court recorded the evidence of both the sides. Plaintiff examined 4 witnesses as PW-1 to PW-4 and marked Exs-P1 to P4. Defendant No.1 examined 6 witnesses as DW-1 to DW-6 and marked 3 documents as per Exs-D1 to D3.

6. The trial Court after hearing the arguments and appreciating the pleading and evidence on record, answered issue Nos.1 to 3 in the affirmative, issue Nos.4 and 5 partly in the affirmative, and partly decreed the suit. The trial Court rejected the relief of specific performance of agreement dated 16.05.1996 and the trial Court granted the relief of refund of earnest money with interest at the rate of 6% per annum from the date of execution of the agreement



of sale, till its realisation, by the impugned judgment and decree dated 01.07.2003.

7. Plaintiff being aggrieved by the said judgment and decree passed by the trial Court in O.S.No.449/1996 dated 01.07.2003 preferred R.A.No.141/2003 before the District Judge Court at Chickaballapura. The first Appellate Court heard the arguments of both the parties and while passing the judgment dated 16.06.2008 framed following points for consideration:

- "i. Whether the finding of the trial Court that defendant No.1 has executed Ex.P1 in favour of plaintiff and received Rs.20,000/- by way of advance, is not proper?*
- ii. Whether the finding of the trial Court that plaintiff was ready and willing to perform his part of contract is not proper?*
- iii. Whether the trial Court erred in not granting the relief of specific performance?*
- iv. What order?"*

8. The first Appellate Court on re-appreciating the materials available on record answered point



Nos.1 and 3 in the negative and point No.2 in the affirmative and by the impugned judgment and decree dated 16.06.2008 dismissed the appeal and confirmed judgment and decree passed by the trial Court in O.S. No.449/1996. The same is challenged in the present appeal.

9. This Court, vide order dated 19.12.2008, admitted the appeal to consider following substantial question of law:

"Whether the Courts below were justified in rejecting the suit of the plaintiff for specific performance of contract despite recording findings in favour of the plaintiff on issue Nos.1 and 2?"

10. I have heard the arguments of learned advocates for both the sides.

11. The trial Court held that plaintiff had proved that defendant No.1 had executed an



agreement of sale in favour of plaintiff, agreeing to sell the suit property for Rs.35,250/- and received earnest money of Rs.20,000/-. The trial Court also held that plaintiff was always ready and willing to perform his part of the contract. The trial Court considered the hardship which would be caused to the defendant No.1 if the relief of specific performance is granted, therefore rejected the said relief of specific performance of agreement and ordered to refund earnest money to the plaintiff with interest at the rate of 6% per annum from the date of suit till its realisation.

12. The first Appellate Court, concurred with the judgment and decree passed in O.S.No.449/1996, but the first Appellate Court reversed the finding of the trial Court in respect of readiness and willingness of plaintiff to perform his part of the contract. The first Appellate Court also considered the hardship that would be caused to the defendant No.1



and dismissed the appeal and confirmed the judgment and decree passed by the trial Court. It directed refund of earnest money with interest.

13. Defendant Nos.1 and 2 have not challenged the judgment and decree passed by the trial court or first Appellate Court. Therefore, there is no need to reconsider the said findings on issue No.1 passed by the trial Court.

14. The trial Court framed issue No.2 pertaining to readiness and willingness of the plaintiff to perform his part of the contract. The trial Court on appreciation of the materials available on record answered the said issue in the affirmative. The defendant No.1 did not challenge the said findings. In spite of that, the first Appellate Court framed a point regarding the readiness and willingness of plaintiff to perform his part of the contract. The first Appellate Court answered the said point in the Negative. When



the said point was not disputed by the defendant No.1, framing of the said point is erroneous and without jurisdiction.

15. The first Appellate Court has not noted the points of argument advanced by defendant Nos.1 and 2 before it. In the impugned judgment, the first Appellate Court observed that even without filing of an appeal or cross-objection, the respondent had right to challenge the findings of the trial Court under Order XLI Rule 22 of CPC. The observation made by the first Appellate Court is not in accordance with the law. The answer given by the trial Court on the issue of readiness and willingness is a finding of a fact on an issue. The said issue is a material issue in a suit for the relief of specific performance of contract. If it were to be challenged, then the defendant ought to have filed a cross-appeal.



16. The learned advocate for respondent/defendant contended that the respondent can challenge the findings of the trial Court in an appeal filed by the plaintiff, as provided under order XLI Rule 22 of CPC, without filing an appeal. Order XLI Rule 22 of CPC provides such an opportunity to the respondents. Hence, findings of the first Appellate Court are not erroneous. Hence, prayed to reject the contentions of the appellants.

17. Order XLI Rule 22 CPC reads as under:

22. Upon hearing respondent may object to decree as if he had preferred a separate appeal.

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

(2) Form of objection and provisions applicable thereto- *Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.*



(3) xxx

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions-relating to appeal by indigent persons shall, so far as they can be made applicable apply to an objection under this rule.

18. Undisputedly, defendant No.1 did not file any appeal or cross-objection. It is also not the argument that he filed an objection to the appeal memo. Respondent would get an opportunity to argue the appeal only if notice of appeal is issued to him. If appeal is dismissed by the appellate Court under Order XLI Rule 11 of CPC or under Order XLI Rule 17 of CPC, then the respondents would not get any such opportunity to argue the case. Therefore, if appeal is admitted to be considered then only respondent has an opportunity to urge that the findings of the trial Court was erroneous. Order XLI Rule 22 has to be read along with other provisions of Order XLI. Hence,



contentions of the respondent that without filing any cross appeal, respondent can challenge the findings of the trial Court on any issue is not tenable.

19. In the case of ***Shingara Singh vs Daljit Singh and another***¹ Civil Appeal No.5919/2023. The Hon'ble Apex Court relying on its earlier judgment in the case of ***Banarsi vs Ramphal***², held that unless the respondent files a cross-objection or an appeal challenging the findings of a trial Court, the Appellate Court cannot reverse the said findings. The principle of law laid down in the above said judgment is applicable to facts of the present case.

20. In view of the aforesaid reasons, reversing of the findings by the first Appellate Court on the point of issue of readiness and willingness of the plaintiff to perform his part of the contract is erroneous.

¹ 2024 INSC 770

² (2003) 9 SCC 606



21. The plaintiff in the pleading as well as in his evidence, has stated that he was always ready and willing to perform his part of the contract. He repeatedly requested defendant No.1 to execute the sale deed by receiving balance amount of sale consideration and defendant No.1 went on postponing to execute the registered sale deed after receiving the balance amount of sale consideration. Therefore, he was forced to file a suit.

22. Defendant No.1 executed agreement of sale on 16.05.1996, within a short period of 6 months, plaintiff has filed suit on 16.12.1996 on the ground that defendant No.1 did not come forward to execute and register the sale deed by receiving of balance of sale consideration. It is not the case of defendant No.1 that plaintiff had no money therefore he was unable to pay balance of amount of sale consideration and hence he did not execute the said



deed. The defence of the defendant No.1 is total denial of the case of plaintiff. In the cross-examination of PW-1 nothing was brought out to believe that the plaintiff had no money to pay the balance amount of sale consideration, therefore he did not come forward to pay the same and get executed the registered sale deed. Therefore, nothing was brought out to discard the pleading and evidence of plaintiff regarding his readiness and willingness to perform his part of the contract.

23. The first Appellate Court considered cross-examination of PW-1 wherein he has stated that "he was a coolie and he had 10 members in his family and he had to look after them and that his earnings were sufficient to meet the regular expenses". On the basis of the said evidence of PW-1, the first Appellate Court held that plaintiff had no sufficient source of income to pay balance amount of sale consideration. The trial Court as well as the First Appellate Court



accepted that plaintiff had paid an amount of Rs.20,000/- towards earnest money. If the plaintiff was able to save Rs.20,000/- from his coolie income, then there was no reason to disbelieve the case of the plaintiff, only on the ground that he was a coolie and there were several members in his family, who were dependent upon his earnings. Therefore, logically, the reasons assigned by the first Appellate Court to hold that the plaintiff was not ready and willing to perform his part of the contract is not tenable.

24. It is true that prior to filing of the suit, no notice was issued by plaintiff to the defendant No.1 calling upon him to execute the registered sale deed. It is not mandatory that a prior notice shall be issued for filing of a suit for specific performance of contract. From the materials it appears defendant No.1 was trying to alienate the property in favour of defendant No.2, therefore, the plaintiff was constrained to file the suit seeking the relief of temporary injunction to



protect the property from alienation by the defendant No.1. In these circumstances, he was unable to issue notice prior to filing of the suit. Only on that ground, it cannot be held that he was not ready and willing to perform his part of the contract. Therefore, on merits also findings of the First Appellate Court in this regard is erroneous and requires interference.

25. The trial Court, as well as the First Appellate Court, refused to grant the relief of specific performance of the contract on the ground that if such relief is granted, it would cause hardship to defendant Nos.1 and 2. Undisputedly, plaintiff had obtained an order of temporary injunction against defendant No.1, restraining him from alienating the suit property pending disposal of the suit. It is also not in dispute that in violation of the said orders passed by the Court of competent jurisdiction, defendant No.1 executed a registered sale deed in favour of defendant No.2 in respect of the suit



schedule property. The rule of *lis pendens* is applicable to the said sale transaction. In the case of **Singhar Singh**, (referred supra), the Apex Court, quoted the observation of its previous judgment in the case of **Usha Sinha vs. Dina Ram**³, which reads as under:

"18. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of 'lis pendens' prohibits a party from dealing with the property which is the subject matter of suit. 'Lis pendens' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI.

23. So far as the present case is concerned, the facts are no more in dispute. As already noted earlier, Title Suit No.140 of 1999 was instituted by the respondent-plaintiff on April 10, 1999. Thus,

³ (2008) 7 SCC 144,



the litigation was pending in respect of the property and the matter was sub-judice. The appellant thereafter purchased the property from original defendant Nos. 4 and 5 by a registered sale deed on February 15, 2000 i.e. during the pendency of the suit. It is also not in dispute that ex-parte decree came to be passed against the defendants on May 24, 2001. In the situation, in our considered opinion, the doctrine of lis pendens would apply to the transaction in question, and the High Court was wholly right in holding that the case was covered by Rule 102 of Order XXI of the Code. The appellant could not seek protection of pendency of suit instituted by her. The Executing Court was not justified in granting stay of execution proceedings. The High Court was, hence, right in setting aside the order of the Executing Court".

26. The Hon'ble Apex Court in the case of **Singhar Singh** (supra) also referred to the case of **Sanjy Varma vs Manik Roy**⁴ and quoted the observation made in the said judgment, which reads as under :

⁴ (2006) 13 SCC 608



"12. The principles specified in Section 52 of the TP Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the TP Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court."

27. The Hon'ble Apex Court in the ***Singhar Singh*** (*supra*) also referred its previous judgment in the case of ***Chander Bhan (Dead) Through Lr Sher Singh vs. Mukhtiar Singh and Others***⁵ to consider the principle of *lis-pendens*.

28. Therefore, the sale of subject matter by the defendant Nos.1 to defendant No.2 during the pendency of this suit is hit by principle of *lis-pendens*. The trial Court as well as the first Appellate Court

⁵ (2004) INSC 377



have not considered the fact that defendant No.1 has disregarded the restraint orders passed by the trial Court. The said sale is hit by principle of *lis-pendens*. Therefore, the question of bonafide purchaser of property by defendant No.2 does not arise. Hence, findings of the trial Court that if the suit of the plaintiff is decreed then defendant Nos.1 and 2 would suffer irreparable loss and injury and on that account denied the relief of specific performance of the agreement in favour of the appellant/plaintiff is erroneous.

29. The plaintiff would suffer hardship if relief of specific performance is rejected. Plaintiff had paid more than 50% of sale consideration to defendant No.1. Defendant No.1 has been enjoying the said amount. He sold the property by violating the Court order, forcing the plaintiff to fight this litigation for the last 20 years. Hence, findings of both the Courts



below denying the relief of specific performance are erroneous.

30. For the aforesaid discussions, the substantial question of law framed above is answered in favour of appellant and this Court proceed to pass following:

ORDER

- i. Appeal is ***allowed*** with costs throughout.
- ii. The Judgment and decree passed by the court below in O.S.No.449/1996 dated 01.07.2003 and R.A.No.141/2003 dated 16.06.2008 awarding the alternative relief of refund of earnest money with interest at the rate of 6% per annum is set aside.
- iii. Suit of the plaintiff in O.S.No.449/1996 is decreed. Defendant Nos.1 and 2 shall execute a Registered Sale Deed in



favour of plaintiff in respect of the suit property by receiving balance of sale consideration within a period of 3 months from the date of the decree.

- iv. Plaintiff/appellant is directed to deposit Rs.15,250/- within a period of 4 weeks from the date of decree passed in this case before the trial Court, with an intimation of the said deposit to the defendant Nos.1 & 2.
- v. In the event defendants fail to execute the said deed, then the plaintiff/appellant is at liberty to approach the court and get executed the Registered Sale Deed through process of the Court in accordance with the law.
- vi. The defendants are also directed to hand over the actual and physical possession of the suit property to the plaintiff.



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Registry is directed to send back the trial Court records along with the copy of a judgment to the Courts below.

Sd/-
(UMESH M ADIGA)
JUDGE

AG
List No.: 1 Sl No.: 29