



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE UMESH M ADIGA

REGULAR SECOND APPEAL NO. 1105 OF 2010 (SP)

BETWEEN:

NAGARAJU (DEAD) BY LR'S

1(A) SMT.MAHADEVAMMA
W/O LATE NAGARAJU
AGED ABOUT 64 YEARS

1(B) SRI.SHIVAMURTHY
S/O LATE NAGARAJU
AGED ABOUT 39 YEARS

1(C) SRI.BASAVARAJU
S/O LATE NAGARAJU
AGED ABOUT 36 YEARS

1(D) MANGALAMMA
D/O LATE NAGARAJU
AGED ABOUT 34 YEARS

ALL ARE R/AT MADAPURA VILLAGE
HAMPAPURA HOBLI
H.D. KOTE TALUK,
MYSURU DISTRICT- 570 001.

...APPELLANTS

(BY SRI. MANJUNATH PRASAD V.,ADVOCATE FOR A1(A TO D))

Digitally signed
by ANNAPURNA
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Location: HIGH
COURT OF
KARNATAKA





AND:

SIDDAMALLAPPA
S/O LATE SIDDAPPA,
AGED ABOUT 60 YEARS
R/AT MADAPURA VILLAGE
HAMPAPURA HOBLI,
H D KOTE TALUK
MYSURU DISTRICT- 570 001.

...RESPONDENT

(BY SRI. M.C. VEERABHADRAIAH, ADVOCATE)

THIS RSA IS FILED U/S 100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 9.12.2009 PASSED IN R.A.NO.17/2009 (OLD NO.152/1997) ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT, HUNSUR, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 12.9.1994 PASSED IN O.S.218/1989 ON THE FILE OF THE MUNSIFF & JMFC., H.D.KOTE.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE UMESH M ADIGA

ORAL JUDGMENT

The plaintiff has preferred this second appeal under Section 100 of Code of Civil Procedure challenging the judgment and decree dated 09.12.2009 passed by the Presiding Officer, Fast Track Court, Hunsur in R.A.No.17/2009, (for short 'First Appellate Court') which was filed against the judgment and decree dated 12.09.1994 passed by the learned



Munsiff and JMFC, H.D. Kote in O.S.No.218/1989 (for short 'the trial Court')

2. The plaintiff has filed the suit for the relief of specific performance of the agreement. The trial Court after recording the evidence and appreciation of the materials on record, by its impugned judgment and decree dated 12.09.1994, decreed the suit. The First Appellate Court by the impugned judgment and decree reversed the said judgment on the main ground that suit was barred by limitation. The same is challenged before this court.

3. The brief facts of the case are that defendant was absolute owner of the suit property. He entered into an agreement of sale with the plaintiff dated 30.09.1981, agreeing to sell the suit property for a sale consideration of Rs.750/- and on the date of agreement of sale he received entire sale consideration of Rs.750/- and handed over the possession of the property in favour of the plaintiff. The suit property was a fragment of land. Therefore, it was agreed that defendant would get order of alienation and there after would execute, the sale deed in the name of the plaintiff. Plaintiff further



contended that plaintiff was/is always ready and willing to perform his part of the contract and he orally requested the defendant to execute the sale deed. The defendant on one or the other reasons went on postponing the execution of the registered sale deed. Therefore, he filed a suit for the relief of specific performance of the contract.

4. Defendant in his written statement denied the plaint averments. He denied the execution of the agreement of sale and receipt of the sale consideration on the date of agreement of sale and delivery of the possession of the property. According to contention of the defendant, the plaintiff was a tenant of the suit property, paying a monthly rent of Rs.90/-. The plaintiff allegedly obtained the defendant's signature on blank documents and created the alleged agreement of sale. With these reasons, prayed to dismiss the suit.

5. The trial Court framed the following issues:

- "i. Whether the suit is not properly valued and the court fee paid is not sufficient?*
- ii. Whether the plaintiff proves that the defendant has entered into an agreement of sale dated 30.09.1981?*



- iii. If so, whether the plaintiff proves that he was/is always ready and willing to perform his part of the contract?*
- iv. Whether the defendant proves that the plaintiff was a tenant under him in the suit schedule premises?*
- v. Whether the plaintiff is entitled to the relief of specific performance of contract?*
- vi. What decree or order?"*

6. The plaintiff to prove his case, examined PW-1 to PW-4 and marked Exs-P1 to 17. Defendant examined himself as DW-1 and marked Exs-D1 to D4.

7. After hearing both the parties and appreciating the pleading and evidence on record, the trial Court answered issue No.1 to 3 and 5 in the affirmative, issue No.4 in the negative and decreed the suit by its judgment and decree dated 12.09.1994.

8. Defendant challenged the said decree and judgment before the Court of Fast Track, Hunsuru (1st Appellate Court) in R.A.No.152/1997(old No.) and it was re-numbered as R.A.No.17/2009. The First Appellate Court heard the



arguments. The first Appellate Court while passing the judgment, framed following points for its consideration.

- "i. Whether the suit is not properly valued and the Court fee paid is not sufficient?*
- ii. Whether the plaintiff proves that the defendant has entered into an agreement of sale deed dated 30.09.1981?*
- iii. If so, whether the plaintiff proves that he has always been ready and willing to perform his part of the contract?*
- iv. Whether the defendant proves that the plaintiff was a tenant under him in the suit schedule premises?*
- v. Whether the plaintiff is entitled to the specific performance of contract?*
- vi. What decree or order?"*

9. After re-appreciation of the evidence on record, the First Appellate Court answered Point Nos.1 and 2 in the affirmative and allowed the appeal by setting aside the judgment and decree.

10. Being aggrieved by the said judgment and decree passed by the First Appellate Court in RA.No.17/2009, plaintiff preferred this appeal.



11. This Court admitted the appeal on 14.03.2013 to consider the following substantial question of law:

"Whether the lower appellate Court had erred in law in holding that the suit was barred by limitation?"

12. The trial Court as well as the First Appellate Court by appreciation of the evidence held that plaintiff had executed an agreement of sale agreeing to sell the suit property in favour of the plaintiff and delivered the possession of the property in favour of the plaintiff. The said concurrent finding of the trial Court as well as the First Appellate Court is not challenged by the defendant by filing a cross appeal or Cross objection.

13. The First Appellate Court without much discussion has held that the plaintiff was not ready and willing to perform his part of the contract. The First Appellate Court did not consider the contents of Ex.P1. The execution of the agreement of sale, delivery of possession, and payment of the entire sale consideration to the defendant as recorded in Ex.P1 were all confirmed by both the courts below. The only act left over to be performed by the defendant was to execute a registered sale



deed. As per the plaint averments as well as the evidence, plaintiff contended that he was repeatedly requesting the defendant to execute the sale deed and defendant went on postponing to execute sale deed on one or other pretext. These facts sufficiently prove that plaintiff was ready and willing to perform his part of the contract. Therefore, the findings of First Appellate Court in this regard is erroneous and without sufficient materials, it reversed the findings of the trial Court.

14. The main question involved in this appeal is whether suit was barred by time. The trial Court in the impugned judgment while answering the Additional issue No.1, had clearly stated regarding the contention of the parties regarding the limitation and answered the said issue in the negative and held that the suit was in time.

15. As per Ex-P1, no time was fixed to execute the sale deed. There was a condition that defendant shall obtain permission for alienation along with other conditions. The learned counsel for respondent vehemently contends that from the date of obtaining the permission for alienation, the period of limitation commences and the said order of alienation was



passed on 22.06.1982. The suit was filed on 05.08.1985 i.e., beyond the period of 3 years. Therefore, the First Appellate Court rightly held that suit was barred by time. The contentions of the learned counsel per appellant is that there was no time fixed under the agreement of sale to complete the sale transaction and it is specifically stated that after obtaining the permission for alienation, defendant agreed to execute the sale deed. Even after taking the permission, defendant did not send any notice in writing, intimating that he had obtained permission of alienation. As per the plaint averments and evidence of PW-1, he had called upon the defendant to execute the sale deed and defendant went on postponing the same. In the evidence of DW-1, he has not stated that he intimated to defendant about his intention not to execute sale deed. On the contrary, defendant denied the plaint averments and execution of agreement of sale. The plaintiff was constrained to file the suit since defendant went on postponing the execution of sale deed as per his case and hence the suit was not barred by time.



16. Article 54 of the Limitation Act has two clauses. One is from the date fixed for performance or if no such date is fixed, then when the plaintiff has notice that performance is refused. In this case, as per Ex-P1, no date was fixed and defendant was not able to show the date on which he ought to have executed sale deed. He has also not made out any case that he indicated to the plaintiff that he was not ready to execute the sale deed. Therefore, oral and documentary evidence do not help the defendant to show that suit filed by the plaintiff was barred by time or it was beyond the period of 3 years and hence the findings of the First Appellate Court is erroneous and without any basis.

17. The learned counsel for respondent relied on the judgment of Hon'ble Apex Court dated 12.09.2023 in Civil Appeal Nos.5342/2023 C/w 5343/2023, 5344/2023 and 5345/2023 in the case of A. Valliammai vs. K.P.Murali and others. In that case at paragraph No. 21, the dates are specifically mentioned. The time given in the agreement at Ex-A1 was extended by the payment made on 26.05.1989, and the Hon'ble Apex Court has held that the cause of action arose



for the plaintiff from that date. The suit was thereafter filed on 27.09.1995. Therefore, it was barred by time. But in this case, there is no date fixed in the Ex-P1 or during course of the evidence any admission was taken by the defendant regarding the date of cause of action. Under these circumstances the law laid down in the above said judgment is not applicable to the facts of the present case.

18. Time is not the essence of the contract in the present case. Except execution of the sale deed, entire transaction was completed. Possession was delivered and entire sale consideration was received by the defendant and by the subsequent permission granted by the defendant, plaintiff had constructed the building in the property. Therefore, in such an event the suit cannot be dismissed on the ground of limitation as time was not the essence of the contract. Looking from any angle, the suit was not barred by time. In view of the same, the substantial question of law is answered in favour of the appellant and proceed to pass the following:



ORDER

- i. Appeal is ***allowed***.
- ii. The impugned judgment and decree passed by the Presiding Officer, Fast Track Court, Hunsur in R.A.No.17/2009 (old No.152/1997) is set aside.
- iii. Judgment and decree passed dated 12.09.1994 passed by the Munsiff and JMFC, H.D.Kote in O.S.No.218/1989 is confirmed. Defendant is directed to execute Registered Sale Deed within a period of six weeks from the date of this judgment. If defendant failed to do so plaintiff may approach the Court and get executed the sale deed through due process of law. He is also entitled for injunction as prayed.

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

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