



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 22ND DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO. 1357 OF 2008 (SP)

BETWEEN:

1. SMT. BALAWWA
W/O. MALLAPPA KARATAGI,
SINCE DECEASED BY HER LRS.

AMENDED AS PER ORDER DATED 17.04.2023

2. SHRI BALAPPA
S/O. MALLAPPA KARATAGI,
AGE: 43 YEARS,

3. SHRI MAHALING
S/O. MALLAPPA KARATAGI,
AGE: 38 YEARS,

4. SHRI SHIVALING
S/O. MALLAPPA KARATAGI,
AGE: 38 YEARS,

APPELLANT NOS.1 TO 4 ARE
R/O. NIDASOSI, TQ. HUKKERI,
DIST. BELAGAVI-591309.

5. SMT. SHIVAKKA
W/O. BHIMAGOUDA PATIL,
SINCE DECEASED BY HER LRS.

- 5A. BHIMANAGOUDA
S/O. RAMAGOUDA PATIL,
AGE: 65 YEARS, OCC. AGRICULTURE,
R/O. MANGANUR, TQ. CHIKKODI,
DIST. BELAGAVI-591201.

Digitally signed
by NAGARATHNA
TEKAL
SUBBARAO
Location: HIGH
COURT OF
KARNATAKA



5B. SHANKARAGOUDA
S/O. BHIMAGOUDA PATIL,
AGE: 43 YEARS, OCC. AGRICULTURE,
R/O. MANGANUR, TQ. CHIKKODI,
DIST. BELAGAVI-591201.

5C. KALAGOUDA
S/O. BHIMAGOUDA PATIL,
AGE: 40 YEARS, OCC. AGRICULTURE,
R/O. MANGANUR, TQ. CHIKKODI,
DIST. BELAGAVI-591201.

AMENDED AS PER ORDER DATED 25.10.2024.

6. SMT. NEELAWWA
W/O. SHANKAR KANKANWADI,
AGE: 30 YEARS, R/O. KESTI,
TQ. HUKKERI, DIST. BELAGAVI-591309.

7. SMT. CHANDRAWWA
W/O. NEELAKANTA ADISHERE,
AGE: 27 YEARS, R/O. UMARANAI,
TQ. CHIKKODI, DIST. BELAGAVI-591201.

8. SMT. MAHADEVI
W/O. RAMAGOUDA PATIL,
AGE: 22 YEARS,
R/O. KONANKERI, TQ. HUKKERI,
DIST. BELAGAVI-591201.

...APPELLANTS

(BY SRI. V.P. KULKARNI, ADVOCATE)

AND:

1. DUNDAPPA
S/O. BHIMAPPA KARATAGI,
SINCE DECEASED BY HIS LRS.

1A. SMT. NEELAWWA
W/O. DUNDAPPA KARATAGI,
AGE: 65 YEARS, OCC. HOUSEHOLD WORK,
R/O. RAJPUR, TQ. GOKAK,



DIST. BELAGAVI-591224.

- 1B. SHRI MALLASHI
S/O. DUNDAPPA KARATAGI,
AGE: 45 YEARS, OCC. AGRICULTURE,
R/O. RAJPUR, TQ. GOKAK,
DIST. BELAGAVI-591224.
- 1C. SMT. BASAWWA
W/O. KEDARI KATTIMANI,
AGE: 43 YEARS, OCC. HOUSEHOLD WORK,
R/O. RAJPUR, TQ. GOKAK,
DIST. BELAGAVI-591224.
- 1D. SHRI BHIMAPPA
S/O. DUNDAPPA KARATAGI,
AGE: 41 YEARS, OCC. AGRICULTURE,
R/O. RAJPUR, TQ. GOKAK,
DIST. BELAGAVI-591224.
- 1E. SMT. KEMPA @ MADAVI
W/O. RAJU KILLEDAR,
AGE: 39 YEARS, OCC. HOUSEHOLD WORK,
R/O. RAJPUR, TQ. GOKAK,
DIST. BELAGAVI-591224.

AMENDED AS PER ORDER DATED 15.11.2023.

2. SHRI ASHOK DUNDAPPA GALAGI
AGE: 34 YEARS, OCC. AGRICULTURE,
R/O. NIDASOSI, TQ. HUKKERI,
DIST. BELAGAVI-591309.
3. SHRI SIDAGOUDA MALAGOUDA PATIL
AGE: 57 YEARS, OCC. AGRICULTURE,
R/O. NIDASOSI, TQ. HUKKERI,
DIST. BELAGAVI-591309.
4. SHRI SHIVASHANKAR SHIVAMURTI PADMAI
AGE: 67 YEARS, OCC. AGRICULTURE,
R/O. NIDASOSI, TQ. HUKKERI,
DIST. BELAGAVI-591309.



5. SHRI DUNDAPPA SHIVAMURTHI HEDDURI
AGE: 55 YEARS, OCC. AGRICULTURE,
R/O. NIDASOSI, TQ. HUKKERI,
DIST. BELAGAVI-591309.
6. SHRI MALIKARJUN BALAPA HUDDAR
AGE: 31 YEARS, OCC. AGRICULTURE,
R/O. NIDASOSI, TQ. HUKKERI,
DIST. BELAGAVI-591309.
7. SHRI IRANNA BALAPPA HUDDAR
AGE: 34 YEARS, OCC. AGRICULTURE,
R/O. NIDASOSI, TQ. HUKKERI,
DIST. BELAGAVI-591309.
8. SHRI RAFIQ S/O. BABU ATTAR,
AGE: 37 YEARS, OCC. AGRICULTURE,
R/O. NIDASOSI, TQ. HUKKERI,
DIST. BELAGAVI-591309.

...RESPONDENTS

(BY SRI. MALLIKARJUNSWAMY B. HIRMEATH, ADVOCATE FOR R2 - R8;
R1(A), R1(B), R1(C) AND R1(E)-NOTICE SERVED;
R1(D)-NOTICE HELD SUFFICIENT)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO
SET ASIDE THE JUDGMENT AND DECREE PASSED BY THE CIVIL JUDGE
(SR.DN.) HUKKERI PASSED IN R.A.NO.64 OF 2006 DATED 26TH
FEBRUARY 2008 AND CONFIRM THE JUDGMENT AND DECREE PASSED
BY THE CIVIL JUDGE (JR.DN.) SANKESHWAR PASSED IN
O.S.NO.153/2000 DATED 31ST JULY 2006 BY ALLOWING THE PRESENT
APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON
24.11.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS
DAY, COURT DELIVERED THE FOLLOWING:



CAV JUDGMENT

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

This appeal arises out of the divergent findings in O.S.No.153/2000 by the learned Civil Judge (Jr.Dn.), Sankeshwar and in R.A.No.64/2006 by the Civil Judge (Sr.Dn.), Hukkeri, whereby the suit filed by the plaintiffs for specific performance of agreement of sale came to be dismissed.

2. The plaintiffs had filed a suit in O.S.No.153/2000 seeking specific performance of contract and O.S.No.126/2000 seeking permanent injunction against the defendants before the Trial Court. The Trial Court, by common judgment, decreed both the suits directing the defendants to execute the sale deed in respect of the suit schedule properties. It also decreed the suit restraining the defendants by permanent injunction from interfering with the peaceful possession and enjoyment of the suit schedule properties by the plaintiffs. The said common judgment in both the suits was challenged before the First Appellate Court in R.A.No.64/2006 and R.A.No.65/2006. The First Appellate Court, after hearing, allowed the appeals and dismissed both the suits. The plaintiffs have filed this appeal only



against the judgment and decree in R.A.No.64/2006, which arises out of O.S.No.153/2000.

3. The suit schedule properties are agricultural land bearing R.S.No.40 measuring 5 acres 21 guntas situated at Nidasosi village and the house property bearing VPC No.528 New VPC No.774 situated at Nidasosi Village of Hukkeri Taluk.

4. The factual matrix that is relevant for the purpose of this appeal may be summarized as below:

(a) The defendant No.1 was the tenant of the agricultural land and he applied for occupancy rights, which came to be granted by the Land Tribunal [under Karnataka Land Reforms Act – 1964] on 05.05.1982 and Form No.10- Occupancy Certificate was issued to him. The said grant of occupancy rights was subject to certain conditions and one among them was that the land should not be alienated for a period of 15 years without permission of the concerned competent authority.

(b) The defendant No.1 for his family necessity and to repay the loans, agreed to sell the suit schedule property in



favour of the husband of the plaintiff No.1 and father of plaintiff No.2 viz., Mallappa for a consideration of ₹40,000/- and received earnest money of ₹38,000/- and executed agreement of sale dated 25.01.1988.

(c) The said Mallappa died on 19.07.1998 leaving behind the plaintiffs as his legal heirs. The deceased-Mallappa was in possession of the suit schedule properties and after his death, the plaintiffs are in possession of the suit schedule properties.

(d) The defendant No.1 has agreed to obtain the necessary permission from the government authorities for selling the suit land since there was a condition while granting the land not to alienate the properties for a period of 15 years.

(e) Since the defendant No.1 tried to obstruct the possession of Mallappa over the suit schedule properties he had filed a suit for permanent injunction in O.S.No.135/1992 and same came to be dismissed on 17.08.1996 for non-prosecution. Mallappa had filed Civil Miscellaneous Petition No.20/1997 for restoration of the said suit and when the present suit came to be filed, the said Civil Miscellaneous Petition was pending. Later, the



said Miscellaneous Petition also came to be dismissed. Again the defendant No.1 tried to obstruct the plaintiffs' possession on 17.07.2000 and therefore, the plaintiffs had to file O.S.No.126/2000 seeking a permanent injunction and in the said suit, the Court had directed plaintiff No.2 to file a suit for specific performance of contract within one month from the date of order i.e., 19.08.2000. Consequently, the present suit O.S.No.153/2000 came to be filed seeking specific performance of the contract of agreement of sale.

(f) The plaintiffs averred that they were always ready and willing to perform their part of the contract by paying balance consideration of ₹2,000/- and had requested the defendant No.1 to execute the registered sale deed.

(g) It is alleged that, on the other hand, the defendant No.1 created hollow sale deeds in favour of defendant No.2 to 4, which are null and void and not binding on the plaintiffs. The defendant No.2 to 4 knowing fully well that the defendant No.1 had executed the agreement of sale in favour of Mallappa and in spite of the prohibitory orders, have entered into the sale deeds and in turn the defendant No.5 to 8 have also entered into such



sale deeds in respect of some pieces of the suit schedule properties. Therefore, the plaintiffs contend that the defendants No.2 to 8 are also liable for execution of the registered sale deed in favour of the plaintiffs.

(h) On the above grounds, the plaintiffs sought a direction to the defendants to execute the registered sale deed in favour of the plaintiffs by obtaining the necessary permission from the Government Authorities and to declare that the sale deeds created in the name of the defendant No.2 to 8 are not binding upon the plaintiffs. Alternatively, the plaintiffs have also sought for refund of the earnest money of ₹38,000/- along with interest at 21% per annum and damages of ₹1,50,000/- for breach of contract and costs of the suit.

(i) It is to be noted that the cause of action for the suit is stated to be in the first week of September 2000, when the defendants refused to take legal notice issued by the plaintiffs through their counsel.



5. On service of summons, defendant No.1 appeared and filed the written statement delineating the following contentions:

(a) He denied the case of the plaintiffs that there was legal necessity for the defendant No.1 and therefore, he had agreed to sell the suit schedule property to the plaintiffs [i.e., Mallappa] for a sum of ₹40,000/- and in pursuance to it, after receiving ₹38,000/-, entered into an agreement of sale. All other contentions, including the possession of the plaintiffs over the suit schedule property in pursuance to the agreement of sale is vehemently and specifically denied by the defendant No.1.

(b) It is the contention of the defendant that since there was family necessity, he has sold portions of the suit schedule properties for valuable consideration. He contends that 2 acres 10 guntas in the suit schedule property was sold to defendant No.2 for ₹47,500/- under a sale deed dated 11.05.2000.

(c) He further stated that an area measuring 20 guntas in the suit schedule property was sold to defendant No.3 for a consideration of ₹10,500/- on 11.05.2000. He further stated that



he had sold an area measuring 2 acres 10 guntas in favour of the defendant No.4 for a consideration of ₹49,500/- on 22.05.2000. He further stated that he had sold an area measuring 21 guntas in the suit survey number for a consideration of ₹11,000/- to defendant No.5 on 22.05.2000. Therefore, he denies that the defendant No.1 entering into an agreement of sale with the plaintiffs on 25.01.1988 is improbable and the alleged agreement is false and concocted.

(d) The defendants have contended that the suit for injunction filed by the original plaintiff Mallappa, in O.S.No.135/1992 came to be dismissed for non-prosecution and later the Civil Miscellaneous No.20/1997 was also dismissed for default on 21.10.2000. It is contended that the VPC No.528, New No.774 of Nidasosi village is occupied by the defendant No.1, he is residing in the same with his family.

(e) Thereafter, the defendant No.5 has sold a portion of the property measuring 11 guntas to defendant Nos.6 and 7 for a consideration of ₹34,000/- on 16.06.2001 and as such, they are in possession of the same. It is contended that defendant Nos.6 and 7 have prepared to construct a building on a property



purchased by them. Therefore, it is contended that the alleged agreement of sale is concocted and as such, the suit deserves to be dismissed.

6. The defendants Nos.2 to 8 have filed a memo adopting the written statement of the defendant No.1 and in addition, the defendant Nos.2 and 8 have also filed their respective written statements reiterating the contention taken by defendant No.1. In these written statements, they have not stated that they are the bonafide purchasers of the suit schedule property, but on the other hand, they have denied the contention of the plaintiff.

7. On the basis of the above contentions, the Trial Court has framed the following issues and additional issues:

"ISSUES

- 1) *Do the plaintiffs prove the execution of agreement of sale dated 25.01.1988 in respect of suit properties infavour of Mallappa Shidalingappa Karatagi (father of plaintiffs 2 to 8 and husband of plaintiff No.1 for a consideration or Rs.40,000?*



- 2) *Do the plaintiffs further prove that, defendants No.1 has received an earnest amount of Rs.38,000/- as on the date of agreement of sale?*
- 3) *If so, do the plaintiffs prove their actual possession over the suit properties as prospective purchasers?*
- 4) *Do the plaintiffs prove their readiness and willingness to perform their part of the contract?*
- 5) *Whether the plaintiffs are entitled for main relief of Specific Performance of contract as prayed?*
- 6) *If not, do the plaintiffs are entitled for alternative relief of refund of earnest money of Rs.38,000/- with damages as prayed?*
- 7) *What order or Decree ?*

Addl. Issue dt: 22.1.2005.

- 1) *Whether the plaintiff proves that sale deed executed by Deft No.1 in favour of Deft.No.8 dated 11.5.2000 is concocted and bogus as contended?*

Addl. Issue dated 12.7.05.

- 1) *Whether the plaintiff proves that defendant Nos.2 to 8 are liable to execute the sale deed in favour of plaintiff after receiving the balance consideration as contended in the plaint?*

Addl. Issue



1) Whether the plaintiff proves that the sale deed executed by def. No.1 is a bogus and fabricated one and not binding on he plaintiff is contended in the plaint?"

8. The O.S.No.153/2000 was clubbed with O.S.No.126/2000 and common evidence was led. The plaintiff was examined as PW1 and two witnesses were examined as PW2 and PW3. Ex.P.1 to Ex.P.46 were marked in evidence. On behalf of the defendants, DW1 to DW7 were examined and Ex.D1 to Ex.D.8 were marked in evidence.

9. After hearing the arguments by both the sides, the Trial Court decreed both the suits as prayed by the plaintiff granting the relief of specific performance of the agreement of sale and directed the defendants to execute the sale deed in favour of the plaintiff.

10. Being aggrieved, the defendant Nos.1 to 8 approached the First Appellate Court in R.A.No.64/2006 and R.A.No.65/2006. The First Appellate Court framed the following points for consideration:



"Points

- 1. Whether the defendants prove that the learned trial judge has not framed the proper issues?*
- 2. Whether defendants prove that the impugned judgment and decree of the learned trial judge is perverse, illegal and capricious?*
- 3. What order?"*

11. The First Appellate Court, after hearing both the sides, by impugned judgment dated 26.02.2008, allowed the appeal and set aside the judgment of the Trial Court in both the suits.

12. Being aggrieved, the plaintiffs are before this Court in second appeal.

13. While admitting the appeal, this Court has framed the following substantial questions of law on 15.09.2009 and 18.11.2025:

Substantial question of law dated: 15.09.2009:



"Whether the Lower Appellate Court has committed error in law while coming to the conclusion that the suit itself was barred by limitation and in that context in reversing the judgment and decree of the Trial Court?"

Substantial question of law dated 18.11.2025:

"Whether the First Appellate Court erred in allowing the application filed under Order XLI Rule 27 of CPC, but not considered the same in the judgment?"

14. The arguments by learned Senior Counsel, Sri.V. P. Kulkarni, appearing for the appellants and learned Counsel, Sri.Mallikarjunaswami Hiremath, appearing for the respondents were heard.

15. Learned counsel appearing for the appellants, in his elaborate arguments, has touched upon three aspects.

16. He firstly argued concerning the limitation, which is pertaining to the first substantial question of law. He also argued regarding the application filed by the appellants under Order XLI Rule 27 of CPC, which is concerning the second substantial



question of law. Then he argued on the ready and willingness of the plaintiffs and regarding the bar contained in Section 61 of the Karnataka Land Reforms Act and as to whether the bar operates even for an agreement of sale.

17. Regarding the limitation, it is submitted that the question of limitation was not raised in the pleadings of the defendants and as such, there were no issues framed concerning the limitation. It is submitted that an issue regarding limitation is a mixed question of law and facts and when there was no issue framed by the Trial Court, the First Appellate Court had erred in dealing with the question of limitation holding that the suit of the plaintiffs is barred by time. It is submitted that there is no material to show that when the order of the Land Tribunal was passed and occupancy rights were granted and therefore unless such documents were produced by the defendants, they could not have dealt with the question of limitation. It is submitted that the plaintiffs came to know about the permission granted by the competent authority to alienate the suit schedule property when the defendant No.1 had applied for permission to sell. It is submitted that the limitation would start when the defendant



informs the plaintiff about the permission granted by the competent authority to alienate the property and therefore the refusal to execute the sale deed has to be inferred only when the legal notice issued by the plaintiff was refused by the defendant. Therefore, he contends that the conclusion of the First Appellate Court that the suit is hit by the law of limitation is erroneous and as such, the same is not sustainable. He further submitted that producing the permission of the Tahsildar, who was a competent authority, was very much essential. It is submitted that a mere lapse of 15 years after the occupancy rights were granted in the form of Form No.10, being issued to the defendant No.1 on 05.05.1982, would not be the starting point for limitation. He buttresses his argument by contending that the ceiling limits prescribed under the provisions of the Land Reforms Act and Registration Act are to be relaxed or to be examined by the competent authority while granting permission to alienate the property. Therefore, mere efflux of time of 15 years from the date of grant of the occupancy rights, would not suffice. Hence, he contends that the suit filed on 15.09.2000 was very much in time and therefore, the views of the First Appellate Court are flawed.



18. Regarding the question of seeking all the reliefs when the suit in O.S.No.126/2000 was filed or earlier to it O.S.No.135/1997 was filed, is concerned, he submits that the plaintiff could not have sought the relief of specific performance since the express permission to alienate the property was not issued when those suits were filed. Therefore, he reiterated that the efflux of time of 15 years would not result in automatic commencement of the time for limitation. Thus, he submits that at no stretch of imagination the suit filed by the plaintiff can be said to be hit by the provisions of Order II Rule 2 of CPC.

19. Regarding readiness and willingness, he submits that the plaintiff had paid substantial consideration amount and he was waiting for the permission. The defendant No.1 never informed the plaintiffs about the permission granted by the competent authority. Therefore, when there is no rebuttal evidence by the defendant No.1, who had personal knowledge of the enquiries made by the plaintiff to perform his part of the contract, the testimony of defendant No.1, who was a GPA holder of defendant No.1, cannot be relied. Obviously, the defendant No.1 had no personal knowledge of the requests made



by the plaintiff to Defendant No.1. Hence, he contends that the readiness and willingness had been established by the plaintiffs all along.

20. He further submitted that the purchasers of the piece of the properties from defendant No.1, nowhere contend that they were diligent and they purchased the property only after verification of the records. The written statement filed by defendant No.2 to 8 does not contain any averment that they are the bona fide purchasers without notice and therefore, they are entitled to retain the portions purchased by them.

21. Lastly, he contends that the provisions of Section 61 of the Karnataka Land Reforms Act would not come in the way of granting a decree. He vehemently submits that the judgment of the Apex Court in the case of **Narayanamma and another v. Govindappa and others**¹ cannot be applied to the case on hand. He submits that on facts involved in the case of **Narayanamma** (referred supra), it can very well be distinguished from the facts of the present case. The facts in that case were relating to question of mortgage as well as an

¹ (2019) 19 SCC 42



agreement of sale coupled with handing over of the possession and the agreement of sale being within one month of the mortgage was involved, and as such, the Apex Court had come to the conclusion that it was an alienation and is hit by the provisions of Section 61 of the Karnataka Land Reforms Act.

22. He further relies on the judgment in the case of ***B.S.Lakshman S/o B.R.Saganshetty v. Puttashetty S/o Muddashetty***, rendered by a Co-Ordinate Bench of this Court in ***RSA No.1358/2022 (D.D.27.06.2025)***, where the case of ***Narayanamma*** (referred supra) was distinguished.

23. The appellants, during pendency of this appeal, have also filed I.A.No.1/2025 under Order XLI Rule 27 of CPC seeking to produce the true copy of the notification under Section 22-A of the Registration Act dated 23.04. 1998. It is contended that it is the same document, which was sought to be produced by the plaintiffs before the First Appellate Court under Order XLI Rule 27 of CPC and though the application was allowed, the document was not considered by the First Appellate Court. In the affidavit accompanying the application, it is stated that the said document



was not traced earlier and therefore, he may be permitted to produce the same.

24. Despite service of notice, respondent No.1(a) to 1(e) have not appeared.

25. The learned counsel appearing for the respondent No.2 to 8 has contended that the Land Tribunal passed an order granting the occupancy rights in favour of defendant No.1 on 29.12.1976 and the Form No.10 was issued on 05.05.1982 as per Ex.P.22. The agreement of sale deed relied by the plaintiff was on 25.01.1988. Clearly the condition not to alienate the property for a period of 15 years had been violated when the agreement was entered into. Therefore, he submits that the suit is hit by the principles laid down by the Apex Court in the case of **Narayanamma** (referred supra). He submits that the dictum of the Apex Court is applicable to the case on hand in its fullest form. Regarding limitation, he contends that the question of limitation need not be raised in the written statement in view of Section 3 of the Limitation Act. It is the Court, which has to look into the question of limitation and therefore, the First Appellate Court is justified in considering the question of limitation.



26. He submits that the plaintiff-Mallappa had filed O.S.No.135/1992 seeking injunction and it was dismissed for non-prosecution. In the said suit, written statement was filed and the agreement was denied. Therefore, on 22.06.1994 when the written statement came to be filed in O.S.No.135/1992, the plaintiffs came to know that the agreement is denied and as such the limitation starts to run from 22.06.1994. Obviously, the present suit is filed in the year 2000 and is hit by the law of limitation.

27. He also submits that the Civil Miscellaneous case was filed for restoration of the said suit and it also came to be dismissed and the present suit is filed only when a direction was issued in O.S.No.126/2000. Therefore, it is crystal clear that the suit was barred by limitation.

28. In other words, he submitted that the limitation could be held to commence from 04.05.1997 when the 15 years moratorium to alienate the property ended and therefore, the suit should have been filed on or before 04.05.2000. The present suit has been filed on 15.09.2000 and therefore on both the counts, the suit is barred by the law of limitation.



29. His second prong of the argument is that, the provisions of Order II Rule 2 of CPC come into operation since the plaintiff had not sought all the relief that he could make in O.S. No.135/1992 or in O.S.No.126/2000. On both these occasions, the plaintiff/s knew that the defendant had denied the agreement and therefore he should have filed the suit for specific performance. He should have prayed for the relief of specific performance and in the said suit he could have sought for an injunction. A suit for injunction simpliciter could not have been filed. In this regard, he places reliance on the judgment in the case of ***Vurimi Pullarao S/o. Satyanarayana v. Vemari Vyantaka Radharani W/o.Dhankoteswarrao and another***².

30. He points out that filing of O.S.No.135/1992 has not been disclosed by the plaintiff in the plaint. Therefore, the plaintiff has suppressed these facts in order to overcome the limitation and an illusory cause of action has been shown in the plaint. On these contentions, the learned counsel appearing for respondent No.2 to 8 seeks dismissal of the suit.

² (2020) 14 SCC 110



A. Reg: second substantial question of law:

31. Before entering into the merits of the case, the application filed under Order 41 Rule 27 of Code of Civil Procedure, is to be decided. The affidavit filed in support of the application states that such an application was filed by the appellant before the First Appellate Court and even though, it was on record, such document was not considered by the Appellate Court. The affidavit filed in support of the application states that the appellant had filed such an application before the First Appellate Court on 04.12.2007 seeking to produce the order of Tahsildar, Hukkeri dated 23.04.1998. It is the grievance of the appellant that such application was never considered by the Appellate Court while deciding the appeal.

32. The provisions of Order 41 Rule 27 of Code of Civil Procedure, indicate that if such production of the additional evidence falls within the scope of the Rule, the application deserves to be allowed. It was incumbent upon the First Appellate Court to decide such application while considering the appeal. The document sought to be produced is order of the Tahsildar which permitted the holder to alienate the property.



When the affidavit filed in support of the application before the First Appellate Court narrates that when the burden was on the defendant to obtain such permission from the competent authority to alienate the property as per the clauses of the agreement, he doesn't say anything about such permission having obtained by him. Therefore, the production of such document is essential to know the intent of the defendants.

33. The affidavit also mention that the plaintiff is kept in ignorance about such permission being granted, he had to search for the same and then, secure it and produce the same before the First Appellate Court. Under these circumstances, the application falls within the purview of the provisions of Order 41 Rule 27 of Code of Civil Procedure. Therefore, this Court does not see any reason to reject the said application and the certified copy of the order dated 23.04.1998 by Tahsildar, Hukkeri is permitted to be produced. The document is taken on record.

34. For above reasons, it is clear the the First Appellate court erred in not considering the documents produced by the appellant. Hence the second Substantial question of law is answered in the affirmative.



B. Ancillary question of law reg bar under Section 61 of

KLR Act:

35. Before we go into the first substantial question of law involved, it is necessary to look into the question of law which operates in the present appeal. The first contention is regarding the provisions of Section 61 of the Karnataka Land Reforms Act. It is worth to note that Section 61 of the Karnataka Land Reforms Act prohibits certain alienations. For better understanding the Section 61 of the Karnataka Land Reforms Act is extracted below.

"61. Restriction on transfer of land of which tenant has become occupant.—(1)

Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall, within [fifteen years] [from the date of the final order passed by the Tribunal under sub-section (4) or sub-section (5) or sub-section (5-A) of section 48A] be transferred by sale, gift, exchange, mortgage, lease or assignment; but the land may be partitioned among members of the holder's joint family.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the occupant



registered as such or his successor-in-title to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government, [a financial institution, a co-operative land development bank, a co-operative society] or a company as defined in section 3 of the Companies Act, 1956 in which not less than fifty one per cent of the paid-up share capital is held by the State Government or a Corporation owned or controlled by the Central Government or the State Government or both for development of land or improvement of agricultural practices; [or for raising educational loan to prosecute the higher studies of the children of such person] and without prejudice to any other remedy provided by any law, in the event of his making default in payment of such loan in accordance with the terms and conditions on which such loan was granted, it shall be lawful to cause his interest in the land to be attached and sold and the proceeds to be utilised in the payment of such loan.

[Explanation.- For the purpose of this sub-section, "Higher studies" means the further studies after Pre-university Examination or 12th Standard Examination conducted by CBSE or ICSE or any Diploma courses.]

Any transfer or partition of land in contravention of sub-section (1) shall be invalid [and such land shall vest in the State Government



free from all encumbrances and shall be disposed in accordance with the provisions of section 77."

36. The judgment of the Apex Court in the case of **Narayanamma** (referred supra) has dealt the issue concerning Section 61 of the Karnataka Land Reforms Act. The facts involved in the case of **Narayanamma** (referred supra), may be found in paragraphs 8 and 9 of the judgment, which reads as below:

"8. The facts in the present case are not in dispute. On 20-10-1976, the suit property i.e. 1 acre 6 guntas bearing Survey No. 57 situated at Mutkur Village, Angondanahalli Hobli, Hoskote Taluk, Bangalore District, was given as a grant in favour of Bale Venkataramanappa. The said grant was under the provisions of the Reforms Act. On 13-9-1983, the premium was paid by Bale Venkataramanappa and the grant was confirmed in his favour with a non-alienation clause of 15 years. On 15-9-1983, there was a mutation entry in the revenue records entering the name of said Bale Venkataramanappa with an endorsement that the land shall not be alienated for a period of 15 years. On 23-4-1990, Bale Venkataramanappa, by a registered mortgage deed, mortgaged the suit land in favour of the plaintiff for a sum of Rs 20,000.



The mortgage deed recites about the receipt of the entire mortgaged amount by Bale Venkataramanappa. Under the mortgage deed, Bale Venkataramanappa had agreed to repay the loan within a period of one year. However, within a period of one month, Bale Venkataramanappa executed an agreement to sell dated 15-5-1990 in favour of the plaintiff. The agreement to sell recites that he was in need of money for his legal necessities and to repay his hand loans and for his domestic needs and, therefore, he had agreed to sell the suit property for a sum of Rs 46,000. He acknowledges the receipt of entire amount of consideration i.e. Rs 46,000. The recital in the agreement to sell reads that at the time of execution of the agreement, the possession of the suit property is handed over to the plaintiff. Further, the recital reads that the plaintiff shall take the consent of the officers of the Tribunal or the officers concerned at his own cost for transferring the property in the name of the plaintiff.

9. It could thus be seen that, initially the property was mortgaged on 23-4-1990, and within a period of one month the agreement to sell is executed. At the time of the agreement itself, the entire consideration amount is said to have been received by Bale Venkataramanappa and also the possession is handed over to the plaintiff."

(emphasis supplied)



37. The Apex Court finds that the question of law that arise for consideration in the said case is as to whether the agreement to sell dated 15.05.1990 executed by Bale Venkataramanappa in favour of the plaintiff would be enforceable in law or not. After elaborated discussion and after noting the various decisions in this regard, it comes to the conclusion that the agreement of sale involved in that case is unenforceable. It relied on the principles laid down in the case of **Immani Appa Rao and Others v. Gollapalli Ramalingamurthi and Otehrs**³ in coming to such conclusion. In the said case of **Narayanamma** (referred supra), the Apex Court had the occasion to consider two doctrines, which are applicable. In paragraphs 17, 18, 20 and 24, the Apex Court discussed the issue involved as under:

"17. Subsequently, another three-Judge Bench of this Court in Immani Appa Rao v. Gollapalli Ramalingamurthi [Immani Appa Rao v. Gollapalli Ramalingamurthi, (1962) 3 SCR 739 : AIR 1962 SC 370] again had an occasion to consider the issue with regard to applicability of the aforesaid two maxims. This Court speaking through P.B. Gajendragadkar, J. (as his Lordship then was) observed thus: (AIR p. 375, paras 12-14)

³ AIR 1962 SC 370



"12. Reported decisions bearing on this question show that consideration of this problem often gives rise to what may be described as a battle of legal maxims. The appellants emphasised that the doctrine which is pre-eminently applicable to the present case is ex dolo malo non oritur actio or ex turpi causa non oritur actio. In other words, they contended that the right of action cannot arise out of fraud or out of transgression of law; and according to them it is necessary in such a case that possession should rest where it lies in pari delicto potior est conditio possidentis; where each party is equally in fraud the law favours him who is actually in possession, or where both parties are equally guilty the estate will lie where it falls. On the other hand, Respondent 1 argues that the proper maxim to apply is nemo allegans suam turpitudinum audiendum est, whoever has first to plead turpitudinum should fail; that party fails who first has to allege fraud in which he participated. In other words, the principle invoked by Respondent 1 is that a man cannot plead his own fraud. In deciding the question as to which maxim should govern the present case it is necessary to recall what Lord Wright, M.R. observed about these maxims in Berg v. Sadler & Moore [Berg v. Sadler & Moore, (1937) 2 KB 158 (CA)] , at KB p. 162. Referring to the maxim ex turpi causa non oritur actio Lord Wright observed that:



'[this maxim], though veiled in the dignity of learned language, is a statement of a principle of great importance; but like most maxims it is much too vague and much too general to admit of application without a careful consideration of the circumstances and of the various definite rules which have been laid down by the authorities.'

Therefore, in deciding the question raised in the present appeal it would be necessary for us to consider carefully the true scope and effect of the maxims pressed into service by the rival parties, and to enquire which of the maxims would be relevant and applicable in the circumstances of the case. It is common ground that the approach of the Court in determining the present dispute must be conditioned solely by considerations of public policy. Which principle would be more conducive to, and more consistent with, public interest, that is the crux of the matter. To put it differently, having regard to the fact that both the parties before the Court are confederates in the fraud, which approach would be less injurious to public interest. Whichever approach is adopted one party would succeed and the other would fail, and so it is necessary to enquire as to which party's success would be less injurious to public interest.

13. Out of the two confederates in fraud Respondent 1 wants a decree to be passed in his



favour and that means he wants the active assistance of the Court in reaching the properties possession of which has been withheld from him by Respondent 2 and the appellants. Now, if the defence raised by the appellants is shut out Respondent 1 would be entitled to a decree because there is an ostensible deed of conveyance which purports to convey title to him in respect of the properties in question; but, in the circumstances, passing a decree in favour of Respondent 1 would be actively assisting Respondent 1 to give effect to the fraud to which he was a party and in that sense the Court would be allowed to be used as an instrument of fraud, and that is clearly and patently inconsistent with public interest.

14. On the other hand, if the Court decides to allow the plea of fraud to be raised the Court would be in a position to hold an enquiry on the point and determine whether it is a case of mutual fraud and whether the fraud intended by both the parties has been effectively carried out. If it is found that both the parties are equally guilty and that the fraud intended by them has been carried out the position would be that the party raising the defence is not asking the Court's assistance in any active manner; all that the defence suggests is that a confederate in fraud should not be permitted to obtain a decree from the Court because the document of title on which the claim is based really conveys no title at



all. It is true that as a result of permitting Respondent 2 and the appellants to prove their plea they would incidentally be assisted in retaining their possession; but this assistance is of a purely passive character and all that the Court is doing in effect is that on the facts proved it proposes to allow possession to rest where it lies. It appears to us that this latter course is less injurious to public interest than the former."

18. *This Court held that, which principle is to be applied in the facts of the case would depend upon the question, as to which principle is more consistent with public interest. The Court finds that, when both the parties before the Court are confederates in the fraud, the Court will have to find out which approach would be less injurious to public interest. The Court observed that, whichever approach is adopted, one party would succeed and the other would fail and, therefore, it is necessary to enquire as to which party's success would be less injurious to public interest. The Court in the facts of the said case finds that if the decree was to be passed in favour of Respondent 1 (who was the plaintiff), it would be actively assisting Respondent 1 to give effect to the fraud to which he was a party and it has been held that in that sense the Court would be allowed to be used as an instrument of fraud and that is clearly and patently inconsistent with public interest.*

19. xxxx



20. *It could thus be seen that, although illegality is not pleaded by the defendant nor is relied upon by him by way of defence, yet the court itself, upon the illegality appearing upon the evidence, will take notice of it, and will dismiss the action ex turpi causa non oritur actio. It has been held, that no polluted hand shall touch the pure fountain of justice. It has further been held, that where parties are concerned in illegal agreements or other transactions, courts of equity following the rule of law as to participators in common crime will not interpose to grant any relief, acting upon the maxim in pari delicto potior est conditio defendetis et possidentis.*

21. xxxx

22. xxxx

23. xxxx

24. *The transaction between the late Bale Venkataramanappa and the plaintiff is not disputed. Initially the said Bale Venkataramanappa had executed a registered mortgage deed in favour of the plaintiff. Within a month, he entered into an agreement to sell wherein, the entire consideration for the transfer as well as handing over of the possession was acknowledged. It could thus be seen, that the transaction was nothing short of a transfer of property. Under Section 61 of the Reforms Act, there is a complete prohibition on such mortgage or transfer for a period of 15 years from the date of grant. Sub-*



section (1) of Section 61 of the Reforms Act begins with a non-obstante clause. It is thus clear that, the unambiguous legislative intent is that no such mortgage, transfer, sale, etc. would be permitted for a period of 15 years from the date of grant. Undisputedly, even according to the plaintiff, the grant is of the year 1983, as such, the transfer in question in the year 1990 is beyond any doubt within the prohibited period of 15 years. Sub-section (3) of Section 61 of the Reforms Act makes the legislative intent very clear. It provides, that any transfer in violation of sub-section (1) shall be invalid and it also provides for the consequence for such invalid transaction."

(emphasis supplied)

38. It is pertinent to note that, the Apex Court notes that both the parties before the Court are confederates in the fraud and the Court will have to find out which approach would be less injurious to the public interest. Therefore, it holds that it is necessary to enquire as to which party the success would be less injurious to the public interest. This is the principle which is followed by the Apex Court in holding that there was an alienation of the property contrary to the prohibiting provisions of law. In paragraph 24, it notices that the transaction between Venkataramanappa and the plaintiff was nothing short of transfer



of the property. In holding so, it is to be remembered that the agreement of sale was executed within one month from the date of the mortgage. The intention of the parties was to alienate. The entire sale consideration was paid to the vendor. In addition, mortgage was also executed one month prior to the agreement of sale. It is this circumstance which prevailed over the Apex Court in holding that the transaction is hit by the provisions of Section 61 of the Karnataka Land Reforms Act. It is in the light of these facts, which were involved, that the dictum of the Apex Court needs to be seen.

39. Hon'ble Apex Court in ***Maharaj Singh and Others v. Karan Singh and Others***,⁴ clarified that statutory prohibition applies to execution of sale deeds and not to agreements for sale, which do not transfer any interest in property. It held as below:

"17. We have perused Section 154-B of the Zamindari Abolition Act. Sub-section (1) prohibits the sale or transfer of agricultural lands to a person who is not an agriculturalist. Clause (h) of sub-section (2) of Section 154-B permits the sale of agricultural land to a non-agriculturalist with the permission of the State

⁴ (2024) 8 SCC 83



Government for the purposes specified in clause (i) to (v) of clause (h). What is prohibited is the sale of agricultural land to a non-agriculturalist. In view of Section 54 of the TP Act, an agreement for sale does not transfer the property subject matter of the agreement to the purchaser. It does not create any interest in the property subject matter of the agreement. Therefore, the embargo created by sub-section (1) of Section 154-B will apply only to the execution of the sale deed and not to the execution of the agreement for sale."

(emphasis supplied)

40. In ***Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai***⁵, the Apex Court held that an agreement to sell does not become a contingent or unenforceable contract merely because the vendor's title or statutory approval was initially imperfect, particularly when subsequent events remove such impediments. It held as below:

"9. We do not see any basis for the submission that the contract between the parties as embodied in the suit banakhat (Ex. 25) was a contingent contract, the performance of which was dependent upon fulfilment of the condition under the earlier agreement (Ex. 26) by which the appellant's vendor Rana Mohabat Singh had undertaken upon himself

⁵ (1986) 3 SCC 300



the obligation of procuring the necessary sanction from the Collector. As to the appellant having an imperfect title the question is purely hypothetical. May be, initially the two transactions were not independent of each other but were interdependent, for the performance of one depended upon the fulfilment of the other agreement. If there was no abolition of proprietary rights, it could well be said that the suit banakhat (Ex. 25), being subject to the fulfilment by Rana Mohabat Singh of the terms of the earlier agreement (Ex. 26), the appellant had an imperfect title and therefore the contract between the parties was contingent on Rana Mohabat Singh obtaining the approval of the Collector and as he could not secure such approval and execute a conveyance in favour of the appellant, no effective agreement came into being which could be ordered to be specifically enforced. But the contention that unless the appellant's vendor Rana Mohabat Singh conveyed title by execution of a proper conveyance, the contract as between the parties became impossible of performance and further that for want of such conveyance the appellant had an imperfect title, does not take into account the subsequent events."

41. In ***Indian Overseas Bank vs. M.A.S. Subramanian, Civil Appeal No. 282/2025*** the Apex Court reiterated the settled principle that an agreement for sale does



not by itself transfer title or create any interest in immovable property. It held as below:

6. It is well settled that an agreement for sale in respect of an immovable property does not transfer title in favour of the purchaser under the agreement. In view of Section 54 of the Transfer of Property Act, 1882, an agreement for sale does not create any interest in the property. The only mode by which an immovable property worth more than Rs.100/- (Rupees one hundred) can be sold is by a sale deed duly registered in accordance with the Indian Registration Act, 1908.

(emphasis supplied)

42. Hon'ble Supreme Court in ***Dharma Naika v. Rama Naika***⁶, interpreted the definition of "transfer" under the PTCL Act to include agreements for sale to protect SC/ST granted lands. It held as below:

"21. We have already considered the scheme of the Act as also the objects and reasons for which it was introduced. It is an admitted position that the Act was introduced to help and protect the right, title and interest of the Scheduled Castes and Scheduled Tribes, in respect of the granted lands,

⁶ (2008) 14 SCC 517



whose poverty and status in the society was taken advantage of by some rich and affluent persons who took their lands either by paying a paltry sum or even without paying anything to them.

22. *As noted hereinafter, it is true that in this case, admittedly, the parties had entered into an agreement for sale in respect of the granted land before the commencement of the Act. It is also an admitted position that the respondents belong/belonged to the Scheduled Caste community. As already noted hereinafter, for the purposes of this Act, "transfer" has been defined to include an "agreement for sale" although under the general law, an "agreement for sale" will not by itself transfer the granted land automatically to the appellant purchaser. From an overall consideration of the objects and reasons for which this Act was introduced viz. to protect the right and interest of the Scheduled Castes and Scheduled Tribes in respect of the granted lands and the relevant provisions of the Act, it is pellucid that the definition of "transfer" under Section 3(1)(e) of the Act includes an agreement for sale also and "transfer" has been so defined to protect the right, title and interest of the Scheduled Castes and Scheduled Tribes so that possession of the lands could be restored to them even if they had entered into an agreement for sale.*

(emphasis supplied)



43. A Co-ordinate Bench of this court, in the case of **B.S.Lakshman** (referred supra) holds that the prohibition under Section 61 of the Karnataka Land Reforms Act is applicable only if there is an alienation or transfer. In paragraph 25, it observes as below:

*"25. It is also important to note that having read Section 61 of the Act and also the judgment of the First Appellate Court, it discloses that the First Appellate Court while answering fourth point for consideration comes to the conclusion that Ex.P1 agreement of sale was executed within 15 years from the date of grant and the same is hit by Section 61 of the Karnataka Land Reforms Act. No doubt, the judgment of the Apex Court in the case of **NARAYANAMMA** referred supra referred by the counsel for the respondents is very clear with regard to hit by Section 61 of the Karnataka Land Reforms Act. In that judgment, it has to be noted that predecessor-in-title executed the registered mortgage deed in favour of the plaintiff but in the case on hand, there is no any such mortgage deed and there was no any transfer and only an agreement is executed and in the said judgment, having executed the registered mortgage deed in favour of the plaintiff, again executed the sale agreement*



when already there was a mortgage deed. But in the case on hand, only sale agreement is executed."

44. Though a Co-ordinate Bench of this Court did not go into the background in which the case of **Narayanamma** (referred *supra*) was dealt by the Apex Court, it holds that agreement of sale is not hit by the judgment of Apex Court in **Narayanamma** (referred *supra*). The resultant effect would be that the Court has to find out whether substantially the agreement amounts to an alienation in violation of the intent of Section 61 of the Karnataka Land Reforms Act; only if there is an alienation and an *ad-idem* between the confederates of the fraud on law that the Court should hold that, such transfer is *non-est* and is hit by Section 61 of the Karnataka Land Reforms Act. It is in this background that the facts involved in the present case need to be considered.

45. This Court in the case of **Uma vs Muni Reddy and Others**⁷ laid down that agreements entered into in violation of

⁷ 2021 SCC Online Kar 15034



statutory restrictions on alienation are void and unenforceable in law, as below:

"15. In the light of the law declared by this Court and by the Hon'ble Apex Court, and applying the provision of Section 23 of the Indian Contract Act, 1992, it is not in dispute that no alienation of land including the land to which agreement of sale has been entered into between the parties, and if any such agreement is entered into, it amounts to nullity and not sustainable under Contract Law. In this aspect, the recital in the Agreement of Sale (Ex.P1) which provides for conclusion of the transaction through execution of registered sale deed only after obtaining permission from the Government i.e. after completion of 15 years, is not an Agreement of Sale in the eye of law and same is void.

16. In view of the rulings referred to above, any agreement of sale for alienation of land made by the owner of the land in question, contrary to the period of non-alienation stipulated in the grant is null and void. Therefore, the Agreement of Sale-Ex.P1 is not an agreement within the purview of law and therefore, the contentions raised by learned counsel appearing for the appellant cannot be accepted. In the light of the law declared by the Hon'ble Apex Court and this Court referred to above, though appropriate issue has not been



raised before the trial Court with regard to alienation of the land made in derogation of the provisions contained under the grant certificate and same has not been questioned by the defendant before the First Appellate Court, however, the said submission of the learned counsel appearing for the appellant cannot be accepted. Suffice it to say that, though the learned counsel appearing for the appellant placed reliance on the judgment passed in the case of R. Nagaraja v. Chikka Venkataramma decided on 22.07.2013 in Review Petition No. 82 of 2013 in RSA No. 1244/2004, however, in view of the later judgment of this Court and the Hon'ble Apex Court in the case of NARAYANAMMA's v. Govindappa reported in (2019) 19 SCC 42, the relief sought for specific performance of contract under the provisions of the Specific Relief Act, 1923 cannot be granted and therefore, the judgment relied upon by the learned counsel for the appellant would not enure to the benefit of the appellant."

46. In the case of **Sri Annappa Patil and Others vs Smt. Bhagawwa in RSA 5863/2013** this Court addressed the legal consequence of an agreement of sale accompanied by delivery of possession in the context of statutory prohibition. It observed as below:



"10. Though, the agreement for sale without possession is not a transfer of property, under the agreement the plaintiffs claims to have taken possession. Thus, the plaintiffs cannot urge that the agreement is not an agreement evidencing transfer. This being the position, this Court is of the view that the substantial question of law relating to validity of the agreement for law under Section 61 of the Act of 1961 is squarely covered in terms of the law laid down in the case of Narayanamma (supra). And the Court need not answer other questions"

47. In **V. Nagaraja vs Purushothama and Others in RSA 190/2010** clarified that the precedent relied upon by the appellants was found inapplicable due to materially different facts and the statutory bar under the Karnataka Land Reforms Act. It opined as below:

"25. Even though learned counsel for the appellants placed reliance on Smt.Narayanamma (supra), the facts and circumstances of the said case is entirely different from the present one. As per facts narrated in the said case, initially a mortgage deed was executed in favour of the plaintiff within the period of restriction for alienation and thereafter within a month, the plaintiff and the defendants have entered into agreement for sale. Under such



circumstances, the Trial Court held that the transaction is hit by Section 61 of the Land Reforms Act, which was upheld by the Hon'ble Apex Court."

48. In **Smt. Chikka Venkatamma (Dead) vs. R. Nagaraja and Others in RSA No.1244/2004**, while considering the issue relating to a sale agreement, the Court observed as follows:

"20. The reading of the above section makes it clear that, what is prohibited is the transfer of land by sale, gift, exchange, mortgage, lease or assignment. In Suraj Lamp and Industries Pvt. Ltd (supra), the Hon'ble Supreme Court relying on Section 54 of the Transfer of Property Act and the earlier Judgment of the Supreme Court in Ramba vs Narain Bapuji (2004(8) SCC 614) held that transfer of immovable property by way of sale can only be made by deed of conveyance (sale deed). It was further held that in the absence of deed of conveyance duly stamped and registered as required by law, no right title or interest in an immovable property can be transferred. The Hon'ble Supreme Court in para.11 of the judgment held as follows:

11. Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on



such property. This Court in Narandas Karsondas v. S.A.Kamtam and Anr. (1977) SCC 247, observed:

A contract of sale does not of itself create any interest in, or charge on the property. This is expressly declared in Section 54 of the Transfer of Property Act."

49. While dealing with the scope of interference under Section 100 of the Code of Civil Procedure, this Court in ***Smt.Prathima and Others vs. Smt. Vinaya Achar in RSA No.1417/2023***, held as follows:

"13. The principles laid in the judgment of the Apex Court in the case of SMT. NARAYANAMMA's case is not helpful to learned counsel for the appellants, since there was no sale transaction between the period of bar and only an agreement was entered and the defendants have consciously entered into an agreement of sale knowing the fact that there was a bar to execute the sale deed and the time stipulated is also to execute the sale deed after the period of 15 years. When such being the factual aspects, I do not find any ground to come to a conclusion that there was a perversity in the finding of the Trial Court to invoke Section 100 of CPC to frame the substantial question of law as contended by the learned counsel for the appellants."



50. In **Parvatagouda Ninganagouda Patil v. Guddappa**,⁸ this Court examined whether statutory restrictions under the Karnataka Land Reforms Act prohibit entering into an agreement of sale.

"29. Now the question is as to whether the bar under Section 61 would come into play even in respect of agreement of sale. We see no substance in the contention of the learned Counsel for the defendants that the defendants in the light of prohibition under Section 61 could not have entered into agreement of sale. The prohibition provided under Section 61 of the Karnataka Land Reforms Act, is from transferring the property by way of sale, gift, exchange, mortgage, lease or assignment. The prohibition under Section 61 does not apply to agreement of sale. Therefore, Section 61 does not prohibit the tenants to whom occupancy rights have been granted from entering into an agreement of sale. The agreement of sale does not amount to transfer of interest or right in the property. It merely creates a right to seek enforcement of contract Under the agreement no interest or right in the property is transferred in favour of the prospective buyer. Therefore, Section 61 does not come in the way of tenant entering into an agreement to sell the property. It is for that reason only under the

⁸ (2009) 1 Kant LJ 547



agreement the defendants agreed to execute the sale deed after the expiry of 15 years from 1983. Under these circumstances there is no substance in this contention also.

30. The next contention that as the plaintiff was a non-agriculturist, he could not purchase agricultural land and therefore the agreement cannot be enforced by him as it is barred under Sections 79 and 80 of the Karnataka Land Reforms Act also has no substance. Two Division Bench of this Court have clearly held that agreement to sell agricultural lands even to a non-agriculturist is not a contract in contravention of the Karnataka Land Reforms Act. In Shivannappa Sidramappa Prantur v. Virupaxappa Allappa Bagi [ILR 1980 KAR 702 (DB).] , a Division Bench of this Court has clearly stated that an agreement to sell agricultural land even to a non-agriculturist is not a contract in contravention of the Karnataka Land Reforms Act and it is further held that there is no bar in the Act for entering into an agreement to sell agricultural lands even in favour of a non-agriculturist. It has been further observed in this decision that the question as to whether the intending purchaser is an agriculturist or not is not at all a relevant issue for consideration in a suit for specific performance of the agreement to sell agricultural lands. Again in the case of Mrs. Sushila A. Dass v. Mrs. Mary Bolger [1988 (1) Kar. L.J. 563 (DB) : ILR 1988 KAR 1413 (DB).] , this view has been reiterated. In the light of these two decisions of the Division Bench of this Court and in the



light of the provisions of Sections 79, 80 and 83 of the Act, there is no substance in the contention of the learned Counsel for the defendants with regard to legality of the agreement-Ex. P. 1.

(emphasis supplied)

51. The above catena of decisions show that the Courts have consistently relied on Section 54 of the Transfer of Property Act to hold that the word 'transfer' connotes the transfer of the title. When Karnataka Land Reforms Act imposes a condition that any such transfer is prohibited, it cannot be stretched to mean that it includes the agreement of sale also. It is relevant to note that Section 54 of the Transfer of Property Act defines the transfer and the Apex Court in its previous judgments and various High Courts have held that agreement of sale does not amount to a transfer. Therefore, the contention of the appellants that the agreement entered into between the plaintiff and the defendant was not a transfer holds good.

52. In the case of **Narayanamma** (referred supra), the Apex Court had held that the mortgage was followed by an agreement of sale and therefore, such agreement which was subsequent to the transfer, which is prohibited under Section 61



of the Act, is void. It is also pertinent to note that the Apex Court had gone into the intention of the parties and it concluded that they were the confederates in a fraud on law.

53. In the case on hand, it is evident that though the agreement of sale mentioned that the plaintiff is in possession and enjoyment of the property, such possession has not been recognized by the Court in O.S.No.135/1992 as it was dismissed. It is pertinent to note that the defendants No.2 to 8 contend that they are in possession and enjoyment of the suit schedule property pursuant to the sale deeds executed by the power of attorney holder of the defendant No.1. The defendant No.1 has not entered the witness box. Learned counsel appearing for the appellant has taken exception to this conduct on the part of the defendant No.1, who did not enter the witness box to say about the manner in which the agreement of sale came into effect. The cross-examination of DW1 show that he doesn't know what had transpired between defendant No.1 and the plaintiff-Mallappa at the time of the agreement. Therefore, the say of DW1, who is only a power of attorney holder cannot be of much relevance in respect of the manner in which the agreement was entered into.



In view of the above, it is evident that the trial Court below had recognized the possession of the plaintiff.

54. The records reveal that the photographs of the suit schedule property, including the house property, have been produced by the plaintiff at Exs.P40 and P41. These photographs show that there is nothing which is discernible to assert the possession of the plaintiff. The house property is in a dilapidated condition. Under these circumstances, it is evident that though the plaintiff asserts his possession and enjoyment of the property as per the agreement of sale, he had not improved the same and had not constructed any building over it.

55. The sale deeds produced by the defendant No.2 to 8 show that they are claiming possession over the pieces of lands, which they have purchased from the defendant No.1 on the basis of the sale deeds. Though these sale deeds mention that the possession of such pieces of lands have been given to them, there is nothing on record to show that they have constructed any structure over it. Though there is scanty oral evidence in this regard, nothing discernible in the form of permission for construction of the building, and such other licences etc.,



obtained for enjoying the constructions made in those properties or the conversion of the lands etc., have been placed on record. Therefore, it appears that the suit schedule property is in the same condition as it was in the hands of the defendant No.1 at the time of the agreement of sale. It may be true that a constructive possession of the suit schedule property was with the plaintiff as averred in the agreement of sale, but the same did not culminated in favour of the plaintiff in O.S.No.135/1992. Under these circumstances, reverting back to the question of law regarding the effect of Section 61 of the Karnataka Land Reforms Act, it is evident that the alleged transfer of the possession from defendant No.1 to the plaintiff's predecessor [Mallappa] appears to be a possession, which remained on papers. In other words, the animus that could be found in the parties in the case of **Narayanamma** (referred supra) cannot be found in the present case on hand. This would lead this Court to hold that, in the case on hand, the agreement of sale as per Ex.P.8 though mentioned about the transfer of the possession by the defendant No.1 in favour of the agreement holder-Mallappa, there was no such improvement to the suit schedule properties. Under these circumstances, the background in which the case of



Narayanamma (referred supra) was dealt with is not available in the case on hand.

56. It is pertinent to note that the circumstances under which the Apex Court came to the conclusion that an agreement of sale is also hit by the provisions of Section 61 of the Karnataka Land Reforms Act, is distinguished by many judgments. While there can be no reversal of the principle that transfer of ownership as defined under Section 61 of the Karnataka Land Reforms Act limits to the modes of transfer mentioned therein, and there being catena of judgments to hold that the agreement of sale never can be held to be a valid transfer, the judgment in the case of **Narayanamma** (referred supra) has to be held that it was in the background of the mortgage and the agreement, which was entered into within one month. Moreover, in the case on hand, though there is transfer of the possession as mentioned in the agreement, there was no such improvement which was carried out by the plaintiff in the suit schedule property. Thus, the ratio laid down in the case of **Narayanamma** (referred supra) cannot be made applicable to the case on hand.



57. With this background, let us examine the question of limitation.

First Substantial Question of law: Limitation

58. Though the plaint does not specifically say as to when the cause of action arose, it only says that the cause of action arose in first week of September, when the defendant refused to accept the legal notice issued by the plaintiffs. It is pertinent to note that as per Article 54 of the Limitation Act, the time begins to run from the date when specific performance was refused. Therefore, it is such refusal to adhere to the contractual terms of Ex.P8 which constitutes the date of cause of action.

59. Hon'ble Apex Court in ***Banarsi Das v. Kanshi Ram***⁹ held that limitation being a mixed question of law and fact cannot be raised for the first time without affording opportunity to the parties. It held as below:

"15. The High Court has overlooked the fact that even upon the argument addressed before it on behalf of Kanshi Ram, the question of limitation was not one purely of law but was a mixed question

⁹ AIR 1963 SC 1165



of fact and law and, therefore, it was not proper for it to be raised for the first time in argument. We are satisfied that what the High Court has done has caused prejudice to some of the parties to the suit and on that ground alone, we would be justified in setting aside its decision. If the High Court felt overwhelmed by the provisions of Section 3 of the Limitation Act, it should at least have given an opportunity to the parties which supported the decree of the trial court to meet the plea of limitation by amending their pleadings. After allowing the pleadings to be amended, the High Court should have framed an issue and remitted it for a finding to the trial court. Instead of doing so, it has chosen to treat the pleading of one of the defendants as conclusive not only on the question of fact but also on the question of law and dismissed the suit. It is quite possible that had an opportunity been given to the defendants, they could have established, in addition to proving the dates on which the summonses were served, that the suit was not barred by time because of acknowledgments. In the course of the discussion, the High Court has said that it was not suggested before it by anyone that the claim was not barred by reason of acknowledgments. Apparently, no such argument was advanced before it on behalf of the plaintiff and the defendant Banarsi Das because the counsel were apparently taken by surprise and had no opportunity to obtain instructions on this



aspect of the case. We are clearly of opinion that the High Court was in error in allowing the plea of limitation to be raised before it particularly by defendants who had not even filed a written statement in the case. We do not think that this was a fit case for permitting an entirely new point to be raised by a non-contesting party to the suit."

(emphasis supplied)

60. In the case on hand the cause of action for the present suit to initiate action for specific performance had arisen from the date when there was refusal. Obviously, the written statement filed by the defendant in O.S.135/1992 has not been produced by the defendants. Evidently, permission was granted by Tahsildar only in the year 1998 and the condition not to alienate the property was relaxed. Therefore, in the absence of anything to show that the refusal of the defendant to execute the sale deed was made known to the plaintiff after such permission dated 23.04.1998 was granted to the defendant, it cannot be said that the limitation had begun to run.

61. Even if we assume that in O.S.No.135/1992, the defendant had refused to comply with the agreement as per



Ex.P8, the condition imposed by the Land Tribunal not alienate for 15 years had not come to an end. Therefore, at any rate, the right to enforce the contract of agreement of sale does not accrue till 1997. Clandestinely the defendant obtains the permission to alienate the property from Tahsildar on 23.04.1998 and sells pieces of the lands to defendant No.2 to 8. However, he doesn't inform the plaintiff about obtaining such permission. Therefore, it cannot be said that the cause of action had arisen immediately after the 15 years period was completed as per the conditions in Form No.10.

62. Therefore, it is evident that the contention of the plaintiff that he only came to know about the refusal to perform his part of the contract by the defendant when the defendant filed the written statement in O.S.No.126/2000 has to be accepted. The defendant has not shown any material to establish that plaintiff knew about refusal to execute the sale deed by the defendant, it cannot be said that the limitation had begun to run on the date of expiry of the 15 years period on 04.05.1997. The contention of the learned counsel for the respondent that the defendant had denied the agreement and had refused to execute



the sale deed in the year 1994 in the written statement filed in O.S.No.135/1992 has not been established.

63. It may be noted that the question of limitation was not at all raised by the defendants in the written statement. The said issue of limitation being question of law and fact, I find considerable force in the submission made by the learned counsel for the appellant that in the present case, it is not the question of law alone, which could have been raised in the appeal, but it was question of fact also, which should have been pleaded in the written statement.

64. In the light of the above discussions, this Court comes to the conclusion that the finding of the First Appellate Court that the suit was barred by limitation is perverse and it does not stand to reason to say that plaintiff had the knowledge of the refusal of the defendant was known to him much earlier to three years from the date of filing of the suit. Thus, it is to be held that the suit is not barred by limitation.

65. Insofar as the contention of the defendant that the suit is hit by the provision of Order II Rule 2 of Code of Civil



Procedure, it is to be noted that the pleadings in the earlier suit are essential to decide the said question. The judgment of Supreme Court in ***Alka Gupta v. Narender Kumar Gupta***¹⁰ reiterated that a bar under Order II Rule 2 CPC must be specifically pleaded and tried as an issue. It held as below:

"7. Xxxxx. For the reasons following, we are of the view that the orders of the learned Single Judge and the Division Bench which ignore several basic principles of the Code of Civil Procedure cannot be sustained.

I. A suit cannot be dismissed as barred by Order 2 Rule 2 of the Code in the absence of a plea by the defendant to that effect and in the absence of an issue thereon.

8. The object of Order 2 Rule 2 of the Code is two-fold. First is to ensure that no defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2 Rule 2 of the Code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. It does not however bar a

¹⁰ AIR 2011 SC 9



second suit based on a different and distinct cause of action.

9. *This Court in Gurbux Singh v. Bhoora Lal [AIR 1964 SC 1810] held :*

"In order that a plea of a bar under O. 2, R. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar."

II. The cause of action for the second suit being completely different from the cause of action for the first suit, the bar under order 2 Rule 2 of the Code was not attracted."

(emphasis supplied)



66. In ***Vurimi Pullarao*** (referred supra), the Apex Court examined whether the omission to seek specific performance in an earlier suit for injunction attracts the bar under Order II Rule 2 of the Code of Civil Procedure and considered the contention that the bar under Order II Rule 2 CPC cannot be applied without the pleadings of the earlier suit being proved on record. It observed as below:

"20. In the present case, the earlier suit for injunction was instituted on 30-10-1996. Para 2 of the plaint in the suit for injunction contained a recital of the agreement to sell dated 26-10-1995; the price fixed for the bargain between the parties; the payment of earnest money; the handing over of possession; the demand for performance and the failure of the defendant to perform the contract. Indeed, the plaintiff also asserted that she was going to institute a suit for specific performance of the agreement dated 26-10-1995. Under the agreement dated 26-10-1995, time for completion of the sale was reserved until 25-10-1996. Notice of performance was issued on 11-10-1996 to which the defendant had replied on 13-10-1996. The cause of action for the suit for specific performance had arisen when the plaintiff had notice of the denial by the defendant to perform the contract. On



30-10-1996 when the suit for injunction was instituted, the plaintiff was entitled to sue for specific performance. There was a complete identity of the cause of action between the earlier suit (of which para 2 of the plaint has been reproduced in the earlier part of the judgment) and the cause of action for the subsequent suit. Yet, as the record indicates, the plaintiff omitted to sue for specific performance. This is a relief for which the plaintiff was entitled to sue when the earlier suit for injunction was instituted. Having omitted the claim for relief without the leave of the Court, the bar under Order 2 Rule 2(3) would stand attracted.

21. *But the case of the plaintiff in appeal is that in order that the bar under Order 2 Rule 2 be attracted, it is necessary that the plaint in the earlier suit must be proved in evidence. In the present case, it was submitted that this was not done. The basis of above submission is the judgment of the Constitution Bench in Gurbux Singh [Gurbux Singh v. Bhooralal, AIR 1964 SC 1810]. Now it is necessary to analyse the facts which led to the decision of the Constitution Bench. The respondent had instituted a suit against the claimant for possession of certain property and for mesne profits. The allegation in the plaint was that the plaintiff was the absolute owner of the property of which the defendant was in wrongful possession and that despite a demand he had failed to vacate the property, thereby attracting the liability to pay*



mesne profits. The plaint contained a reference to a previous suit instituted by the plaintiff and his mother in which a claim had been made against the defendant for the recovery of mesne profits in regard to the same property. It was also stated that mesne profits had been decreed in the suit. In the written statement, the appellant-defendant raised a plea to the maintainability of the suit on the ground of the bar under Order 2 Rule 2. As an issue was struck it was argued as a preliminary issue. The Court recorded a finding that the suit was barred by the provisions of Order 2 Rule 2. The Court held that without the pleadings in the earlier suit being made a part of the record, the trial court decided the issue as a matter of deduction. Consequently, the District Judge held that the bar under Order 2 Rule 2 could not have been entertained without the plaint in the earlier suit being made a part of the record. However, the first appellate court also held that if the point did arise for consideration, it would have decided it in favour of the plaintiff and treated the cause of action for a suit for mesne profit as distinct from a cause of action for the relief of possession of a property from a trespasser. However, on the first point that there was no material on the record to justify the plea of a bar under Order 2 Rule 2, the District Judge did not rest his decision on his view of the law as regards the construction of Order 2 Rule 2(3). Accordingly, he set aside the dismissal of the



suit and remanded it to the trial court for a decision on merits. The High Court dismissed the second appeal as a consequence of which proceedings came up before this Court.”

67. In ***Rathnavathi v. Kavita Ganashamdas***¹¹, the Supreme Court explained why the bar under Order II Rule 2 CPC was held inapplicable due to distinct causes of action for injunction and specific performance. It observed as below :

“25. In the instant case when we apply the aforementioned principle, we find that the bar contained in Order 2 Rule 2 CPC is not attracted because of the distinction in the cause of action for filing the two suits:

25.1. So far as the suit for permanent injunction is concerned, it was based on a threat given to the plaintiff by the defendants to dispossess her from the suit house on 2-1-2000 and 9-1-2000. This would be clear from reading Para 17 of the plaint. So far as the cause of action to file suit for specific performance of the agreement is concerned, the same was based on non-performance of agreement dated 15-2-1989 by Defendant 2 in the plaintiff’s favour despite giving legal notice dated 6-3-2000 to Defendant 2 to perform her part.

¹¹ (2015) 5 SCC 223



25.3. In case of former, the plaintiff is required to make out the existence of prima facie case, balance of convenience and irreparable loss likely to be suffered by the plaintiff on facts with reference to the suit property as provided in Section 38 of the Specific Relief Act, 1963 read with Order 39 Rules 1 and 2 CPC. Whereas, in case of the latter, the plaintiff is required to plead and prove her continuous readiness and willingness to perform her part of the agreement and to further prove that the defendant failed to perform her part of the agreement as contained in Section 16 of the Act.

26. One of the basic requirements for successfully invoking the plea of Order 2 Rule 2 CPC is that the defendant of the second suit must be able to show that the second suit was also in respect of the same cause of action as that on which the previous suit was based. As mentioned supra, since in the case on hand, this basic requirement in relation to cause of action is not made out, the defendants are not entitled to raise a plea of bar contained in Order 2 Rule 2 CPC to successfully non-suit the plaintiff from prosecuting her suit for specific performance of the agreement against the defendants."

(emphasis supplied)

68. It is evident that in the year 1992, when the suit for injunction was filed by the plaintiff, a prayer for specific performance could not have been made by him. The condition



imposed by the Land Tribunal not to alienate the suit schedule property for 15 years had not lapsed. Permission was not available to sell the property. Evidently, the defendant No.1 had several other properties, which may be seen from Ex.P43 to 46. Therefore, the question of ceiling limits about the extent of property to be held by a person was also to be cleared by the competent authority. Learned counsel for the appellant draws the attention of this Court to the provisions of Section 63 to 66 of KLR Act, which imposes certain limits on the extent of the land that may be held by a person.

69. Hence, this court comes to the conclusion that the finding of the First Appellate Court that the suit is hit by law of limitation cannot be sustained and the first substantial question of law is answered in the affirmative.

C. Regarding Ready and willingness:

70. Having answered both the substantial questions of law and regarding the statutory bar under section 61 of the KLR Act, let us consider the question of ready and willingness. In ***Sri Thammannagowda vs Ramegawda [RSA 1082/2022]*** this



Court held that where the entire sale consideration has been paid and possession has been delivered, the requirement of readiness and willingness and the plea of limitation must be examined in light of the admitted factual matrix and the terms of the agreement.

"27. In the case on hand, when there was a non-alienation clause and entire sale consideration is paid, the question of readiness and willingness to pay the balance consideration money is not of much importance in view of the admitted factual aspects of the judgment reported in ILR 2003 KAR 3533 and the said judgment aptly applies to the facts of the case on hand and there is no obligation on the part of the plaintiff either by making any payment of balance sale consideration, since already paid the entire sale consideration and possession was also delivered in favour of the plaintiff as on the date of execution of the sale agreement and the recitals in the power of attorney is also very clear that, all powers are applicable to the facts of the case on hand having considered the discussions made in Para No.15 of the judgment, wherein there was an endorsement by the plaintiff himself that he consents for defendant to sell plot Nos.198 and



199 which he had intended to purchase. When such materials are available before the Court, the very contention of the learned counsel for the respondent that Article 54 of the Limitation Act applies cannot be accepted and Article 54 of the Limitation Act applies when no time period is fixed in the agreement to have the sale deed and time was already fixed for execution of the document and not performing any part of contractual terms."

71. The First Appellate Court as well as the Trial Court have come to the conclusion that the agreement between the parties as per Ex.P8 has been proved. Both the Courts relied on the testimony of the DW5 and the testimony of the PWs1 to 3 to come to the conclusion that the plaintiff-Mallappa and the defendants had entered into the agreement. The said question of fact, being concurrent findings, it is not necessary for this Court to re-examine the same.

72. The First Appellate Court holds that the PW1 has unequivocally admitted that prior to the institution of the suit, notice was not issued to the defendant No.1 and the plaintiffs have not approached the defendant No.1 with balance sale



consideration amount. Therefore, it holds that the ready and willingness is not proved. It also adds that the plaintiffs have not filed suit for cancellation of the sale deeds executed by defendant No.1 in favour of defendants No.2 to 8.

73. The Trial Court while dealing with the issue regarding the ready and willingness (issue No.4) notices that the moratorium of fifteen years from the date of issue of Form No.10 by the Tribunal expires on 05.05.1997 and for all those years, the plaintiff had not approached the defendant. However, it notices that a legal notice as per Ex.P3 had been issued to the defendant but it was refused. This would show that the reasoning of the First Appellate Court is incorrect. It also notices that it was the bounden duty of the defendant to obtain the permission from the concerned authority for transfer of the property and therefore, it holds that the plaintiff had shown ready and willingness.

74. Since, the First Appellate Court had not bestowed its attention on the legal notice issued as per Ex.P3, it cannot be said that there was no such ready and willingness. A perusal of Ex.P8, the agreement shows that the defendant had agreed to



execute the sale deed whenever the Government permits him to alienate the property. The defendant had accepted the responsibility to obtain such permission to alienate the property. Obviously, the written statement do not state when the defendant No.1 had obtained such permission. It is relevant to note that the additional document now produced by the appellant under Order 41 Rule 27 of Code of Civil Procedure, shows that such permission was granted on 23.04.1998. The defendant has not informed the plaintiff about such permission being granted by Tahsildar. There is no averment of such permission being granted to him in the written statement. Therefore, it is evident that when the plaintiff came to know about the alienation made by the defendant No.1, he issued a legal notice as per Ex.P3 and thereafter, instituted the suit for specific performance.

75. Not only that, it appears that the defendant in his written statement in O.S.No.126/2000 had contended that he has sold the property to defendants No.2 to 8. Therefore, the Court had directed to file a suit for specific performance. When the plaintiff was in possession of the property as per the agreement at Ex.P8 and when the burden of securing the



permission to alienate was on the defendant, it was not necessary for the plaintiff to go on making enquires about the permission to alienate. In that view of the matter, the cryptic findings of the First Appellate Court that there was no such ready and willingness on the part of the plaintiff appears to be perverse and it could not have replaced its findings to that of the Trial Court without referring to the written statement on O.S.No.126/2000 and Ex.P3. Therefore, this finding of the First Appellate Court is patently perverse and arbitrary.

76. It is also relevant to note that the Trial Court initially discusses and holds that the question of ready and willingness has not been proved by the plaintiff but at the end of paragraph 20 (Page 33), it holds that the ready and willingness has been proved. It seems that the Trial Court was unsure about the ready and willingness of the plaintiff. However, after noting that the defendant had not stepped into the witness box, it changes its mind and holds the issue No.4 in the affirmative.



77. The Apex Court in ***Man Kaur v. Hartar Singh Sangha***¹², emphasized strict compliance with Section 16(c) of the Specific Relief Act regarding readiness and willingness. It held as below:

"21. The plaintiff who ought to have given evidence never appeared and gave evidence. As his attorney-holder PW 1 had no knowledge of the transaction, the plaintiff solely relied on the evidence of the property dealer Balraj Singh (PW 2) to prove the execution of the agreement, the terms of the agreement, his readiness and willingness to perform the agreement and the alleged breach by the defendant. But Balraj Singh cannot become a substitute for the plaintiff to give evidence about the finances or intentions or the readiness and willingness of the plaintiff which were within the personal knowledge of the plaintiff. Balraj Singh was a property dealer engaged by the plaintiff and supporting the plaintiff. He was not an attorney-holder acting on behalf of the plaintiff. Therefore, neither the evidence of Jagtar Singh (PW 1) nor the evidence of Balraj Singh (PW 2) can be relied upon to prove that plaintiff was always ready and willing to perform his obligations under the contract, in terms of the contract. Therefore, it has to be held that though there were

¹² (2010) 10 SCC 512



necessary averments in the plaint about the readiness and willingness of the plaintiff, and though PW 1 and PW 2 gave evidence about his readiness and willingness, the suit has to fail for failure to comply with Section 16(c) of the Specific Relief Act, as there was no acceptable or valid evidence of such readiness and willingness of the plaintiff to perform his part of the obligations in terms of the contract.

78. The question of ready and willingness which is held against the plaintiff by the First Appellate Court is perverse and the same needs to be set aside. The resultant effect would be whether the discretion has to be exercised in favour of the plaintiffs or the defendant No.1.

D. Reg: Discretion of the Court to grant Specific Performance

79. The evidence on record shows that as per the photographs produced at Ex.P.40 and Ex.P.41 there is no such discernible improvement in the land or investment made by the plaintiff in the suit schedule property. It is not the case of the plaintiff that he has made certain improvements and constructions and has put the suit schedule property to better



use. It is also relevant to note that the defendant No.1, in the year 1994, as per Ex.D.1 had executed power of attorney in favour of DW1 to deal with the suit schedule property and Survey No.43, in a manner he likes. On the basis of such power of attorney, DW1 had executed various sale deeds in favour of other defendants and in turn there have been transactions between them. The cross-examination of PW1 shows that the house property has been dilapidated. The testimony of DW2 shows that the piece of land purchased by him to the extent of 21 guntas is improved by him. Similarly, the testimonies of the other witnesses also show that the property is adjoining Chikkodi road and therefore, they have improved the lands purchased by them.

80. The manner in which discretion has to be exercised by the Court while granting the relief of specific performance is dealt by the Apex Court in the decision of ***Satya Jain (Dead) through Lrs. & Others v. Anis Ahmed Rushdie (Dead) through Lrs***¹³.

¹³ (2013) 8 SCC 131



81. It is evident that the Apex Court deviated from the provisions of Section 20 of the Specific Relief Act and held that the relief of specific performance cannot be denied on the ground of efflux of time and escalation of the price of the property, but however in order to balance both the issues based on the plaintiff's offer, an additional compensation was awarded to the vendor by granting market value than what had been stipulated in the agreement. In the case on hand, the agreement had taken place in the year 1988. The issue is being finally decided by this Court in this appeal in the year 2026 it is evident that more than 3½ decades have passed after the agreement was entered into. The valuation of the suit schedule property measuring 5½ Acres in the year 1988 was ₹40,000/-. The subsequent sale deeds entered into between the GPA holder of defendant No.1 and the other defendants was for a higher value. Evidently, the defendants are claiming that they have improved the lands, and there is nothing on record to show that the plaintiffs had improved the lands and any value additions made by them. Moreover, except the agreement, there is nothing to show that they are in possession.



82. The other aspect which is borne out from the records is that, it appears that defendant No.1 was in deep financial trouble and therefore, he had sold both the properties granted to him by the Land Tribunal i.e., Survey No.40 and 43 to various purchasers. Though an agreement was executed in the year 1988, the permission to alienation was obtained in the year 1998. By that time, the valuation had increased. There were no value additions that had been made to the suit schedule property by the plaintiff and as such, it appears that the defendant No.1 alienated pieces of lands to the various other purchasers and evidently the value is on the higher side. Therefore, granting a relief of specific performance after about 37 years would not be justifiable in the interest of justice and equity.

83. Taking clue from the judgment of the Apex Court in the case of **Satya Jain** (referred supra), it would not be proper to grant the relief of specific performance to the plaintiff. The First Appellate Court, since it came to the conclusion that the plaintiff is not entitled for the relief of specific performance on the ground of there being no readiness and willingness on his part, did not go into the question of the discretion to be exercised. The Trial Court, in paragraph 22 of its judgment,



notes that discretion has to be exercised cautiously and noting that the defendant No.2 to 8 had not pleaded that they are *bona fide* purchasers of the suit schedule property without notice, it grants the relief of specific performance to the plaintiff. The question whether the defendant No.2 to 8 are the *bona fide* purchasers or not, had nothing to do in respect of the judicial discretion, which had to be considered by it. The comparative hardship of the defendant No.1 and the plaintiffs would be the criteria for considering the discretion to be exercised. Therefore, when there is no material on record to show that the plaintiffs had made any value additions to the suit schedule property, which would place them in a disadvantageous position if the specific performance is not ordered, there will not be any hardship to them. However, if the lands which are sold by defendant No.1 to defendant No.2 to 8 are to be reverted back to the plaintiffs, then obviously the contentions of these defendants that there have been improvements which would put them in disadvantageous position would come to fore. Of course, it is true that the defendants No.2 to 8 have not contented that they are *bona fide* purchasers, but the evidence on record show that the property was not improved by the plaintiff. Moreover, after 37 years, it would not be proper to exercise the discretion in



favour of the plaintiff and allow him to purchase the suit schedule property measuring 5½ Acres for a meager sum of ₹40,000/-. Therefore, this Court is of the view that the discretion cannot be exercised in favour of the plaintiff for:

- (a) The issue is being decided after 37 years;
- (b) The escalation in the price of the land is manifold;
- (c) No improvement has been made by the plaintiff in the suit schedule property;
- (d) The land has been sold by the defendant No.1 to the defendant No.2 to 8 in bits and pieces.

84. Hence, this is a fit case where the discretion has to be declined. In the result, the appeal deserves to be allowed in part. The defendant No.1 (now represented by LRs), either by himself or collectively, with the help of other defendants to whom he has sold the property, are to be directed to refund the sum of ₹38,000/- to the plaintiff along with interest rate 18% per annum from the date of the agreement till the date of payment, which would also cover the damages claimed. Hence the following:



ORDER

- (i) The appeal is allowed in part.
- (ii) The suit filed by the appellant for specific performance of the contract is dismissed.
- (iii) The judgment of the First Appellate Court is hereby set aside. The judgment of the Trial Court in O.S.No. 153/2000 is modified.
- (a) The defendant No.1 to 8 jointly or severally are liable to refund the sum of ₹38,000/- along with interest @ 18% per annum from the date of agreement i.e., 25.01.1988 till the date of payment. There shall be a charge over the suit property until the payment is fully made.
- (b) The appellant is also entitled for the costs throughout.

**Sd/-
(C M JOSHI)
JUDGE**