



CNR: KAHC010012282019

NC: 2026:KHC:39901
RSA No. 97 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 97 OF 2019 (SP)

BETWEEN:

M N VASANTHA
S/O M. NAGAPPA
AGED ABOUT 59 YEARS
PROPRIETOR OF RENUKA ELECTRICALS,
KESHAVAPURA EXTENSION,
BHADRAVATHI - 577 301,
SHIVAMOGGA DISTRICT.

...APPELLANT

(BY SRI. UMESH MOOLIMANI, ADVOCATE FOR
SRI. S.V. PRAKASH, ADVOCATE)

AND:

1. GANESH SINGH
S/O NARAYANA SINGH
AGED ABOUT 73 YEARS

2. ARUN SINGH
S/O GANESH SINGH
AGED ABOUT 43 YEARS

BOTH ARE R/AT BESIDES JAGAJYOTHI
BASAVESHWARA HOSTEL
BATAWADI COLONY,
TUMAKURU - 572 132.

...RESPONDENTS

(BY SRI. MOHANKUMAR G.R., ADVOCATE FOR R1
VIDE ORDER DATED 13.07.2026,
R2 SERVED (THROUGH PAPER PUBLICATION))

Digitally
signed by
MALATESH
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Location:
HIGH
COURT OF
KARNATAKA



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THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 29.09.2018 PASSED IN R.A.NO.111/2013 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND JMFC, BHADRAVATHI DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 03.09.2013 PASSED IN O.S.NO.47/2011 ON THE FILE OF THE I ADDL. CIVIL JUDGE AND JMFC, BHADRAVATHI.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri.Umesh Moolimani, learned counsel for the appellant. None appears for the respondents.
2. This is the plaintiff's second appeal challenging the non-enforcement of the agreement to sell by the Trial Court in O.S.No.47/2011 confirmed in R.A.No.111/2013.
3. Facts which are utmost necessary for disposal of the present appeal are as under;

The defendant agreed to sell the suit property in favour of the plaintiff by executing two sale agreements, one on 13.06.2008 and second on 17.03.2008. There is no dispute as to the execution of the document and receipt of



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the advance sale consideration in a sum of ₹ 1,00,000/-.

The reason assigned by the Trial Court for non-enforcement of the agreement is plaintiff failed to prove that he was always ready and willing to perform his portion of the contract.

4. Being aggrieved by the same, the plaintiff filed an appeal before the First Appellate Court in R.A.No.111/2013. The Hon'ble Judge in the First Appellate Court after securing the records, heard the arguments of the parties and on re-appreciation of material on record dismissed the appeal.

5. Being further aggrieved by the same, the plaintiff is before this Court.

6. Sri Umesh Moolimani, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that both the Courts have lost sight of the fact that it is the defendants who did not come forward to execute the sale deed pursuant to the



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sale agreements and reason assigned by both the Courts for non-enforcement is incorrect and against the settled principles of law and sought for admitting the appeal on following substantial questions of law;

i) Whether the judgment and decree passed by the lower appellate court is in consonance with Order XLI Rule 31 in as much as the lower appellate court has failed to re-appreciate the entire evidence on record which is sine-qua-non for disposal of the appeals filed under Section 96 of Code of Civil Procedure?

ii) Whether on facts and in the circumstances of the case, the impugned judgment and decree of the lower appellate court confirming the judgment and decree of the trial court is sustainable in law?

iii) Whether the lower appellate court is justified in declining to allow the application made by the plaintiff in R.A. No. 111/2013 seeking to produce the additional documents under Order XLI Rule 27 of Code of Civil Procedure, 1908.

iv) Whether the finding recorded by the courts below that the plaintiff failed to prove the suit agreement Ex.Pl is perverse regard being had to the



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admission of defendants in Ex.P2 and in the evidence of DW1 (second defendant)?

v) Whether the courts below have committed an error in holding that the plaintiff and the defendants entered into an agreement for sale in respect of suit schedule property 17.03.2008 in absence of any material whatsoever produced by the defendants and also in absence of a copy of said sale agreement having been produced?

vi) Whether the courts below are justified in recording finding that the plaintiff has failed to establish that he was ready and willing to perform his part of obligation under the terms of Ex.P1 in absence of any materials produced by the defendants?

vii) Whether the courts below are right in law in holding that the plaintiff is not entitled for the refund of the advance amount paid under the agreement despite the categorical admission made by defendants in Ex.P2 and also in the evidence of second defendant (DW1)?

viii) Whether the courts below are justified in holding that plaintiff having not examined one of the attesters to Ex.P1, the execution of the same has



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not been proved notwithstanding the fact that the defendants have admitted the execution of said document?

7. Since the counsel for the respondents is absent, this Court perused the material on record meticulously in the light of arguments put forth on behalf of the appellant.

8. On such perusal of the material on record in paragraph No.17 of the Trial Court Judgment, while answering Issue No.3, learned Trial Judge has noted that it is the plaintiff who failed to prove that he was always ready and willing to perform his portion of the contract.

9. Learned Trial judge has also noted the answers elicited in the cross-examination of the plaintiff, wherein, he has specifically admitted that earlier to the suit agreement, there was one more agreement. Said agreement was suppressed by the plaintiff and in the second agreement, the responsibility of getting the suit property surveyed was left on the plaintiff and the



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defendants have co-operated for the said survey in all respects.

10. Reply notice issued by the defendants make out a case that it is not the defendants who are non-cooperative, but it is the plaintiff who failed to perform his portion of the contract.

11. In fact earlier to the suit agreement, there was one more agreement whereunder also, three months time was stipulated for completion of the said transaction and when the said time expired, the plaintiff could not get the sale deed executed and the second agreement came into existence.

12. Since the agreement is admitted and the readiness and willingness is not proved by the plaintiff, decreeing the suit in part ordering for refund of amount is thus just and proper which requires no further consideration by this Court having regard to scope of Section 100 CPC.



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13. Accordingly, the following;

ORDER

- (i) Admission is declined.
- (ii) The appeal is ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

GH
List No.: 1 Sl No.: 48