



CNR: KAHC010040312022

NC: 2026:KHC:36159
RSA No. 180 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 180 OF 2022 (SP)

BETWEEN:

1. KEMPAHANUMIAH
S/O LATE NARASAHANUMIAH
AGED ABOUT 50 YEARS
2. BYLAPPA
SINCE DEAD
- 2(A). SMT. VENKATA LAKSHMAMMA
W/O LATE BYLAPPA
AGED ABOUT 54 YEARS
RESIDING AT K.G. SRINIVASAPURA VILLAGE
MYLANAHALLI, NELAMANGALA TALUK
BENGALURU RURAL DISTRICT - 562 123.
- 2(B). SMT. KALPANA S.B
S/O LATE BYLAPPA
S/O DALAPPA H.P
AGED ABOUT 35 YEARS
RESIDING AT VASANTHA NAGARA
HESARAGATTA, BENGALURU NORTH
BENGALURU - 560 088.
- 2(C). SMT. MANGALAGOWRAMMA S.B
W/O PURUSHOTHAMA A.H
D/O LATE BYLAPPA
AGED ABOUT 34 YEARS
RESIDING AT ARALIMARADAPALYA VILLAGE
NORTHERN EXTENSION, MADHUGIRI,
TUMKUR DISTRICT - 572 106.

Digitally
signed by
MALATESH
K

Location:
HIGH
COURT OF
KARNATAKA



NC: 2026:KHC:36159
RSA No. 180 of 2022

CNR: KAHC010040312022

2(D). SMT. SHAKUNTHALA S.B
W/O SURESH R.B
D/O LATE BYLAPPA
AGED ABOUT 33 YEARS
RESIDING AT NO. 69, KUVEMPU ROAD,
NEAR WATER TANK, ADAKAMARANAHALLI
BENGALURU - 562 123.

2(E). SMT. BHAGYA S.B
W/O VINOK KUMAR R
D/O LATE BYLAPPA
AGED ABOUT 30 YEARS
RESIDING AT NAGASANDRA,
SONDEKOPPA
DASANAPURA HOBLI
BENGALURU - 562 130.

3. NARASIMHA MURTHY
S/O LATE NARASAHANUMAIH
AGED ABOUT 50 YEARS

ALL ARE RESIDING AT
K.G. SRINIVASAPURA VILLAGE
KASABA HOBLI, NELAMANGALA TALUK
BENGALURU RURAL DISTRICT - 562 123.

...APPELLANTS

(BY SRI. KASHINATH J.D, ADVOCATE FOR APPELLANT AND
ALSO FOR A2(A TO E) AND A3)

AND:

NANJAPPA
AGED ABOUT 58 YEARS
S/O SRI. GOVINDAPPA
RESIDING AT T K.G. SRINIVASAPURA VILALGE
KASABA HOBLI, NELAMANGALA TALUK
BENGALURU RURAL DISTRICT - 562 123.

...RESPONDENT

(BY SRI. GANGADHARAIH A.N, ADVOCATE)



**NC: 2026:KHC:36159
RSA No. 180 of 2022**

THIS RSA IS FILED UNDER SECTION 100 OF CPC, 1908 AGAINST THE JUDGMENT AND DECREE DATED 08.12.2021 PASSED IN RA.No.232/2020 ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 19.02.2020 PASSED IN OS.No.775/2009 ON THE FILE OF THE SENIOR CIVIL JUDGE NELAMANGALA.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard.
2. Defendants' second appeal challenging the decree passed by the Trial Court in O.S.No.775/2009 dated 19.02.2020 which was confirmed by the First Appellate Court in RA No.232/2020 dated 08.12.2021 decreeing the suit for specific enforcement of agreement to sell.
3. Facts of the case are as under:



**NC: 2026:KHC:36159
RSA No. 180 of 2022**

CNR: KAHC010040312022

3.1. A suit in O.S.No.775/2009 came to be filed in respect of agreement to sell dated 28.12.2005 with regard to the following property (hereinafter referred to as suit property):

"All that piece and parcel of the property bearing Sy.No.27/2, measuring 20 guntas, situated at K.G.Srinivasapura village, Kasaba Hobli, Nelamangala Taluk, bounded on the:

East by: Road

West by: Land of Bylappa

North by: Village

South by: Land of Govindappa"

3.2. Plaintiff contended that defendants agreed to sell the suit property being the absolute owner having been granted the land to him. There was a stipulation of condition of non-alienation for a period of 15 years in the grant certificate. Thereafter, defendants had agreed to sell the property at the rate of Rs.7,750/- per gunta. Sale consideration was thus fixed in a sum of Rs.1,55,000/-.

3.3. On 28.12.2005, defendants executed sale agreement and received advance sale consideration in a sum



CNR: KAHC010040312022

of Rs.1,20,000/- and balance sum of Rs.35,000/- was agreed to be paid at the time of registration.

3.4. Despite repeated demands, defendants failed to execute the sale deed and therefore, suit was necessitated after issuing necessary legal notice.

4. Pursuant to the suit summons, defendants entered appearance and filed written statement denying the plaint averments in *toto* except admitting that defendants are the absolute owners of the suit property.

5. Based on the rival contentions of the parties, learned Trial Judge raised necessary issues and after recording the material evidence on record, decreed the suit of the plaintiff holding that the defence taken by the defendants that signatures are not tallying in the agreement is negated by virtue of the report filed by the handwriting expert.

6. Being aggrieved by the same, defendants filed an appeal before First Appellate Court in RA No.232/2020.

7. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in



CNR: KAHC010040312022

detail and on reappreciation of the material on record, dismissed the appeal filed by the defendants by considered judgment dated 08.12.2021 *inter alia* holding in paragraph Nos.20 to 28 as under:

"20. One of the main grounds urged by the learned counsel for the defendants No.2 to 4 in the appeal on hand is that the alleged agreement of sale is not maintainable in view of the PTCL Act. The learned counsel for the defendants No.2 to 4 has drawn the attention of this Court to the decision of the Hon'ble High Court of Karnataka reported in ILR 2012 KAR 4261 (Smt. Narasamma and Others Vs. K.V. Ramprasad and Another) wherein referring to Section 4 of the PTCL Act, it is held that:

"The Act was enacted to provide for prohibition of transfer and or restoration of lands granted by the Government to the persons belonging to the Scheduled Castes and Scheduled Tribes in the State. Sub-section (2) of Section 4 states that no person shall, after commencement of the Act, transfer or acquire by transfer any Granted Land without previous permission of the Government. An extensive definition has been used to define the expression 'transfer'. Thus, 'transfer' not only means a sale, gift, exchange or mortgage with or without possession, lease or any other transaction not being a partition among members of a family of



CNR: KAHC010040312022

a testamentary disposition but also the creation of a charge or agreement to sell, exchange, mortgage or lease or enter into any other transaction. Further held, there is a clear bar for entering into an agreement to sell of the Granted Lands without previous permission of the State Government. If an agreement is entered into in respect of the Granted Land in violation of Section 4(2), it is void-ab-initio."

There is no dispute regarding the principle of law laid down in the above referred decision regarding the concerned provisions of the PTCL Act. But it is not at all the contention of the defendants in the suit before the trial Court that the agreement of sale void ab initio in view of the PTCL Act. The only defence of the defendants before the trial Court is the denial of execution of the agreement of sale at Ex.P.2. Moreover, as pointed out by the learned counsel for the plaintiff, the plaintiff has produced copy of the Grant Certificate issued in favour of the defendant No.1 in respect of the suit property along with the other properties and the same is marked at Ex.P.8.

21. In the said Grant Certificate at Ex.P.8 it is clearly mentioned that

"Certificate of registration of a tenant as occupant under Section 55(1) of the Karnataka Land Reforms Act, 1961", whereas the Tribunal, Nelamangala Taluk, has under Sub-section (4)/(5)



CNR: KAHC010040312022

of Section 48A of the Karnataka Land Reforms Act, 1961 ordered that Sri Narasahanumaiah is entitled to be registered as an occupant of the lands detailed hereunder, namely:-..."

This would clearly show that as per the said Grant Certificate, the suit property along with other properties was granted in favour of the defendant No.1 under the Karnataka Land Reforms Act. Moreover, there is absolutely no averment in the written statement or oral and documentary evidence forthcoming from the defendants to show that they are belonging either to Scheduled Castes or to Scheduled Tribes and the suit property was granted in favour of the defendant No.1 by the Government, he being a person belonging to Depressed Class.

22. On the other hand, the documentary evidence on record would show that the occupancy right in respect of the suit property was granted in favour of the defendant No.1 as per the Grant Certificate at Ex.P.8. Moreover, one of the conditions as per the said Grant Certificate is that the property should not be alienated for the period of 15 years from the date of issue of Grant Certificate. As per Ex.P.8, the grant was made in the year 1975-76 and the Grant Certificate was issued on 20.02.1981. As per the agreement of sale at Ex.P.1, the said agreement was executed on 28.12.2005 i.e. after more than 24 years from the date of grant of the suit property in favour of the defendant No.1. Therefore, the principle of law laid down



CNR: KAHC010040312022

in the above referred decision is not applicable to the case on hand.

23. Moreover, the learned counsel for the plaintiff has drawn the attention of this Court to the decision of the Hon'ble High Court of Karnataka reported in 2003 (1) Kar.L.J. 337 (FB) (Mohammed Jaffar and Another Vs. State of Karnataka and Others), wherein referring to the relevant provisions of the PTCL Act and the Karnataka Land Reforms Act, 1961, it is held that:

"Definition of Granted land is only Government land granted to person under provisions of any enactment, in consideration of fact that person belonging to Scheduled Castes or Scheduled Tribes, falls within that definition. Tenanted land that stood vested in State Government as on 1-3-1974 under Land Reforms Act, does not become "granted land" when occupancy in respect of such land is conferred on tenant, merely because tenant happens to be person belonging to Scheduled Caste or Scheduled Tribe. Vesting of tenanted land in State Government is not absolute but is subject to vested right of tenant to get occupancy conferred on him. Conferment of occupancy right on tenant by Land Tribunal does not amount to making grant of land. Alienation of land in respect of which occupancy was conferred on erstwhile tenant, held, is not hit by prohibitions contained in the PTCL Act of 1978."



CNR: KAHC010040312022

But the principle laid down in the above referred decision aptly applicable to the case on hand against the contention put forth by the defendants No.2 to 4 in this appeal that the agreement of sale at Ex.P.1 is void ab initio in view of the provisions of the PTCL Act. Therefore, on the facts of the case and also in law, the argument of the learned counsel for the defendants No.2 to 4 that the agreement of sale at Ex.P.1 is void ab initio, does not have legs to stand in law.

24. It is true that the learned counsel for the defendants No.2 to 4 has argued that the plaintiff has not proved execution of the agreement of sale at Ex.P.1. But, as discussed herein above, even though the defendant No.3 did not put his signature to the said agreement of sale at Ex.P.1, it does not vitiate the said agreement in its entirety. Moreover, the trial Court in the impugned judgment has clearly referred to the Commission Report filed by the Handwriting Expert. As held by the trial Court in the impugned judgment, both the parties, especially the defendants have not chosen to file any objections to the Commission Report. Hence, the said Commission Report is part of the documentary evidence forthcoming on record in view of the provisions of law laid down by our Hon'ble High Court in the decision reported in ILR 2008 KAR 1840 (Parappa and Others Vs. Bheemappa and Another), which is aptly referred to by the trial Court in the impugned judgment. In the Commission Report, the Handwriting Expert has given opinion that:



CNR: KAHC010040312022

"The cumulative consideration of the aforesaid similarities are significant and sufficient in questioned and the standard signatures of both the general and individual writing characteristics constitutes the basis for my opinion that the question signatures marked as Q1 & Q2 and the standard signatures marked as S1 to S13 were also written by one and the same person.

The cumulative consideration of the aforesaid similarities are significant and sufficient in questioned and the standard signatures of both the general and individual writing characteristics constitutes the basis for my opinion that the question signatures marked as D1 & D2 and the standard signatures marked as A1 to A7 were also written by one and the same person."

The signatures at S1 to S13 are the admitted signatures of the defendant No.4 in Vakalath dated 23.11.2011, three sheets of written statement, four sheets of chief cum cross-examination dated 14.12.2012, 19.02.2013, 30.07.2013 & 14.10.2015 and on postal acknowledgement card during the period of October 2006. The signatures at A1 to A7 are the admitted signatures of the defendant No.2 on Vakalath dated 23.11.2011, three sheets of the written statement dated 31.08.2007 and on postal acknowledgement card during the period of October 2006. As discussed herein above, the Commission Report stands unchallenged. Therefore, on this ground also, it would be clear that the trial Court



CNR: KAHC010040312022

has rightly held that the plaintiff has proved execution of the agreement of sale at Ex.P.1.

25. It is true that the learned counsel for the defendants No.2 to 4 has drawn the attention of this Court to the decision of our Hon'ble High Court of Karnataka reported in LAWS (KAR) 2017 2 172 (Smt. Sunandamma Vs. Hanumantharayappa), in which it is held that:

"20. Considering the entire material on record, both the Courts below concurrently held that the plaintiff has failed to prove that defendant has executed an agreement of sale in favour of the plaintiff on 28-6-1986 agreeing to sell the suit property and also failed to prove that he has paid advance amount and further failed to prove that at the time of execution of agreement, there was no prohibition of registration of the property and also failed to prove that defendant has delivered vacant possession of the property on 10-7-1986 after receiving advance amount and both the Courts below concurrently held that the suit filed by the plaintiff is clearly barred by time. The defendant has proved that he is the owner in possession of the suit schedule property. The said findings of fact recorded by the Courts below are based on oral evidence of P.Ws.1 to 3 and D.W.1 and material documents Exs.P.1 to P.6(b) and Exs.D.1 to D.11. "

On the basis of the above said decision, the contention of the learned counsel for the defendants No.2 to 4 is that



CNR: KAHC010040312022

NC: 2026:KHC:36159
RSA No. 180 of 2022

the suit is barred by limitation. But, as discussed herein above, the agreement of sale at Ex.P.1 was executed on 28.12.2005. Six months time was granted from the date of agreement of sale for execution of the sale deed. The legal notice at Ex.P.2 was issued on 03.10.2006 i.e. much after the period of six months from the date of execution of the agreement of sale. The suit is filed on 20.02.2007. Therefore, the suit filed by the plaintiff is very much within the period of 3 years from the date of cause of action for the relief of specific performance of the contract under the agreement of sale at Ex.P.1 and hence, the suit is filed within the period of limitation. Therefore, any of the arguments put forth by the learned counsel for the defendants No.2 to 4 and the above referred decision do not stand for consideration to come to the conclusion that the suit is barred by limitation.

26. As against the point of readiness and willingness of the plaintiff to perform his part of the contract, the learned counsel for the defendants No.2 to 4 has relied on the decision of the Hon'ble Supreme Court of India reported in 2006 SCC OnLine Kar 496 (Smt. Narasamma Vs. Nirannaniltha Mommen John), in which referring to the evidence of the plaintiff in the case of the said decision, it is observed that:

"This is also evident from further admissions made by P.W.1 inasmuch as P.W.1 admits as under:

"...It is true since the defendant had asked us number of times to pay him the balance



CNR: KAHC010040312022

NC: 2026:KHC:36159
RSA No. 180 of 2022

consideration amount and to get registered sale deed and as we did not pay him, he got issued legal notice on 6-11-1995 canceling the agreement..."

But, as submitted by the learned counsel for the plaintiff, the said decision is not applicable to the case on hand. In the suit on hand, there is specific averment in the plaint and also in the evidence of the plaintiff as P.W.1 that he was ready and willing to perform his part of the contract.

27. Moreover, the conduct of the plaintiff in issuing legal notice at Ex.P.2 would show that he was ready and willing to perform his part of the contract. The total sale consideration is Rs.1,55,000/- and on the date of the agreement of sale, substantial amount of Rs.1,20,000/- was paid by the plaintiff to the defendants and only meagre amount of Rs.35,000/- is remaining to be paid. It is not the case of the defendants No.2 to 4 that the plaintiff was not in a position to pay the amount of Rs.35,000/- when they would be ready to execute the sale deed in favour of the plaintiff. Hence, the above referred decision also does not arise for consideration in the case on hand in support of the argument put forth by the learned counsel for the defendants No.2 to 4.

28. It is true that the learned counsel for the defendants No.2 to 4 has relied on one more decision of our Hon'ble High Court of Karnataka reported in ILR 2007 KAR 4440 (K. Gajendran Vs. Chikkathimma and Others), wherein



CNR: KAHC010040312022

NC: 2026:KHC:36159
RSA No. 180 of 2022

referring to the relevant provisions of the Specific Relief Act, it is held that:

"Escalation of prices of real estate in and around the schedule property – offer made by the plaintiff to pay the additional amount apart from the agreed amount under the agreement of sale – Decision of the Supreme Court in 'Govind Ram Vs. Gian Chand, AIR 2000 SC 3106 – law laid down therein – Followed – On facts, Held – In order to mitigate the hardship to the defendants, the plaintiff was directed to pay the defendants at the rate of Rs.350/- per sq.feet for actual area of 10 guntas available in the schedule property for transfer in favour of plaintiff. Judgment and decree of the trial Court is set-aside."

But in the case on hand, as mentioned herein above, in the year 2005 i.e. on the date of agreement of sale itself, substantial amount of Rs.1,20,000/- was paid to the defendants by the plaintiff. But the defendants in spite of service of notice at Ex.P.2, failed to execute the sale deed in favour of the plaintiff and they dragged on the matter making the plaintiff to file the suit. Even though the suit has been decreed, the defendants No.2 to 4 have come with the present appeal challenging the judgment and decree of the trial Court, without complying with the judgment and decree of the trial Court. Therefore, even though there is no dispute regarding the principle of law laid down in the above referred decision, the said decision is not applicable to the case on hand and hence, the



CNR: KAHC010040312022

defendants are not entitled to any additional amount under equity, as they have failed to show that the execution of the sale deed was dragged on due to any conduct on the part of the plaintiff. Hence, any of the grounds urged by the defendants No.2 to 4 in the appeal does not have legs to stand on the facts of the case and also in law."

8. Being further aggrieved by same, defendants has filed the present appeal on following grounds and substantial questions of law:

- *The impugned judgment and decree passed by the learned reference courts below are opposed to law, facts and evidence in the case.*
- *It is submitted that, the learned reference courts was framed the issues on the basis of the pleading of the parties and framed the 4 issues out of the 4 issues, issue No.1 to 4 was framed against to the plaintiff and the Court below was answer to the said issues affirmative. Such being the case, the Court ought to have answer the issue No.1 to 4 affirmative under the equitable ground exercising its discretionary jurisdiction u/s 20 of specific relief Act direct the defendant execute the absolute sale deed allowed and the defendants are hereby directed to receive to the balance sale consideration of Rs.35,000/- from the plaintiff and to execute the registered Sale Deed in his favour with respect to the suit scheduled property*



CNR: KAHC010040312022

of sale dated:28-12-2005 within 3 months is arbitrary same is illegal.

- *The Judgment passed by the court below is based on erroneous appreciation of the documentary evidence and oral evidence the trial court has not considered the law that the alleged agreement itself void, ab-initio and violation of law under section 5 of the Prohibition of Transfer of Certain Lands Act, 1979, the suit schedule property is granted and the said alleged sale agreement granted to the defendants as per Ex.P8, in the said Grant Certificate the Defendants should have obtained permission from the government before executing the sale Agreement to the plaintiff/Respondent. However the agreement itself is void, the void agreement is not permitted to enforce under the law, the reference court mainly considered as to the sound principles of law and passing before the judgment and decree.*
- *It is submitted that, there is a statutory declaration to the effect that if any of the aforesaid conditions are violated or infringed, such transfer is deemed to be null and void; the same is by a statutory fiction. The expression granted land is defined in Section 3(b) as under;*

"Granted land" means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such person under the relevant law for the time being in force



CNR: KAHC010040312022

relating to agrarian reforms or land ceilings abolition of imams, other than that relating to hereditary offices or rights and the word "Granted" shall be construed accordingly."

The word "transfer" is defined under Section 3(e) as under;

(1)

Transfer" means a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of a charge or an agreement to sell, exchange, mortgage or lease or enter into any other transaction."

(2)

Though the expression 'Scheduled Castes and Scheduled Tribes' does not find a place in Section 4(2) of Act, but having regard to the definition under Section 3(d) of the Act, it is evident that when land has been granted to any member of the Scheduled Castes and Scheduled Tribes and such land is transferred, then the prohibitions under Section 4 would apply and if there is non-compliance of the requirements under the said Section, the transfer would be deemed to be null and void and there would be no conveyance of title to the purchaser.

- *It is submitted that, the Court below was failed to apply his mind decreed the suit consider the pleadings of the parties and issue framed on the said pleadings. In the*



CNR: KAHC010040312022

present case in hand the Court below was travelled beyond the pleadings and issues framed on the same and declined to exercise the discretionary power directing the defendant execute the absolute sale deed in favor of plaintiff, grant the relief of specific performance on the ground respondent / defendant having limited title on the suit schedule property, the findings of the Court below was beyond pleading and issues same is erroneous and arbitrary liable to be interfere by this Hon'ble Court modified the judgment and decree set aside the judgment and decree of the Court below.

- *The trial court has failed to apply the law principle of section 16(1)(b) of Specific Relief Act clearly states that 16. Personal bars to relief.-Specific performance of a contract cannot be enforced in favour of a person-*
 - a. who would not be entitled to recover compensation for its breach; or*
 - b. who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract;*
- *The learned reference court was not considered that, the Defendant No.1 is died when the Judgment and decree against without made legal representatives, however the judgment is suffer from illegal and erroneous, It is further*



CNR: KAHC010040312022

submitted that, the plaintiff in any event was not entitled to a decree for specific performance and possession of the property against the defendant No. 1. In the circumstance the declaration of the Sale agreement dated 28-12-2005 executed by the defendant No. 1 in favour of the plaintiff to term the same as null and void as claimed by the plaintiff also did not arise. It would indicate that there has been considerable appreciation in the market price, since even as per the contention of the defendants has sold the property for a lesser price and it is not a market price.

- *It is submitted that, there clearly shows that the statements of the plaintiff/PW1 by misusing the information of the deeds and documents got created the said documents without their knowledge. The trial court has failed to consider the contractions and discrepancies in the evidence of PW1 and the trial court has failure to consider the ratio laid by the Hon'ble High Court of Karnataka.*
- *It is submitted that, the trial court has not observed the market value of the property and agreement to sale only and instrument In 2014 (5) KCSR 659 (DB) Karnataka High Court, Bengaluru Smt. Asharaj since dead by LRs Vs. S.G. Nagaraj @ Suga by L.Rs wherein at head not 'A' it is held as under*

*"A Specific Relief Act, 1963 Section 16 (c) and 20
Suit for Specific performance of registered*



CNR: KAHC010040312022

Agreement of Sale-Defendant denying her intention to sell but pleading that it is a security for the loan received-Suit decreed Held, it I specifically held that a court dealing with a suit for specific performance will have to make a serious effort performance will have to make a serious effort to ascertain as to whether the document in question is an out and out agreement of sale or not just because a document is proved as an agreement of sale equitable relief of specific performance will not automatically follow. The relief being discretionary the court is guided by the parameters laid down under section 20 of Specific Relief Act 1963. "

- *It is further submitted that, after filing of the suit in the Court below the respondent/defendant came on record filing the written statement and contending that the plaintiff has created the alleged agreement of sale and he has been illegally claiming right over the suit schedule property. However the judgment and decree is caused to interference by this Hon'ble Court. The appellants have still they are in possession of the said land.*
- *It is submitted that, the Sale Agreement is hit by Section 61 of the Land Reforms Act reads as follows:*

"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



CNR: KAHC010040312022

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 48-A) be transferred by sale, gift, exchange, mortgage, lease or assignment; but the land may be partitioned among members of the holder's joint family."

- *The appellate court has held that, the correct position of law is that when at one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. This court further held that if the illegality is trivial or venial and the plaintiff is not required to rest his case upon that illegality then public policy demands that the defendant should not be allowed to take advantage of the position. It has further been held that a strict view must be taken of the plaintiffs conduct and he should not be allowed to circumvent the illegality by restoring to some subterfuge or by misstating the facts. However if the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose is achieved then unless it be of such a gross nature as to outrage the conscience of the court the plea of the defendant should not prevail. The same is held in Hon'ble Supreme Court of India in Civil appeal No.7630-7631/2019 arising out of S.L.P. No.29205-29206/2015.*



CNR: KAHC010040312022

- *It is submitted that, in the instant case there is a misjoinder and nonjoinder of the case due to the reasons that the plaintiff stating that, the attesting witness is Venkatramaiah and Annayappa has put the signature in the said agreement the same has admitted by the plaintiff but the said Annayappa and Venkataramaiah and who was prepare the Sale Agreement i.e. one Krishnamurthy have not made the witness before the learned trial court. It is further submitted that, the plaintiff himself admitted that, at the time of execution of Agreement of Sale i.e. Ex.P1 the plaintiff is not their and the Krishnamurthy is their at the time of execute the Agreement, it is clearly shows that the agreement itself created and concocted the same. It is submitted that the said alleged sale agreement dated:28-12-2005 was not registered agreement. The same has not considered by the Lower appellate court.*

- *It is submitted that, there is delay in filing the suit for specific performance of contract the sale agreement was made on 28-12-2005 in the said agreement as per the condition within 6 months the defendants will registered sale deed. But the Plaintiff/Respondent have send the legal notice on 26-10-2006 thereafter the plaintiff has filed the suit for specific performance of contract before the Senior Civil Judge at Nelamangal on 20-02-2007 i.e., after one year from the date of legal notice the plaintiff/defendants have filed the suit.*



CNR: KAHC010040312022

- *The appellant seek liberty from this Hon'ble court made out additional ground at the time of arguments.*
- *The Trial courts have failed to consider both oral and documentary evidence in proper perspective and have failed to draw proper inferences from admitted and proved facts and those drawn are erroneous.*
- *The courts below have failed to consider the comparative hardship which is more to the appellant than to the respondents."*

9. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that both the courts have not properly appreciated the material facts in its proper perspective and wrongly decreed the suit of the plaintiff resulting in miscarriage of justice and sought for admitting the appeal on following substantial questions of law:

"1. Whether the courts below have committed a grave legal error in not taking into consideration the great variance between the pleadings and the proof of the plaintiff which was sufficient for allowing the suit of the plaintiff for specific performance of agreement of sale?

2. Whether the plaintiff is entitled for the relief of specific performance in the absence of compliance of the provisions of Section 16 of the Specific Relief Act?



CNR: KAHC010040312022

3. Whether the courts below wrong in passing a decree for specific performance of the agreement for sale in favour of the plaintiff as a matter of course by ignoring the legal position that the grant of relief of specific performance is always discretionary and the courts are not bound to grant the same in all cases?

4. Whether the courts below have committed a grave legal error for considering only commissioner report filled by the Handwriting Expert in the case on hand, without considering the other aspect raised by the appellants/Defendants?

5. Whether the discretion under Section 20 of the Specific Relief Act should have been exercised in view of the pleaded hardship of the defendant?

6. Whether the courts below have erred in law in not considering the comparative hardship which is more to the appellant than to the respondents?

7. Whether the impugned judgment and decree are perverse and unreasonable liable to be set aside?"

10. Per contra, learned counsel for the respondents supports the judgment of the First Appellate Court.



CNR: KAHC010040312022

11. Having heard the arguments of both sides, this Court perused the material on record meticulously.

12. On such perusal of the material on record, it is established that suit agreement is duly executed by the defendants.

13. The defence taken by the defendants that the signature found in the agreement is negated by the report filed by the handwriting expert.

14. It is settled principles of law that when once the suit agreement is disputed by the defendants, they are precluded from raising any other defence as there is no agreement at all as per the defendants.

15. Thus, the contentions now urged before this Court that plaintiff was not ready and willing to perform his portion of the contract, hardship etc., cannot be considered as there is a factual finding recorded by both the Courts.

16. Accordingly, this Court does not find any merit in any one of the substantial questions of law so as to admit the appeal for further consideration.



NC: 2026:KHC:36159
RSA No. 180 of 2022

CNR: KAHC010040312022

17. Hence, following:

ORDER

- i. Admission is declined.
- ii. Appeal is ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**

KAV
List No.: 1 Sl No.: 14