



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO.468 OF 2023 (SP)

BETWEEN:

SRI. B MANJUNATH,
S/O BASAVARAJAPPA,
AGED ABOUT 40 YEARS,
AGRICULTURIST,
R/A YAREHALLI VILLAGE,
AMRUTHAPURA HOBLI,
TARIKERE TALUK.

...APPELLANT

(BY SRI. ARUN ASHOK GADAG., ADVOCATE)

AND:

1. SMT. CHANDRAMMA,
W/O SHANKRAPPA,
AGED ABOUT 55 YEARS,
2. Y.S MANJUNATHA
S/O SHANKARAPPA,
AGED ABOUT 37 YEARS,
3. Y.S DHARANESH
S/O SHANKARAPPA,
AGED ABOUT 36 YEARS,

ALL ARE AGRICULTURIST
R/A YAREHALLI VILLAGE,
AMRUTHAPURA HOBLI,
TARIKERE TALUK.

...RESPONDENTS

(BY SRI. KRISHNA NAIK., ADVOCATE)

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



THIS RSA IS FILED UNDER SECTION 100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 18.11.2022 PASSED IN R.A NO.19/2022 ON THE FILE OF THE SENIOR CIVIL JUDGE AND PRINCIPAL JMFC., TARIKERE. PARTLY ALLOWING THE APPEAL AND DECREED THE JUDGMENT AND DECREE DATED 10.12.2021 PASSED IN O.S NO.47/2016 ON THE FILE OF THE CIVIL JUDGE AND ADDITIONAL JMFC, TARIKERE AND ETC

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and decree dated 18.11.2022 passed by Senior Civil Judge and Principal J.M.F.C., Tarikere, in R.A.no.19/2022 and confirming judgment and decree dated 10.12.2021 passed by Civil Judge and Additional J.M.F.C., Tarikere, in O.S.no.47/2016, this second appeal is filed.

2. Sri Arun Ashok Gadag, learned counsel for appellant submitted that appeal was by plaintiff in O.S.no.47/2016 seeking relief of specific performance of Agreement of Sale ('**AoS**', for short) dated 01.02.2013 executed by defendants agreeing to sell land bearing Sy.no.96/3A, measuring 01 Acre 20 guntas situated at Yerehalli village, Amruthapura Hobli,



Tarikere Taluk (hereinafter referred to as '***Suit Property***') for total sale consideration of Rs.4,50,000/-, after receiving advance amount of Rs.4,10,000/- and agreeing to execute sale deed as and when called upon by plaintiff by receiving balance sale consideration of Rs.40,000/-.

3. In plaint, it was stated that defendants were owners of *Suit Property* and for legal necessity had approached plaintiff with intention to sell same. It was submitted, after execution of AoS, plaintiff had approached defendants on several occasions stating that he was ready with money and called upon defendants to receive same and execute sale deed. However defendants had sought postponement on one pretext or another. Thereafter on 16.08.2014, defendants got issued legal notice to defraud plaintiff by alleging that AoS was only for purpose of surety for loan transaction and defendants were ready to repay amount and demanded return of original AoS. It was stated that to said legal notice, plaintiff had addressed reply on 01.09.2014 not only denying defendants' assertion, but also stating that plaintiff was always ready and willing to perform his part of contract and approached defendants with



balance sale consideration on several occasions and specifically stating that plaintiff was ready and willing to pay balance and called upon defendants to execute sale deed. Even thereafter there was no response constraining plaintiff to file suit on 30.01.2016.

4. After service of summons, defendants no.1 and 2 filed written statement and same was adopted by defendants no.3 and 4 denying plaint averments and stating that defendant no.4 had borrowed sum of Rs.3,00,000/- from one Manjappa S/o Kariyappa and for repayment of said loan, defendants had borrowed Rs.3,00,000/- from plaintiff and executed AoS dated 01.02.2013 as security for said amount. It was agreed between them that after return with interest, plaintiff was bound to cancel AoS and when defendants approached plaintiff after one year for cancellation of agreement by expressing readiness to repay loan amount, plaintiff had refused and panchayat convened had failed. Since plaintiff failed to act upon his words, defendants issued legal notice on 16.08.2014. It was also pleaded that *Suit Property*



was *Stridhana* property of defendant no.1 and pleading hardship.

5. Based on pleadings, trial Court framed following:

ISSUES

- 1) *Whether the plaintiff proves that the defendants have executed agreement of sale dated 01.02.2013 for sale consideration of Rs.4,50,000/- and agreed to sell the suit schedule property in favour of the plaintiff?*
- 2) *Whether the plaintiff proves that the defendants have received Rs.4,10,000/- on the date of agreement towards advance amount?*
- 3) *Whether the plaintiff proves that he is ever ready and willing to perform his part of contract?*
- 4) *Whether the plaintiff is entitled for the relief sought for?*
- 5) *What order?*

6. In trial, plaintiff examined himself and three others as PWs.1 to 4 and got marked Exhibits-P1 to P5. In rebuttal, defendant no.1 and two others were examined as DWs.1 to 3. No documents were marked.

7. On consideration, trial Court answered issues no.1 to 4 in affirmative and decreed suit directing defendants to



receive balance sale consideration and execute sale deed within three months. Aggrieved defendants no.1, 3 and 4 filed RA no.19/2022 on various grounds, based on which first appellate Court framed following:

POINTS

- 1) *Whether the Trial Court is justified in answering issue nos.1 to 4 in affirmative holding that the plaintiff has proved the agreement of sale dated 01.02.2013 and the plaintiff was ever ready and willing to perform his part of contractual obligations and hence the plaintiff is entitled for the relief of specific performance of contract as sought for in the plaint?*
- 2) *Whether the judgment and decree of the trial Court warrants interference by the instant Court?*
- 3) *To what order or decree?*

8. After answering points no.1 and 2 partly in affirmative, it allowed appeal in part, modified judgment and decree passed by trial Court by directing defendants to refund earnest money of Rs.4,10,000/- with interest at rate of 12% per annum within three months from date of its judgment. Aggrieved thereby, plaintiff preferred this second appeal.



9. Learned counsel for appellant submitted that, trial Court had held Exhibit-P1 - AoS as proved and decreed suit granting specific performance. Said judgment was questioned by defendants no.1, 3 and 4. While passing impugned judgment, first appellate Court erroneously assumed that plaintiff had not expressed his readiness and willingness and failed to call upon defendants to perform their part of contract. It observed, even in Exhibit-P5 - reply to defendants' legal notice, plaintiff had failed to call upon defendants to come forward to perform their part of agreement which was contrary to record.

10. It was submitted fact that defendants had not mentioned about *Suit Property* being *Stridhana* property of defendant no.1 in Exhibit-P4 - legal notice, but pleaded for first time in written statement, established it was an afterthought. It was further submitted, recitals in Exhibit-P1 - AoS itself subscribed to by defendants would state that *Suit Property* fell to share of defendant no.1 in a family partition thereby establishing falsity of plea of *Suit Property* being *Stridhana* property. Therefore impugned judgment and decree passed by



first appellate Court was without proper appreciation of material on record, based on assumption and presumption and therefore following substantial questions of law would arise for consideration.

- a. Whether Senior Civil Judge has properly appreciated the evidence placed before the trial Court?*
- b. Whether the Senior Civil Judge, Tarikere exercised equitable relief fairly the considering both parties?*
- c. Whether the Senior Civil Judge, Tarikere was right in holding the schedule property as "Stridhana" without any cogent evidence by the defendant?*
- d. Whether the Senior Civil Judge, Tarikere was right in considering no separate legal notice issued though there is a intimation and demand in the Reply notice?*
- e. When the plaintiff has proved the agreement whether the Senior Civil Judge, Tarikere is writing awarding alternative relief to the plaintiff?*



*f. Whether the judgment and decree
passed by the Senior Civil Judge,
Tarikere Judge is correct?*

11. Learned counsel sought for answering substantial questions of law in favour of appellant by allowing appeal, setting aside judgment and decree passed by first appellate Court and restoring judgment and decree passed by trial Court.

12. On other hand, Sri Krishna Naik, learned counsel for respondents/defendants opposed appeal. It was submitted, first appellate Court had considered facts and circumstances as well as material on record in proper perspective and passed judgment and decree by assigning proper reasons and same would not call for interference in this appeal.

13. Heard learned counsel, perused impugned judgment and decree of both Courts and copies of plaint, written statement and Exhibits-P4 and P5 made available for perusal by learned counsel for appellant.

14. This appeal is by plaintiff being aggrieved by modification of judgment, denying relief of specific performance



and directing refund of earnest money with interest by first appellate Court in a suit for specific performance. It is seen, trial Court held Exhibit-P1 - AoS as proved and granted decree of specific performance. In appeal by defendants, first appellate Court also held Exhibit-P1 - AoS as proved. Though there is modification of relief, there is no challenge of judgment and decree passed by first appellate Court by defendants. Thus finding about due execution of Exhibit-P1 - AoS between parties has attained finality. Only other aspect requiring consideration is whether first appellate Court was justified in denying relief of specific performance.

15. Admittedly, Exhibit-P1 - AoS was executed on 01.02.2013 whereunder, defendants had agreed to sell *Suit Property* for total sale consideration of Rs.4,50,000/- receiving Rs.4,10,000/- in advance and agreeing to receive balance sale consideration of Rs.40,000/- as and when called upon by plaintiff and executing sale deed. Though plaintiff claims to have approached defendants with balance amount on various occasions, particulars are not pleaded either in Exhibit-P5 - reply notice or in plaint. Admittedly, agreement required



plaintiff to call upon defendants to receive balance sale consideration and execute sale deed. Such being case, a year later defendants issued Exhibit-P4 - legal notice on 16.08.2014, claiming AoS was a security for loan transaction and they were ready to return borrowed money and called upon plaintiff to cancel Exhibit-P1 - AoS. Said notice is replied to by plaintiff as per Exhibit-P5 on 01.09.2014. Indeed, learned counsel for appellant would be justified in pointing out that plaintiff had pleaded his readiness and willingness and also called upon defendants to perform their part of contract in Exhibit-P5 - reply. However, suit for specific performance is filed only on 30.01.2016 nearly three years after execution of AoS.

16. Hon'ble Supreme Court in case of **U.N. Krishnamurthy v. A.M. Krishnamurthy**, reported in **(2023) 11 SCC 775**, has clarified connotation of words 'readiness' and 'willingness'. It is held though plaintiff may have financial capacity to pay balance sale consideration, but same would not by itself imply willingness. Conduct of plaintiff in not showing earnest in seeking for performance of terms and conditions of agreement require to be taken into account. As noted above, a



vague statement is made by plaintiff that he had approached defendants on various occasions with balance sale consideration and defendants had postponed execution of sale. There is absolutely no material to establish sale, which is glaring firstly in absence of particulars stated in Exhibit-P5 - reply notice as well as in plaint and absence of specific pleadings in this regard would be fatal.

17. Besides suit is filed more than one year after issuance of Exhibit-P5 - reply notice and nearly three years of AoS indicating lack of willingness on part of plaintiff to perform as per Exhibit-P1 - AoS. Though, first appellate Court has referred to plea of *Suit Property* being *Stridhana* property of defendant no.1 and same may not hold good in view of fact that said plea would be contrary to recitals in Exhibit-P1 - AoS and there is failure to plead same in Exhibit-P4 - legal notice, same would not upset final conclusion arrived at by first appellate Court. First appellate Court has referred to entire material on record and arrived at reasoned conclusion. Therefore, no substantial questions of law as proposed would



arise for consideration. Hence, appeal is devoid of merit and stand ***dismissed***.

In view of dismissal of appeal, pending applications, if any, stands dismissed.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 Sl No.: 40