



NC: 2026:KHC:55789
RSA No. 204 of 2007

CNR: KAHC010216132007

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 204 OF 2007 (SP)

BETWEEN:

1. SRI MURIGEPPA GOWDA
S/O LATE CHAYAPPA GOWDA
AGED ABOUT 55 YEARS
OCC: AGRICULTURIST
R/AT DOONA, KENCHANALA POST
HOSANAGARA TQ, SHIMOGA DIST-577201.

...APPELLANT

(BY SRI. S.V. PRAKASH AND S.G. KADADAKATTI, ADVOCATE)

AND:

1. SRI SHIVANANDAPPA
S/O CHENNABASAPPA GOWDA
AGED ABOUT 50 YEARS
OCC: AGRICULTURIST
R/AT DOONA, KENCHANALA POST
HOSANAGARA TQ, SHIMOGA DIST-577201.

...RESPONDENT

(BY SRI. PRUTHVI WODEYAR, ADVOCATE)

THIS RSA IS FILED U/S.100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 07.10.2006 PASSED IN R.A.NO.248/2004 (R.A.47/93 ON THE FILE OF THE CIVIL JUDGE, SAGAR) ON THE FILE OF THE DISTRICT AND SESSIONS JUDGE, PRESIDING OFFICER, FTC-II, SHIMOGA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 11.10.1990 PASSED IN O.S.NO.348/1989 ON THE FILE OF THE PRL. MUNSIF, SAGAR.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned second appeal is preferred by defendant No.2–Murigeppa Gowda, calling in question the concurrent findings recorded by the Courts below whereby the suit filed by the respondent/plaintiff for specific performance of contract came to be decreed. The appellant-defendant No.2 seeks interference with the concurrent findings and the consequential grant of the discretionary relief of specific performance.

2. For the sake of convenience and brevity, the parties shall hereinafter be referred to as per their rank before the Trial Court.

3. The facts giving rise to the present appeal, in brief, are as follows:

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The plaintiff instituted O.S.No.348/1989 seeking specific performance of contract on the strength of two agreements to sell allegedly executed by defendant Nos.1 and 2. The plaintiff relied upon the agreements dated 22.03.1984 and 05.07.1984 and asserted that, out of the total agreed sale consideration of Rs.30,025/-, a sum of Rs.18,500/- had been paid towards advance sale consideration. According to the plaintiff, defendant No.1, who is the father of defendant No.2, initially executed an agreement to sell dated 22.03.1984 and received a sum of Rs.10,000/- towards advance sale consideration. Thereafter, defendant Nos.1 and 2 jointly executed a further agreement to sell dated 05.07.1984 and received a further sum towards the agreed sale consideration. The plaintiff contended that, in all, a sum of Rs.18,500/- had been paid towards advance sale consideration. It was further pleaded that possession of the suit property had been delivered to the plaintiff pursuant to the agreements and that, despite receipt of a substantial portion of the



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sale consideration, the defendants failed to complete the transaction by executing the sale deed. The plaintiff, therefore, asserted that he had always been ready and willing to perform his part of the contract and sought a decree for specific performance.

4. Defendant No.1 filed his written statement and admitted the execution of the agreement to sell dated 22.03.1984. However, he disputed the subsequent agreement dated 05.07.1984. Defendant No.2, who is the son of defendant No.1, filed a separate written statement and disputed the execution of both the agreements as well as the alleged payment of advance sale consideration. Defendant No.2 also raised a specific plea of limitation and sought dismissal of the suit.

5. On the basis of the pleadings, the Trial Court framed the requisite issues and called upon the parties to adduce evidence. The plaintiff and the defendants led both oral and documentary evidence in support of their



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respective cases. Upon appreciation of the evidence on record, particularly the documentary evidence produced by the plaintiff and marked as Ex.P-5, the Trial Court found that the defendants, in lieu of the advance sale consideration received under the agreements, had purchased alternate lands bearing Sy.Nos.6 and 7 of Kone Hosur Village.

6. The Trial Court, while answering Issue Nos.1 and 2 in the affirmative, held that the plaintiff had successfully established the execution of both the agreements to sell dated 22.03.1984 and 05.07.1984 and had further established payment of advance sale consideration of Rs.18,500/-. The Trial Court also recorded a finding that possession of the suit property had been delivered to the plaintiff pursuant to the agreements and that the plaintiff had established his readiness and willingness to perform his part of the contract. Upon consideration of the rival contentions and while answering



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Issue Nos.6 and 7 in the negative, the Trial Court exercised its discretion in favour of the plaintiff and proceeded to decree the suit for specific performance.

7. Aggrieved by the judgment and decree of the Trial Court, the defendants preferred R.A.No.248/2004 before the First Appellate Court. The First Appellate Court, being the final Court of fact, independently re-appreciated the pleadings, oral evidence and documentary evidence available on record. Upon such re-appreciation, the Appellate Court concurred with the findings recorded by the Trial Court and dismissed the appeal, thereby affirming the decree for specific performance.

8. It is this concurrent judgment and decree of the Courts below which is assailed by defendant No.2 in the present second appeal.

9. This Court, by order dated 13.04.2009, admitted the appeal and formulated the following substantial questions of law:

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"(a) Whether the Courts below have committed serious error in not considering the hardship that is going to be caused to the appellants/defendants by granting a decree of specific performance as required under Section 20 of the Specific Relief Act?

(b) Whether both the Courts below committed an illegality in not considering the entire oral and documentary evidence on record?"

10. Learned counsel appearing for defendant No.2, reiterating the grounds urged in the memorandum of appeal, would vehemently contend that, although the substantial questions of law formulated by this Court primarily concern the exercise of discretion under Section 20 of the Specific Relief Act, 1963, the very execution of the second agreement to sell dated 05.07.1984 was seriously disputed by defendant No.2. It is his contention that, in the absence of cogent and convincing evidence establishing due execution of the said agreement, both the

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Courts below have erred in accepting the same and in recording a finding against defendant No.2.

11. Learned counsel would further contend that grant of a decree for specific performance would cause serious prejudice to the wife of defendant No.2, who has already obtained a decree for maintenance and whose claim is the subject matter of a connected second appeal. It is further contended that the agreements relate to a substantial extent of immovable property for a comparatively meagre consideration and, therefore, the exercise of discretion in favour of the plaintiff would cause serious prejudice to the valuable rights and interests of defendant No.2 in the suit properties.

12. In support of his submissions, learned counsel appearing for defendant No.2 has placed reliance on the following judgments:

(i) S. Kugashankar v. Subhash Chand Goel and Others – ILR 2006 KAR 3689; and



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(ii) Chinnaswamy v. Profulla – ILR 1992 KAR 2294.

13. Per contra, learned counsel appearing for the plaintiff would refute the contentions advanced on behalf of defendant No.2 and submit that, though defendant No.2 has disputed the execution of the second agreement to sell in the present proceedings, his own pleadings in the maintenance proceedings initiated by his wife contain a categorical admission regarding the transaction between the plaintiff and the defendants. Referring to paragraph 8 of the written statement filed in the said proceedings, learned counsel would contend that defendant No.2 has candidly acknowledged the transaction and, having admitted the same in earlier proceedings, cannot now be permitted to take a contrary stand.

14. Learned counsel would further place reliance on Ex.P-5 and contend that the document lends substantial corroboration to the plaintiff's case. According to him, on

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the very date of execution of the second agreement to sell dated 05.07.1984, and upon receipt of the amount of Rs.18,500/-, defendant Nos.1 and 2 purchased alternate land, which transaction is evidenced by Ex.P-5. It is therefore contended that the documentary evidence, coupled with the admission made by defendant No.2 in the maintenance proceedings, sufficiently establishes the transaction pleaded by the plaintiff. On these grounds, learned counsel would submit that both the Courts below have concurrently exercised their discretion in accordance with law and that no substantial question of law arises warranting interference in the present second appeal.

Findings on the Substantial Question of Law (b):

15. Before examining the rival contentions with regard to the exercise of discretion under Section 20 of the Specific Relief Act, 1963, it would be appropriate to first examine the nature of the defence set up by defendant Nos.1 and 2 before the Trial Court. A careful perusal of the



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pleadings does not disclose any specific plea that the agreements in question related to a large extent of land for an inadequate consideration or that enforcement of the agreements would result in any disproportionate hardship or cause comparative hardship to the defendants. Significantly, there is no specific pleading setting out the nature of the alleged hardship which defendant No.2 would suffer if the decree for specific performance were to be granted.

16. In this backdrop, it would be appropriate to advert to paragraph 3 of the written statement filed by defendant No.1, which assumes significance for appreciating the nature of the defence and the stand taken by the defendants. The relevant portion of the written statement reads as under:

"3. The plaintiff was under legal obligation to pay the balance of amount of consideration to the 1st defendant on or before 22.3.86. The plaintiff

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was not in position to pay the balance of amount on or before 22.3.86."

17. A careful perusal of paragraph 3 of the written statement extracted supra would indicate that defendant No.1 has categorically acknowledged the execution of the first agreement to sell dated 22.03.1984. More importantly, insofar as defendant No.2 is concerned, though he has made an attempt in the present proceedings to dispute the very transaction and has denied the execution of the agreements relied upon by the plaintiff, his own pleadings in the collateral proceedings instituted by his wife in O.S.No.165/1984 assume considerable significance. Defendant No.2, while contesting the claim made by his wife for maintenance, has referred to the very transaction between the defendants and the plaintiff and has disclosed the circumstances in which the defendants had dealt with the



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properties and thereafter entered into an agreement to purchase alternate lands at Kone Hosur.

18. In fact, in paragraph 8 of the written statement filed by defendant No.2 in O.S.No.165/1984, he has specifically pleaded as under:

"8. The plaint schedule properties are not giving sufficient income and there was a litigation on that land. So the defendant have sold the land bearing Sy.Nos.22 and 23 for legal necessity and for discharge of loans, to a higher rate, and out of the sale consideration the defendants have entered into Agreement to purchase the land at Kune Hosur. The sale transaction was took place even prior to the filing of the suit. So the plaintiff cannot claim to create a charge on the suit property".

19. The admission contained in the said written statement assumes considerable significance, particularly when viewed in conjunction with the other documentary evidence available on record. Thus, the attempt of

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defendant No.2 to completely disown the transaction in the present proceedings cannot be accepted.

20. The aforesaid pleading cannot be brushed aside as an incidental or vague reference to some unrelated transaction. Defendant No.2 himself has pleaded, in clear terms, that the defendants had sold the lands bearing Sy.Nos.22 and 23 for legal necessity and discharge of loans and out of the sale consideration received therefrom, had entered into an agreement to purchase land at Kone Hosur. Thus, the written statement filed by defendant No.2 in the maintenance proceedings contains a clear reference to the transaction whereby the defendants, after dealing with their existing properties, entered into an agreement for acquisition of alternate lands at Kone Hosur.

21. What assumes significance is that the stand now taken by defendant No.2 in the present proceedings is wholly at variance with the stand disclosed in his earlier



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written statement. In the present suit, defendant No.2 seeks to completely disown the transaction and seriously disputes the execution of both the agreements to sell. However, when confronted with the earlier pleading filed in O.S.No.165/1984, the transaction involving the defendants and the acquisition of alternate land at Kone Hosur is no longer a matter of mere assertion by the plaintiff. It finds its genesis in the pleading of defendant No.2 himself extracted supra.

22. The evidentiary value of this admission becomes significant when it is examined in the light of the contemporaneous documentary evidence produced by the plaintiff. The plaintiff has relied upon Ex.P-3, which is a material document having a direct bearing on the transaction pleaded by him. The records disclose that on 05.07.1984, i.e., on the very date on which defendant Nos.1 and 2 are stated to have executed the second agreement to sell in favour of the plaintiff, they purchased

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lands bearing Sy.Nos.6 and 7 of Kone Hosur Village, totally measuring 4 acres 10 guntas, for a sale consideration of Rs.22,000/-.

23. The coincidence of the dates and the amounts involved assumes considerable significance. The plaintiff's specific case is that, under the second agreement to sell dated 05.07.1984, defendant Nos.1 and 2 received a further sum of Rs.18,500/- towards the agreed sale consideration. On the very same day, defendant Nos.1 and 2 proceeded to purchase alternate lands at Kone Hosur for a consideration of Rs.22,000/-. Thus, the transaction evidenced by Ex.P-3 is not an isolated or unrelated transaction; rather, it substantially corresponds with the specific case pleaded by the plaintiff regarding the utilization of the amount received by the defendants.

24. The contemporaneous nature of Ex.P-3 assumes significance in appreciating the disputed second agreement. The defendants' purchase of alternate lands at



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Kone Hosur on 05.07.1984, coupled with the pleading of defendant No.2 in O.S.No.165/1984 that the defendants had entered into an agreement to purchase land at Kone Hosur out of the sale consideration received by them, provides a strong corroborative circumstance supporting the plaintiff's case. The two pieces of evidence, namely, the admission contained in the written statement of defendant No.2 and the contemporaneous documentary evidence at Ex.P-3, operate in conjunction with each other and lend substantial credence to the plaintiff's version regarding the second transaction.

25. It is also relevant to note that the defendants subsequently sold the property purchased at Kone Hosur in the year 1986. This subsequent conduct, though not by itself determinative of the execution of the second agreement, constitutes a further circumstance which has to be considered while appreciating the chain of transactions commencing from the agreements relied upon



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by the plaintiff. The conduct of the defendants has to be examined as a whole and not by isolating one particular document or circumstance.

26. Therefore, the case of the plaintiff regarding the second agreement dated 05.07.1984 cannot be examined merely on the basis of the denial contained in the written statement filed by defendant No.2 in the present proceedings. The said denial has to be considered alongside his own admission in the earlier maintenance proceedings, the categorical admission of defendant No.1 regarding the first agreement dated 22.03.1984, and the contemporaneous transaction evidenced by Ex.P-3. When these circumstances are cumulatively considered, the finding recorded by the Courts below accepting the execution of the second agreement and the payment of the further advance sale consideration cannot be said to be either perverse or unsupported by evidence.



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27. In this context, the contention advanced on behalf of defendant No.2 that the Courts below have erroneously exercised their discretion in favour of the plaintiff and that the equities ought to have been weighed in favour of the defendants cannot be accepted. The defendants' own conduct and their contemporaneous transactions do not support the plea that the grant of specific performance would operate inequitably against them. On the contrary, the material on record indicates that the defendants, having received the consideration under the transaction, utilized the same in acquiring alternate lands at Kone Hosur. The plaintiff, therefore, cannot be non-suited by placing reliance upon a plea of equity which is not supported by the defendants' own conduct.

28. The significance of the admission made by defendant No.2 in the earlier proceedings lies not merely in the fact that he had referred to an agreement to



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purchase land at Kone Hosur, but in the fact that the said pleading substantially corresponds with the contemporaneous transaction evidenced by Ex.P-3. The subsequent documentary evidence thus lends independent corroboration to the earlier admission. The plaintiff's case, therefore, derives support from a combination of the defendants' own pleadings, the contemporaneous documentary evidence and the subsequent conduct of the parties.

29. Consequently, the attempt of defendant No.2 to completely disown the transaction in the present proceedings cannot be accepted. The Courts below have concurrently appreciated these circumstances and have recorded a finding in favour of the plaintiff. Such finding is based on appreciation of relevant evidence and cannot be characterized as perverse merely because defendant No.2 seeks to place reliance upon his denial of the second agreement. The concurrent findings, particularly when



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viewed in the backdrop of the admission contained in the written statement in O.S.No.165/1984 and the contemporaneous transaction evidenced by Ex.P-3, warrant no interference in the present second appeal.

30. The defendants, having voluntarily entered into the agreements in the year 1984 and having parted with possession of the property pursuant thereto, cannot now seek to take advantage of the subsequent rise in the value of the property to defeat the contractual rights of the plaintiff. Though the amount of Rs.28,500/- may appear to be modest when viewed from the perspective of the present value of the property, the same cannot be considered in isolation. The transaction has to be examined in the backdrop of the prevailing circumstances in the year 1984. The plaintiff had parted with a substantial amount towards the sale consideration and had secured possession of the property pursuant to the agreements. The defendants, in turn, had utilized the



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consideration received from the plaintiff for acquiring alternate lands on the very date of execution of the second agreement. These circumstances constitute relevant factors for determining whether the discretion vested in the Court ought to be exercised in favour of the plaintiff.

31. It is well settled that the relief of specific performance is discretionary and such discretion is required to be exercised on sound and settled judicial principles. The Court is required to take into consideration the circumstances of the case, the conduct of the parties and the respective interests arising under the contract. The mere fact that the relief is discretionary does not mean that a party who has established a valid and enforceable contract should ordinarily be denied its enforcement. The discretion has to be exercised judicially and not arbitrarily.

32. Accordingly, substantial questions of law No.(b) is answered in the **Negative** and against the defendants.



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Findings on the Substantial Question of Law (a):

33. The aforesaid admission of defendant No.2, extracted hereinbefore, when read conjointly with the documentary evidence produced before the Trial Court, assumes considerable significance. The evidence on record establishes that, on the very date on which the second agreement of sale dated 05.07.1984 was executed, Defendant Nos.1 and 2 purchased lands bearing Sy.Nos.6 and 7 of Kone Hosur Village for a consideration of Rs.22,000/-. The plaintiff produced the relevant sale deed in proof of the said contemporaneous transaction. The purchase of the aforesaid property on the very date on which the defendants received the further advance sale consideration constitutes a material circumstance bearing directly upon the subsequent conduct of the defendants.

34. More importantly, defendant Nos.1 and 2 did not, in their written statement, raise any specific plea that enforcement of the agreement would cause them



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comparative or unforeseen hardship. There is no pleading setting out the nature of the alleged hardship, the circumstances in which such hardship would arise, the manner in which it would be disproportionate to the hardship likely to be caused to the plaintiff by refusal of specific performance, or any factual foundation for invoking the equitable jurisdiction of the Court. The plea of comparative hardship, being a fact-dependent defence, cannot be considered in the abstract or for the first time at the stage of appeal, particularly in the absence of a specific pleading and an issue duly framed in that regard.

35. The legal position is well settled. In ***Kamal Kumar v. Premlata Joshi***¹, the Hon'ble Supreme Court held that the question whether grant of specific performance would cause hardship to the defendant is one of the material questions required to be examined and that such requirements must be properly pleaded by the parties and proved by evidence. The Court specifically

¹ (2019) 3 SCC 704



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identified, as one of the relevant questions, whether it would be equitable to grant specific performance or whether such enforcement would cause hardship to the defendant and, if so, in what manner and to what extent.

36. The same principle was reiterated by the Hon'ble Supreme Court in ***Parswanath Saha v. Bandhana Modak (Das)***². While considering the scope of Section 20 of the Specific Relief Act, 1963, the Court observed that the issue of hardship is a question of fact and that the High Court ought not to reverse a decree on that ground without an appropriate issue and a proper factual foundation. The Court further emphasised that hardship must be established by cogent evidence and must ordinarily be assessed with reference to the circumstances existing at the time of entering into the contract.

² 2024 INSC 1022



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37. Likewise, in ***K. Narendra v. Riviera Apartments (P) Ltd.***³, the Hon'ble Supreme Court held that the doctrine of comparative hardship is statutorily recognised, but clarified that mere inadequacy of consideration, or the mere fact that the contract is onerous or improvident, does not constitute either an unfair advantage to the plaintiff or unforeseeable hardship to the defendant. The discretion under Section 20 must be exercised on sound and reasonable principles and not arbitrarily.

38. The principle was also explained in ***Nirmala Anand v. Advent Corporation (P) Ltd.***⁴, wherein the Hon'ble Supreme Court held that the Court must examine the totality of the circumstances, including the conduct of the parties, the identity of the defaulting party, the possibility of one party obtaining an undue advantage and the hardship, if any, caused to the defendant. A mere

³ (1999) 5 SCC 77

⁴ (2002) 8 SCC 146



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escalation in the value of the property, by itself, cannot ordinarily constitute a ground for refusing specific performance.

39. In the present case, the defendants neither pleaded comparative hardship in their written statement nor placed before the Trial Court any specific facts demonstrating that enforcement of the agreement would cause them hardship which was unforeseen at the time of the transaction. In the absence of such pleading, the plaintiff had no occasion to meet the alleged case by leading appropriate evidence. The defendants cannot, therefore, be permitted to introduce a new equitable defence at the stage of second appeal and seek to displace concurrent findings of fact recorded by the Courts below.

40. On the contrary, the documentary evidence discloses that Defendant Nos.1 and 2 acquired alternate property on the very date on which they received the further advance sale consideration under the second



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agreement. The said property was subsequently sold by them in the year 1986. This contemporaneous conduct is inconsistent with the assertion that enforcement of the agreement would cause them such disproportionate or unforeseen hardship as would justify refusal of specific performance. The acquisition and subsequent sale of the alternate property materially corroborate the plaintiff's case and militate against the plea that the equities or comparative hardship lie in favour of the defendants.

41. It is, therefore, not permissible to examine the question of comparative hardship merely with reference to the present market value, extent or location of the suit property. The Court is required to consider the circumstances prevailing at the time of the transaction, the conduct of the parties, the extent of the advance consideration paid, the subsequent conduct of the defendants and the existence of any specific and proved hardship which was not foreseeable when the contract was



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entered into. Tested on these parameters, no case has been made out by Defendant Nos.1 and 2 for refusing the relief of specific performance.

42. The finding regarding execution of the second agreement and payment of advance consideration is further fortified by the contemporaneous purchase of the Kone Hosur property and the admission made by Defendant No.2 in O.S.No.165/1984. These circumstances constitute relevant and corroborative evidence which have been duly considered by the Courts below. Merely because the said evidence does not receive the interpretation suggested by the defendants cannot lead to the conclusion that the material evidence has been ignored or that the findings are perverse.

43. The conduct of Defendant Nos.1 and 2 is grossly unfair and disentitles them from seeking the equitable discretion of this Court against enforcement of the decree for specific performance. Defendant No.2,



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despite suffering a decree for maintenance in favour of his wife, has admittedly failed to pay even a single penny towards the maintenance awarded to her since the year 1991, as recorded in the connected Second Appeal decided today. At the same time, the evidence on record establishes that Defendant Nos.1 and 2 purchased alternate lands on the very date on which the second agreement of sale was executed and further advance consideration was received by them, and that the said alternate property was subsequently sold in the year 1986. Having thus acquired and later alienated alternate property, the defendants cannot now invoke comparative hardship to resist a decree for specific performance, particularly when no specific plea of comparative hardship was taken in their written statement. Their conduct discloses an attempt to retain the benefit of the advance consideration, avoid performance of their contractual obligation and, at the same time, rely upon an equitable defence which is unsupported by pleadings or evidence



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44. The Courts below have neither overlooked the question of hardship nor failed to consider the relevant oral and documentary evidence. Rather, in the absence of any specific plea of comparative hardship in the written statement, and in view of the defendants' own contemporaneous conduct, the equitable discretion has rightly been exercised in favour of the plaintiff. The concurrent findings are based on relevant evidence and do not suffer from any error of law warranting interference under Section 100 of the Code of Civil Procedure.

45. Accordingly, substantial question of law No.(a) is answered in the **Negative** and against the defendants. The concurrent judgment and decree passed by the Courts below do not call for interference in the present second appeal.

46. In view of the foregoing discussion, this Court proceeds to pass the following:



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ORDER

(i) The appeal, being devoid of merit, is hereby ***dismissed***.

(ii) The judgment and decree passed by the Courts below granting the relief of specific performance in favour of the plaintiff are hereby affirmed.

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(SACHIN SHANKAR MAGADUM)
JUDGE

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