



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.542 OF 2017 (SP)

BETWEEN:

1. M J MARI CHIKKE GOWDA
S/O JAVAREGOWDA, DEADY BY LRS

SMT SAKAMMA
W/O M J MARICHIKKEGOWDA,
AGED ABOUT 60 YEARS,

2. SMT MEENAKSHI
D/O LATE M J MARICHIKKEGOWDA,
AGED ABOUT 40 YEARS,

3. MR.M C KRISHNA
S/O M J MARICHIKKEGOWDA,
AGED ABOUT 38 YEARS,

4. M C JAGADEESH
S/O M J MARICHIKKEGOWDA,
AGED ABOUT 36 YEARS,

5. M C SUDHA
D/O LATE M J MARICHIKKEGOWDA,
AGED ABOUT 36 YEARS,

ALL ARE R/AT 507,
SWARNASANDRA,
MANDYA CITY

...APPELLANTS

(BY SRI K.R.NAGARAJA, ADVOCATE)

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



AND:

1. AYUB PASHA
DEAD BY HIS LRs
- 1(a) SMT.SHAHEENA TAJ
W/O LATE AYUB PASHA
AGED ABOUT 47 YEARS
- 1(b) MR.IRFAN PASHA
S/O LATE AYUB PASHA
AGED ABOUT 26 YEARS
- 1(c) MR.RIZWAN PASHA
S/O LATE AYUB PASHA
AGED ABOUT 24 YEARS
- 1(d) MR.MUBARAK
S/O LATE AYUB PASHA
AGED ABOUT 22 YEARS

ALL ARE RESIDING AT NO.1894,
5TH CROSS,
GANDHI NAGARA
MANDYA CITY.

2. VENKATESH
S/O MOODALAGIRI GOWDA,
AGED ABOUT 48 YEARS,
3. SMT RATNAMMA
W/O VENKATESH,
AGED ABOUT 38 YEARS,
4. NARAYAN
S/O VENKATESH,
AGED ABOUT 21 YEARS,

ALL ARE
R/O INDAVALU VILLAGE,



KOTHATI HOBALI,
MANDYA TALUK.

...RESPONDENTS

(BY SRI BHARGAVA D. BHAT, ADVOCATE FOR R1(A TO D) –
ABSENT;

R2 TO R4 ARE SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE AGAINST THE JUDGMENT DECREE DATED
05.12.2016 PASSED IN R.A.No.44/2014 ON THE FILE OF THE
V ADDL. DISTRICT AND SESSIONS JUDGE, MANDYA ALLOWING
THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE
DATED 10.09.2014 PASSED IN O.S.NO.233/2006 ON THE FILE
OF THE PRINCIPAL SENIOR CIVIL JUDGE, MANDYA.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri K.R. Nagaraja, learned counsel for the
appellants.

2. The present appeal came to be admitted on the
following substantial questions of law:

*"Whether the first appellate Court was right
in decreeing the suit of the plaintiff for specific
performance of contract ignoring the registered*



sale deed dated 06.09.2006 in favour of appellant much prior to filing of the suit?"

3. Facts of the case are as under:

4. First respondent/ plaintiff filed a suit in O.S.No.233/2006 for specific enforcement of the agreement to sell dated 05.09.2006 in respect of the following immovable property (hereinafter referred to as 'suit property').

"Wet land measuring 0.08.00.00 gts in Sy.No.94/3 assessment of Rs.0.38 ps situated at Kiraganduru village, Dudda Hobli, Mandya taluk and same bounded:

East : By government halla

West : By land of Hushundi Thimmegowda and others

North : By land of Hulininganna

South : By land of Channegowda

5. Plaintiff contended that defendant Nos.1 to 3 are the owners in suit property and it is the ancestral property of defendants 1 to 3 and Katha of the said property is standing in the name of defendant No.3 who is minor as per the revenue



proceedings in M.R.No.113/1994-95 entered in the name of defendant No.1 being the guardian of defendant No.3.

6. It is further contented that for discharging of hand loan and also for welfare of the minor son, defendant Nos.1 and 2 entered into an agreement to sell the suit property for a valuable sale consideration of Rs.2,00,000/-.

7. Defendant Nos.1 and 2 themselves and defendant No.1 being the guardian of defendant No.3, executed the registered agreement on 05.09.2006 which was duly registered in the office of Sub-Registrar, Mandya.

8. It is further contented that defendant Nos.1 and 2 received sale consideration of Rs.20,000/- and agreed to receive balance amount of Rs.1,80,000/- at the time of registration of the sale deed and 90 days time was fixed for completion of the sale transaction.

9. Plaintiff also contended that he was ready and willing to perform his portion of the contract all along and was ready to pay the balance sale consideration of Rs.1,80,000/- and approached the defendants Nos.1 and 2 and requested them to receive the balance sale consideration and execute the sale deed.



10. But, defendants Nos.1 and 2 failed to do so and intentionally started evading the receipt of balance sale consideration. As such, plaintiff was constrained to file the suit.

11. Pursuant to the suit summons, defendant Nos.1 to 3 appeared before the Court and filed detailed written statement denying the entire plaint averments.

12. It is further contented that defendant Nos.1 to 3 are not the owners of the suit property as on the date of agreement. But it is Sri M.J.Marichikkegowda, who is the absolute owner in possession of the suit property by virtue of the sale deed executed on 06.09.2006.

13. It is also contended that plaintiff had orally agreed to purchase the suit land in a sum of Rs.2,50,000/- and also assured that balance sale consideration would be paid before the Sub Registrar, but he failed to do so and tricked the defendant Nos.1 to 3 to sign the suit agreement. But when the balance amount was not paid at the time of execution of the sale agreement, left with no alternative, defendants have sold the property in favour of defendant No.4 and thus sought for dismissal of the suit.



14. During the pendency of the suit, defendant No.4 has been impleaded as party to the suit and he filed a separate statement denying the plaint averments in *toto* and contented that he is the owner of the property. Therefore, the suit for specific enforcement of contract is against him is not maintainable and sought for dismissal of the suit.

15. Based on the rival contentions, learned Trial Judge heard the arguments of the parties, raised necessary issues and after recording the findings, suit of the plaintiff was dismissed insofar as Specific enforcement of the contract, but directed that sum of Rs.20,000/- is ordered to be paid to the plaintiff with interest at 24% per annum as against defendant Nos.1 to 3.

16. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in R.A.No.44/2014.

17. Learned judge in the First Appellate Court after securing the records heard the arguments of the parties and allowed the appeal *inter alia* holding at paragraphs 18 to 22 as under:

"18. The trial Court on its Judgment at para 34 held that the plaintiff has not produced any documents to



prove the readiness and willingness to perform his part of contract. The law does not mandate that the plaintiff has to prove his readiness and willingness by placing documentary evidence. The trial Court has expressed suspicion, as the plaintiff was unable to say his accounts number. It is a quite natural thing that no one can remember a 14- digit account number. It is also quite impracticable to remember the account number. To suspect the testimony of witness on this ground is not sustainable when the defendants against whom the plaintiff has claimed the relief have not challenged the claim of plaintiff by stepping into witness box. It is quite unfair to expect the plaintiff to prove his readiness and willingness by placing the documentary evidence. The trial Court in its Judgment has discussed much on the point that the plaintiff has filed suit within a period of 90 days. But the law does not mandate that the plaintiff cannot file the suit within a period of 90 days.

19. As discussed earlier even though defendant No.1 to 3 have filed written statement, they did not choose to step into the witness box. The attitude of the defendants shows that they are sailing with the defendant No.4. It seems the defendant No.1 to 3 wants to see the rights of the plaintiff to be defeated. When the plaintiff is seeking relief against the defendant No.1 to 3, then a burden is cast on the defendants to step into witness box and explain under what circumstances they executed the registered sale deed in favour of defendant No.4. Further, the defendant No.1 to 3 ought to proved their bonafide by offering themselves to cross- examination. It seems the



defendant No.1 to 3 want to wash off their hands by saying that they are no more the owners of the Suit Schedule Property. The said attitude of defendant No.1 to 3 shows that their intention is to defraud the plaintiff.

20. It is an admitted fact that the plaintiff did not make defendant No.4 as a party to the suit. But the defendant No.4 voluntarily appeared before the Court and filed an application to implead him as defendant. As per order of Hon'ble High Court of Karnataka, defendant No.4 was added as a party to the suit. The defendant No.4 contested/resisted the suit of the plaintiff by filing his written statement. It has come in evidence of PW1 that he did not know the execution of Ex.D1 and D2 as such the question of making defendant No.4 as a party does not arise at all. The defendant No.4 contended in his written statement that he is a bonafide purchaser as such his interest be protected by the Court. It is not the dispute that Ex.P1 is a registered agreement of sale, whereas Ex.D1 is an unregistered agreement of sale. Ex.D1 speaks that the Suit Schedule Property was agreed to be sold to defendant No.4 for consideration of Rs.75,000/- out of this Rs.65,000/- was received as an advance on the date of the agreement of sale. Ex.D1 is the registered sale deed said to have been executed by defendant no.1 to 3 in favour of defendant No.4. The recitals of Ex.D2 regarding passing of consideration is as under:

“ಕ್ರಯದ ಮೊಬಲಗು ಪೂರ್ತಾ ಹಣ ಈ ಪತ್ರಕ್ಕೆ ಸಾಕ್ಷಿದಾರರ ಸಮಕ್ಷಮ ನಗದಾಗಿ ಪಡೆದಿರುತ್ತೇವೆ.”



21. *So, it is mentioned in Ex.D2 that the entire sale consideration was received in front of witnesses of Ex.D2. The witnesses of Ex.D2 and Ex.D1 are different persons. Even though there is a recital of Ex.D1 in D2, there is no recital of receipt of advance of Rs.65,000/- and receipt of the balance of Rs.10,000/- on the date of execution of Ex.D1. Further, no one has signed as scribe of Ex.D1. All these suspicious circumstances show that these documents came into being to defraud the rights of the plaintiff. Ex.D2 is executed subsequent to execution of the registered agreement of sale i.e. Ex.P1 in favour of the plaintiff. The recitals of Ex.D2 speak that there is no encumbrance on the said property. The defendant NO.4 claims that before purchasing the property he has enquired regarding the encumbrance over the Suit Schedule Property and found that there was no encumbrance on it. The defendant No.4 in order to substantiate his claim has produced the encumbrance certificate pertaining to Suit Schedule Property, which is marked as Ex.D3. The said encumbrance certificate was obtained on 26.11.2011 covering the period from 01.04.1999 to 04.09.2006. On the face of Ex.D3 it is clear that the defendant No.4 has taken encumbrance certificate upto 04.09.2006. The date of execution of Ex.P2 is 05.09.2006. If the defendant No.4 had taken encumbrance certificate up to 05.09.2006 instead of 04.09.2006 definitely the transaction regarding to Ex.P1 should have been mentioned in Ex.D3. This act of defendant No.4 creates a suspicion on his bonafide in purchasing the Suit Schedule Property. Further, it is to be*



noted that Ex.P1 is executed for Rs.2,00,000/- whereas Ex.D2 is for Rs.75,000/-. It is hard to believe that the property which was proposed to be sold for Rs.2 lakhs was sold for Rs.75,000/-. The defendant No.4 during the course of cross-examination deposed that he purchased Suit Schedule Property for Rs.2,50,000/- and paid Rs.1,75,000/- on the date of execution of Ex.D2. But the defendant No.4 neither pleaded it in his written statement nor he has mentioned it in examination-in-chief. As such the say of defendant No.4 in this regard is not believable. The defendant No.4 during the course of cross-examination has deposed that before execution of Ex.D2 the defendant No.1 to 3 did not execute any document in his favour. Further, defendant No.4 during the course of cross-examination has deposed that as per the say of defendant No.1 to 3 he got impleaded himself as defendant No.4 clearly demonstrates that defendant No.1 to 3 and 4 are colluding with each other. Intentionally defendant No.1 to 3 evaded from stepping into witness box. All these circumstances goes to show that defendant No.4 is not a bonafide purchaser and Ex.D1 and D2 are the documents came into existence under suspicious circumstances and they are sham documents. Considering the attitude of defendant No.1 to 3 and the fact that they have not questioned readiness and willingness of the plaintiff to perform his part of contract. I am of the view that the appellant is entitled to the relief of specific performance of contract.

22. Of course the relief of Specific Performance is a discretionary relief. But the discretion cannot be



exercised arbitrarily. The facts and circumstances of the case demands that the plaintiff is entitled for the relief of Specific Performance of Contract. As such the finding to the trial Court on issue No.3 is not justified and same is to be reversed. Accordingly, this point is answered in Affirmative."

18. Being further aggrieved by the same, it is defendant No.4 who has filed the appeal before this Court assailing the correctness of the order of the judgment of the First Appellate Court.

19. As referred to supra, appeal came to be admitted on the aforesaid substantial questions of law.

20. Sri K.R. Nagaraja, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that as on the date of the suit itself, the property had been purchased by defendant No.4 by virtue of a registered sale deed dated 06.09.2006 whereas the plaintiff wanted to have the execution of the sale deed pursuant to the registered agreement dated 05.09.2006 and thus sought for allowing the appeal.

21. He would further contend that since the contract had become incapable of performance as on the date of the suit



itself, the Trial Judge was justified in ordering for refund of the advance amount of Rs.20,000/- with interest.

22. Therefore, the judgment of the First Appellate Court reversing the finding of the Trial Judge and directing the defendant No.4 to execute the sale deed in favour of the plaintiff, ignoring the fact that it is the defendant No.4 who was the bona fide purchaser for value, had been the owner of the property and was not bound by the terms of the contract entered into by the plaintiff with the defendant Nos.1 to 3. Thus, sought for allowing the appeal.

23. Sri Bhargav D.Bhat is the Advocate who represented the legal representative of the deceased plaintiff. Despite granting sufficient opportunity, he failed to address arguments.

24. As such, in the light of the arguments put forth on behalf of the appellant, this Court perused the material on record meticulously.

25. On such perusal of the material on record, there is no dispute that on 06.09.2006, defendants 1 to 3 have sold the property in favour of defendant No.4 who has been subsequently impleaded in the suit.



26. Admittedly, in Ex.D2, there is a mention that the sale consideration has been received by defendant Nos.1 to 3 in *toto* i.e., on 06.09.2006.

27. On 05.09.2006 what has been paid by the plaintiff is only Rs.20,000/-. No doubt, Ex.P1 is a registered agreement to sell. But, according to defendant Nos.1 to 3, plaintiff had agreed to pay the entire sum of Rs.2,50,000/- as per the oral agreement and having paid only Rs.20,000/-.

28. As on 05.09.2006, no rights have been transferred under the said agreement to sell in *toto* in respect of suit property and they were entitled to sell the property in favour of defendant No.4 in view of breach of terms of contract of agreement to sell. Therefore, the Trial Court has taken note of the fact that as on the date of suit itself, the property was transferred in the name of defendant No.4 and rightly referred to order for specific performance of suit agreement and ordered return of contract money with interest @ 24% p.a.

29. Defendants 1 to 3 did not choose to place any evidence on record, having sold the property to fourth defendant. Only on that ground, learned Judge in the First



Appellate Court opined that defendant Nos.1 to 3, in order to defeat the rights of the plaintiff, sailed with defendant No.4.

30. It is also noted by the learned Judge in the First Appellate Court that defendant No.4 was not made as a party at the first instance.

31. When there is a specific averment made in the written statement by defendant Nos.1 to 3 that the property has been sold to defendant No.4, it was incumbent on the plaintiff to implead defendant No.4 as a party to the suit immediately.

32. Nevertheless, defendant No.4 having come to know about the suit, voluntarily appeared before the Court and he was allowed to be added as a party after he approached the Court seeking permission to implead himself in the suit.

33. The conduct of the plaintiff in this regard is ignored by learned judge in the First Appellate Court while much has been discussed as to non-entering into the witness box by defendant Nos.1 to 3.

34. Admittedly, the First Appellate Court noted in paragraph 22 that the grant of specific performance of a



contract is discretionary in nature as the statute stood when the judgment came to be passed.

35. First Appellate Court also noted that such discretion cannot be exercised arbitrarily. But, for specific enforcement of the agreement to sell dated 05.09.2006, no reason whatsoever is furnished by the First Appellate Court, much less cogent and convincing reasons except noting that defendant Nos.1 to 3 did not lead evidence.

36. First Appellate Court also failed to note that as on the date of suit itself, the property was alienated and plaintiff failed to implead the subsequent purchaser. In fact, records would depict that on 06.09.2006 i.e., very next day of the suit agreement, the property was alienated in favour of defendant No.4.

37. Further, all the defenses that are available to defendant Nos.1 to 3 can be taken by defendant No.4 being the successor in interest of the property and he can raise such defenses and also establish before the Court that plaintiff is not entitled for specific enforcement of the contract.



38. Thus, reversing the finding recorded by the Trial Court and even after noting that defendant No.4 was the owner of the suit property as on the date of suit itself, without there being any plausible reasons assigned, held that defendant No.4 is not a *bona fide* purchaser for value.

39. It is to be noted that a mere agreement to sell did not transfer any right in favour of the agreement holder whereas in a sale deed in favour of fourth defendant, the rights stood transferred.

40. Further, in the absence of any material evidence being discussed and analysed by the First Appellate Court, the First Appellate Court in its judgment in paragraph 21 has recorded the finding that Ex.D1 and Ex.D2 has come into existence under suspicious circumstances.

41. Pertinently, it is not the case of the plaintiff himself that Ex.D1 and Ex.D2 has come into existence under suspicious circumstances. What are such suspicious circumstances is not even mentioned in the impugned judgment.

42. Only on the ground that defendant Nos.1 to 3 did not choose to enter the witness box, the First Appellate Court ought not to have opined that the Exs.D1 and D2 have come



into existence under suspicious circumstances. Thus, the finding of First Appellate Court in this regard is to be termed as perverse.

43. Such a finding therefore, in the considered opinion of the Court is not only perverse but also suffers from legal infirmity and without there being any application of judicious mind.

44. Therefore, a case is made out by the appellant to set aside the order of the First Appellate Court and restore the order of the Trial Court.

45. Accordingly, substantial question of law raised at the time of admission of the appeal is answered in favour of the appellant.

46. Consequently, the following:

ORDER

- (i) Appeal is allowed.
- (ii) Consequently, the judgment dated 05.12.2016 in R.A.No.44/2014 passed by the learned V Additional District and sessions Judge, Mandya is hereby set aside by restoring the judgment



**NC: 2026:KHC:29822
RSA No. 542 of 2017**

dated 10.09.2014, passed by the learned
Principal Civil Judge (Sr.Dn), Mandya.

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

MR
List No.: 2 Sl No.: 82