



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO. 616 OF 2016 (SP)

BETWEEN:

1. SHANTHAMMA,
AGED ABOUT 54 YEARS,
WIDOW,
KUMBENA AGRAHARA,
KADUGODI POST,
BANGALORE - 560 067.
2. SRI.GIRISH KUMAR,
AGED ABOUT 32 YEARS,
S/O LATE.K.N.ASWATHANARAYANA SWAMY,
KUMBENA AGRAHARA, KADUGODI POST,
BANGALORE - 560 067.
3. KUM.A.N.SUMALATHA,
AGED ABOUT 30 YEARS,
D/O LATE.K.N.ASWATHANARAYANA SWAMY,
KUMBENA AGRAHARA, KADUGODI POST,
BANGALORE - 560 067.
4. KUM.GEETHA,
AGED ABOUT 34 YEARS,
D/O LATE.K.N.ASWATHANARAYANA SWAMY,
KUMBENA AGRAHARA, KADUGODI POST,
BANGALORE - 560 067.

...APPELLANTS

(BY SRI.AKERSH.B.R, ADVOCATE)



AND:

1. N. SIDDALINGAPPA,
S/O NANJUNDAPPA,
AGED ABOUT 77 YEARS,
RESIDENT AT KEB ROAD,
BIDARAHALLI HOBLI,
KADUGODI POST,
BANGALORE - 560 067.
2. K.S.NATARAJ,
S/O SIDDALINGAPPA,
AGED ABOUT 50 YEARS,
RESIDENT AT KEB ROAD,
BIDARAHALLI HOBLI,
KADUGODI POST,
BANGALORE - 560 067.
3. K.S.MANJUNATHA,
S/O N.SIDDALINGAPPA,
AGED ABOUT 48 YEARS,
RESIDENT AT KEB ROAD,
BIDARAHALLI HOBLI,
KADUGODI POST,
BANGALORE - 560 067.
4. SRI. P.SUBRAMANI,
S/O LATE PAPAIAH,
AGED ABOUT 51 YEARS,
R/AT BELATHUR VILLAGE,
KADUGODI POST,
BIDARAHALLI HOBLI - 560 067.
BANGALORE SOUTH TALUK.

...RESPONDENTS



THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE JUDGEMENT DECREE DTD04.01.2016 PASSED IN R.A.NO.145/2010 ON THE FILE OF THE VII ADDL. DISTRICT AND SESSIONS JUDGE, BANGALORE RURAL DISTRICT, BANGALORE, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DTD01.04.2010 PASSED IN OS.NO.145/1999 ON THE FILE OF THE II ADDL. CIVIL JUDGE (JR.DN.) BANGALORE (R) DISTRICT., BANGALORE.

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

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

ORAL JUDGMENT

This appeal is preferred by the plaintiffs assailing the judgment and decree dated 04.01.2016 passed in R.A.No.145/2010 on the file of VII Additional District and Sessions Judge, Bangalore Rural District, Bangalore, confirming the judgment and decree dated 01.04.2010 passed in O.S.No.145/1999 on the file of II Additional Civil Judge (Senior Division), Bangalore Rural District, Bangalore, dismissing the suit of the plaintiffs.



2. The relevant facts for the adjudication of this second appeal are that the plaintiffs are the intending purchasers of the suit schedule properties, wherein the husband of plaintiff No.1-K.N.Aswathanarayan, had entered into an agreement of sale with the defendants as per the agreement of sale dated 22.08.1994. It is the case of the plaintiffs that, the plaintiffs have paid Rs.5,000/- as advance amount out of the total sale consideration amount of Rs.1,25,000/-, and thereafter paid another Rs.5,000/- on 28.08.1994 to the defendants. It is the case of the plaintiffs that the husband of plaintiff No.1-K.N.Aswathanarayana died on 25.06.1998. It is further stated that the plaintiffs were ready and willing to perform their part of the contract in terms of the agreement of sale dated 22.08.1994 and therefore, the plaintiffs have issued a legal notice dated 06.02.1999 to the defendants calling upon the defendants to execute the registered sale deed in respect of the subject matter of the property.



3. It is also stated in the plaint that prior to the issuance of legal notice dated 06.02.1999, O.S.No.407/1998 has been preferred by plaintiff No.1 against the defendants seeking the relief of permanent injunction. Therefore, it is the case of the plaintiffs that the defendants have not given effect to the agreement of sale dated 22.08.1994 and accordingly the plaintiffs have preferred O.S.No.145/1999 seeking relief of specific performance of the agreement dated 22.08.1994.

4. Upon service of notice, the defendants entered appearance and filed a detailed written statement denying the averments made in the plaint. It is the specific case of the defendants that the suit is hit by the principles of *res judicata*, as plaintiff No.1 had already filed O.S.No.407/1998 against the defendants, which came to be dismissed. It is also stated that the suit is barred by limitation as the sale agreement was entered into between the parties on 22.08.1994 and as such, the suit is filed belatedly and therefore, sought for dismissal of the suit.



5. The Trial Court based on pleadings on record has framed the issues for its consideration. In order to establish their case, the plaintiffs examined two witnesses as PW.1 and PW.2 and got marked 11 documents as Ex.P1 to Ex.P11. The defendants have examined four witnesses as DW.1 to DW.4 and got marked 22 documents as Ex.D1 to Ex.D22.

6. The Trial Court, after considering the material on record by judgment and decree dated 01.04.2010, dismissed the suit. Feeling aggrieved by the judgment and decree passed by the Trial Court, the plaintiffs have preferred R.A.No.145/2010 before the First Appellate Court. In the said appeal, the defendants have contested the matter on merits. The First Appellate Court, after considering the material on record by judgment and decree dated 04.01.2016, dismissed the appeal, consequently confirmed the judgment and decree in O.S.No.145/1999. Hence, this second appeal is preferred.



7. Heard Sri.Akersh B.R, learned counsel appearing for the appellants.

8. Learned counsel appearing for the appellants contended that, both the Courts below have committed an error in not considering the fact that the suits which are filed in respect of the very same subject matter was required to be resolved by the defendants, and in view of the said aspect of the matter, the judgment and decree passed by the Courts below require to be set aside. It is further submitted by the learned counsel appearing for the appellants by inviting the attention of the Court to the recitals in the agreement of sale dated 22.08.1994 wherein, the defendants have to execute the registered sale deed only after the pending suits were concluded and the said aspect of the matter has not been properly appreciated by both the Courts below and accordingly, he sought for interference of this Court.



9. In the light of the submission made by the learned counsel appearing for the appellants, and on careful consideration of the findings recorded by both the Courts below, it would indicate that the husband of plaintiff No.1-K.N.Aswathanarayana has entered into an agreement of sale dated 22.08.1994 with the defendants in respect of the subject matter of the properties. It is also to be noted that the total sale consideration was Rs.1,25,000/- and the perusal of Ex.P3, would indicate that a sum of Rs.5,000/- was paid to the defendants on the date of the execution of the agreement of sale. Thereafter, shara is also made in the said agreement, evidencing the payment of further amount of Rs.5,000/- on 28.08.1994.

10. On careful consideration of the findings recorded by both the Courts below wherein, plaintiff No.1 herein had filed suit against the defendants in O.S.No.407/1998 seeking the relief of permanent injunction, which came to be dismissed for default. It is also to be noted that, the



O.S.No.180/1992 was also with relation to the very same subject matter of the property.

11. It has to be considered that the agreement of sale on which the plaintiffs are seeking specific performance was executed on 22.08.1994 and thereafter, the recitals in the agreement would indicate that the plaintiffs have to pay Rs.55,000/- to the defendants within two months from the date of execution of the said agreement.

12. However, a perusal of the findings recorded by both the Courts below as well as the Ex.P3, would indicate that the plaintiffs have failed to pay Rs.55,000/- within two months in terms of the recitals in the agreement of sale deed at Ex.D9. In that view of the matter, I am of the view that the findings recorded by both the Courts below are just and proper and as the plaintiff, has not, complied with the terms and conditions of the agreement of sale at Ex.P3, I am of the view that no interference is called for in



this appeal. It is to be noted that, the appellants have not made out a case for formulation of substantial question of law as required under Section 100 of CPC. Accordingly, the appeal is ***dismissed.***

**SD/-
(E.S.INDIRESH)
JUDGE**

KVR
List No.: 1 SI No.: 38