

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 1888 OF 2019 (INJ)

C/W

REGULAR FIRST APPEAL NO. 1887 OF 2019

IN RFA No. 1888/2019

BETWEEN:

MESSRS SANA GROUP
A PROPRIETARY CONCERN
HAVING ITS PLACE OF BUSINESS AT
SHOPPING COMPLEX, 1ST FLOOR
FERNHILL GARDENS
6TH SECTOR, HSR LAYOUT
BANGALORE-560 102
REPRESENTED BY ITS PROPRIETOR & MANAGING
DIRECTOR SHRI AJIT PRAKASH

...APPELLANT

(BY SRI. S. SREEVATSA, SENIOR COUNSEL FOR
SMT. YUKTHA ANIL, ADVOCATE)

AND:

1. SHRI JAY PRAKASH AGARWAL
S/O SHRI DHARAMCHAND BANSAL
AGED ABOUT 56 YEARS
RESIDING AT 122/A, 6TH MAIN ROAD
III STAGE, 4TH BLOCK, KORAMANGALA
BANGALORE-560 009
2. SHRI CHANDRASEKHAR Y PATIL
S/O LATE DR Y.V PATIL
AGED ABOUT 72 YEARS
RESIDING AT 'SRI VINAYAKA'
NO.90, 2ND MAIN ROAD
HAL III STAGE

Digitally signed
by PANKAJA S
Location: HIGH
COURT OF
KARNATAKA

NEW THIPPASANDRA
BANGALORE-560075

3. SHRI SATEESH MOHAN
S/O MR GOPI MOHANAN
AGED ABOUT 40 YEARS
RESIDING AT ERNADACKAL HOUSE
KADATHY EAST, MARKET P.O
MUVATTAPUZHA
ERNAKULAM-686 673
KERALA

...RESPONDENTS

(BY SRI. SHIRISH KRISHNA, ADVOCATE FOR R1,
VIDE ORDER DATED 24/01/2024 R2 IS DELETED
SRI. P.B. APPAIAH, ADVOCATE FOR R3)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 11.06.2019 PASSED ON
IA.NO.V IN OS.NO.25260/2019 ON THE FILE OF THE XXVIII
ADDITIONAL CITY CIVIL JUDGE, BENGALURU, ALLOWING THE
IA.NO.V FILED UNDER ORDER VII RULE 11(a) AND (d) R/W
SEC.151 OF CPC., FOR REJECTION OF PLAINT.

IN RFA NO. 1887/2019

BETWEEN:

MESSRS SANA GROUP
A PROPRIETARY CONCERN
HAVING ITS PLACE OF BUSINESS AT
SHOPPING COMPLEX, 1ST FLOOR,
FERNHILL GARDENS,
6TH SECTOR, HSR LAYOUT,
BANGALORE-560102.
REPRESENTED BY ITS PROPRIETOR & MANAGING
DIRECTOR SHRI AJIT PRAKASH.

...APPELLANT

(BY SRI. S. SREEVATSA, SENIOR COUNSEL FOR
SMT. YUKTHA ANIL, ADVOCATE)

AND:

1. SHRI SUSHIL KUMAR AGARWAL

SON OF SHRI DHARAMCHAND BANSAL,
AGED ABOUT 56 YEARS,
RESIDING AT 122/A, 6TH MAIN ROAD,
III STAGE, 4TH BLOCK, KORAMANGALA,
BANGALORE-560 009.

2. SHRI CHANDRASHEKHAR Y PATIL
SON OF LATE DR Y V PATIL,
AGED ABOUT 72 YEARS,
RESIDING AT 'SRI VINAYAKA',
NO.90, 2N^D MAIN ROAD, HAL III STAGE,
NEW THIPPASANDRA,
BANGALORE-560075.
3. SHRI. SATEESH MOHAN
SON OF MR GOPI MOHANAN,
AGED ABOUT 40 YEARS,
RESIDING AT ERANDACKAL HOUSE,
KODATHY EAST, MARKET P.O.
MUVATTAPUZHA, ERNAKULAM-686673,
KERALA.

...RESPONDENTS

(BY SRI. SHIRISH KRISHNA, ADVOCATE FOR R1,
VIDE ORDER DATED 24.01.2024, R2 IS DELETED,
SRI. P.B. APPAIAH, ADVOCATE FOR R3)

THIS RFA IS FILED UNDER SEC.96 OF THE CPC.,
AGAINST THE ORDER DATED 11.06.2019 PASSED ON IA
NO.IV IN OS NO.26622/2018 ON THE FILE OF THE XXVIII
ADDL.CITY CIVIL JUDGE ALLOWING THE IA NO.IV FILED
UNDER ORDER VII RULE 11(a) AND (d) R/W.SEC.151 OF
CPC., FOR REJECTION OF PLAINT.

THESE APPEALS HAVING BEEN RESERVED FOR
JUDGMENT ON 24.09.2026 COMING ON FOR PRONOUNCEMENT
THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

The plaintiff—Messrs Sana Group is before this Court in these appeals seeking to set aside the judgments and decrees passed in O.S. No. 25260/2019 and O.S. No. 26622/2018 by the XXVIII Additional City Civil Judge, Mayohall, Bengaluru (for brevity, "the Trial Court"), whereby the Trial Court rejected the plaints filed by the plaintiff under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC).

2. For the sake of convenience, the parties are referred to by their respective ranks held before the Trial Court.

3. The factual matrix of the case according to the plaintiff is that defendant No.1 is the absolute owner of the suit schedule properties, having purchased the same vide Sale Deed dated 20.12.1995. Thereafter, defendant No.1 entered into an Agreement of Sale with Defendant No. 2 on 10.02.1999 agreeing to sell the same, which was a registered agreement. defendant No.1 also executed a General Power of Attorney in favour of defendant No.2 on 10.02.1999 authorizing him to deal with and sell the suit schedule properties.

4. Acting upon the said Power of Attorney, defendant No.1 as Group-I vendor and defendant No.2 as Group-II vendor executed two unregistered Agreements of Sale dated 10.08.2008 in favour of the plaintiff—one in respect of the plaint schedule property in O.S. No.25260/2019 and the other in respect of the plaint schedule property in O.S. No.26622/2018. The total sale consideration under each agreement was Rs.88,32,000/-. As per the said agreements, the plaintiff paid an aggregate sum of Rs.22,00,000/- to defendant No.2, with the balance of Rs.66,32,000/- payable at the time of execution and registration of the absolute Sale Deed.

5. As per paragraph 2.1 of the said Agreements of Sale, conditions precedent to the plaintiff paying the balance consideration and obtaining conveyance were that defendant No.1 had to obtain a Khatha Certificate in his name and a No Objection Certificate (NOC) from the Defence Department within 60 days from the date of execution of the agreements. Thereafter, the plaintiff published a public notice on 17.09.2008 regarding the proposed transaction, to which objections were raised by the Defence Estates Officer, Karnataka & Goa Circle. Subsequently, on 12.08.2016, defendant No. 2 issued a public

notice stating that the original title documents had been lost, followed by police complaints filed in that regard.

6. The plaintiff asserts that it has always been ready and willing to perform its part of the contract. defendant No.1 obtained the Khatha Certificate on 30.08.2016, but failed to secure the NOC from the Defence Department. However, in the first week of October 2018, the plaintiff discovered that defendants No.1 and 2 had executed a registered Agreement of Sale dated 15.04.2016 in favour of defendant No.3 in respect of the suit schedule properties.

7. Since defendants No.1 and 2 had neither obtained the NOC nor formally terminated the unregistered Agreements of Sale dated 10.08.2008, the plaintiff asserted that its right to sue for specific performance had not fully accrued. Consequently, to safeguard its commercial interests over the suit schedule properties, the plaintiff filed O.S. No.25260/2019 and O.S. No.26622/2018 seeking a permanent injunction restraining the defendants from alienating or dealing with the schedule properties during the subsistence of the unregistered Agreements dated 10.08.2008.

8. In both suits, defendant No.2 filed applications under Order VII Rule 11(a) and (d) read with Section 151 of CPC seeking rejection of the complaints on the grounds that the complaints disclosed no cause of action and that the bare injunction suits were barred by law.

9. The Trial Court, upon considering the materials on record, allowed the applications and rejected the complaints, observing that the suits for bare injunction were not maintainable when an efficacious remedy of filing a comprehensive suit for specific performance was available. Aggrieved by the rejection of the complaints, the plaintiff filed R.F.A. No. 1888/2019 and R.F.A. No. 1887/2019.

10. Heard learned senior counsel Sri. S. Sreevatsa for Smt.Yuktha Anil for appellant, learned counsel Sri. Sirish Krishna for respondent No.1 and learned counsel Sri. P. B. Appaiah for respondent No.3 for respondent No.3.

11. Learned senior counsel contended that the Trial Court erred in rejecting the complaints under Order VII Rule 11 CPC. It was submitted that Section 41(h) of the Specific Relief Act, 1963 is not a bar because the cause of action for specific performance had not yet fully arisen, as the vendors had

neither expressly repudiated the agreements nor communicated their refusal to perform. It was further argued that the 60-day stipulation for securing the NOC was merely directory and not the essence of the contract; hence, until the NOC was produced, a suit for injunction was the only immediate, preventive remedy available to protect the plaintiff's rights.

12. Learned senior counsel further pointed out that the plaintiff had filed applications under Order II Rule 2 of CPC seeking leave of the Trial Court to file a subsequent suit for specific performance as and when the NOC is communicated. It was asserted that under Order II Rule 2(3) CPC, a plaintiff omitting a relief with the leave of the Court is protected, and the Trial Court committed a serious error in rejecting the complaints without deciding the said applications.

13. *Per contra*, learned counsel for the respondents/defendants submitted that the Trial Court's orders are well-founded in law. It was contended that the plaintiff's agreements dated 10.08.2008 are unregistered documents and the plaintiff was never put in possession of the suit schedule properties. On the other hand, defendants No. 1 and 2

executed a registered Agreement of Sale in favour of defendant No. 3, who holds possession. A prospective purchaser out of possession holding an unregistered agreement cannot maintain a bare suit for injunction against the true owner or subsequent registered transferee. Furthermore, the cause of action to seek specific performance accrued the moment the plaintiff learned of the third-party creation in October 2018; omitting to seek specific performance directly attracts the statutory bar under Section 41(h) of the Specific Relief Act, 1963.

14. Having heard the learned counsel for the respective parties and perused the material on record, the following points for consideration arise for consideration in these appeals:

1. Whether the cause of action to sue for specific performance under accrued to the plaintiff upon the expiry of 60 days fixed for performing the condition precedent, or at least in October 2018 when the plaintiff had notice of clear repudiation by the defendants through alienation to a third party, thereby rendering a suit for bare injunction barred by law under Section 41(h) of the Specific Relief Act, 1963?

2. Whether an application filed seeking leave under Order II Rule 2(3) of the CPC to reserve the right to sue for specific performance at a later stage can protect a suit for bare permanent injunction from being rejected under Order VII

Rule 11(d) of the CPC, when the suit itself is hit by the statutory bar of Section 41(h) of the Specific Relief Act, 1963?

15. I have given my anxious consideration to the submissions made by learned counsel for both parties and perused the material on record.

16. As could be gathered from records, the undisputed facts are that defendants No. 1 and 2 entered into unregistered Agreements of Sale dated 10.08.2008 with the plaintiff. One of the conditions precedent was securing an NOC from the Defence Department within 60 days. Though the Khatha was obtained in 2016, the NOC was never obtained. Even if the 60-day period is treated as directory, the plaintiff's own plaint averments state that in October 2018, it discovered that defendants No. 1 and 2 had executed a registered Agreement of Sale dated 15.04.2016 in favour of defendant No. 3. This act constituted a clear, unequivocal threat and deliberate repudiation of the unregistered agreements dated 10.08.2008, thereby giving rise to an immediate right to sue for specific performance under Article 54 of the Limitation Act, 1963.

17. It is a well-settled principle of law that an agreement of sale does not, by itself, create any title, interest,

or charge upon immovable property (Section 54 of the Transfer of Property Act, 1882). Further, under Section 17(1A) of the Registration Act, 1908 and Section 53A of the Transfer of Property Act, an unregistered agreement holder who is not in actual physical possession cannot assert possessory rights or maintain a standalone suit for permanent injunction to restrain the recorded owner from alienating the property.

18. Under Section 41(h) of the Specific Relief Act, 1963, an injunction cannot be granted when an equally efficacious relief can certainly be obtained by any other usual mode of proceeding. Where an agreement to sell is alleged to be breached or repudiated, the primary and efficacious remedy available to the purchaser is to file a comprehensive suit for specific performance of the agreement and seek an interim injunction against alienation as an interlocutory relief temporary injunction within that suit. Filing a bare suit for permanent injunction without claiming the substantive relief of specific performance is legally impermissible.

19. In ***State of Punjab v. Gurdev Singh*** reported in **(1991) 4 SCC 1**, the Hon'ble Supreme Court held that the Court must examine the plaint averments to determine when

the "right to sue" first accrued. The right to sue accrues when the cause of action arises—specifically when the right asserted in the suit is infringed or faced with a clear threat of infringement. The discovery of the registered agreement in favour of defendant No. 3 in October 2018 triggered the complete cause of action for specific performance. The plaintiff could not artificially defer seeking specific performance under the guise of an unobtained NOC while simultaneously seeking a permanent restraint on alienation. Consequently, point No. 1 is answered in the affirmative, holding that the cause of action accrued in October 2018, making the bare injunction suit barred under Section 41(h) of the Specific Relief Act.

20. The reliance placed by the Trial Court on the principles reiterated in ***RBANMS Educational Institution v. B. Gunashekar & Another*** reported in **2025 INSC 490** is entirely justified. The Supreme Court emphasized that Courts have a duty to scrutinize complaints to weed out clever drafting designed to create an illusion of a cause of action where the suit is otherwise barred by law. The power under Order VII Rule 11 of CPC is substantive, aimed at preventing abuse of judicial process.

21. Regarding the contention that the applications filed under Order II Rule 2 CPC shielded the plaints from rejection, the said submission is untenable. In ***Sucha Singh Sodhi v. Baldev Raj Walia & Another*** reported in **(2018) 6 SCC 733**, the Hon'ble Supreme Court observed as under:

"23. Order 2 Rule 2(1) of the Code provides that every suit shall include the whole of the claim, which the plaintiff is entitled to make in respect of the cause of action. Liberty is, however, granted to the plaintiff to relinquish any portion of his claim with a view to bring the suit within the jurisdiction of any court.

24. It is clear from the reading of Order 2 Rule 2(1) of the Code that whenever the plaintiff files a suit on the basis of a cause of action pleaded in the plaint, he is under a legal obligation to include and claim all the reliefs against the defendant, which have accrued to him on the cause of action pleaded by him in his plaint. In other words, if on the basis of cause of action pleaded by the plaintiff in the plaint, he is entitled to claim two reliefs, namely, 'A' and 'B' against the defendant(s), then he is under an obligation to claim both 'A' and 'B' reliefs together in the suit. Order 2 Rule 2(1) of the Code enables the plaintiff to relinquish any portion of his relief with a

view to bring the suit within the jurisdiction of any court.

25. Order 2 Rule 2(2) of the Code, however, provides that where a plaintiff omits to sue or intentionally relinquishes, any portion of his claim/relief in his suit, then in such event, he shall not be allowed afterwards to sue in respect of the claim/relief so omitted or/and relinquished by him in his suit. In other words Rule 2(2) does not permit the plaintiff to file second suit to claim the omitted or/and relinquished relief.

26. In our opinion, the sine qua non for invoking Order 2 Rule 2(2) against the plaintiff by the defendant is that the relief which the plaintiff has claimed in the second suit was also available to the plaintiff for being claimed in the previous suit on the causes of action pleaded in the previous suit against the defendant and yet not claimed by the plaintiff."

22. Collocating the findings of the Hon'ble Apex Court in the above judgment, while Order II Rule 2 CPC addresses the procedural bar against filing a *second* suit for an omitted relief arising from the same cause of action, it cannot be invoked as a mechanism to validate an initial suit that is fundamentally barred by a substantive statute. An application under Order II Rule 2 CPC seeking leave to omit the relief of specific

performance cannot override or bypass the statutory bar under Section 41(h) of the Specific Relief Act, 1963, which renders a bare injunction suit non-maintainable when specific performance is the requisite efficacious remedy. Accordingly, point No. 2 is answered in the negative, holding that an Order II Rule 2 application cannot save a suit barred by Section 41(h) from rejection under Order VII Rule 11(d) CPC.

23. Therefore, the Trial Court was entirely justified in allowing the applications under Order VII Rule 11(a) and (d) of CPC and rejecting the complaints as barred by law.

In view of the above conclusions, both the Regular First Appeals (RFA No. 1887/2019 and RFA No. 1888/2019) are **dismissed**.

SD/-
(RAJESH RAI K)
JUDGE

PKS/V