

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

COMMERCIAL APPEAL NO.230 OF 2023

BETWEEN:

SRI B PUTTASWAMY
S/O SRI BETTE GOWDA
AGED ABOUT 64 YEARS
TIMBER MERCHANT AND AGRICULTURIST
R/O NALLUR GATE
CHIKKAMAGALURU TALUK-577 101

...APPELLANT

(BY SRI: K S GANESHA, ADVOCATE [VC])

AND:

SRI K R CHANDAN
S/O K R RAJAN
AGED ABOUT 36 YEARS
BUSINESSMAN
MANJUNATHA VENEERS AND TIMBERS
HIEMAGALURU
CHIKKAMAGALURU TALUK
REPRESENTED BY K R VIJAYAN
BY GPA HOLDER
S/O LATE K RAMAN
AGED ABOUT 56 YEARS
MANJUNATHA VENEERS AND TIMBERS
HIEMAGALUR, JYOTHINAGARA POST
CHIKKAMAGALURU TALUK
PIN-577 102

...RESPONDENT

(BY SRI: SANTHOSH H R, ADVOCATE/CAVETOR)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO ALLOW THE APPEAL WITH COST BY SETTING ASIDE THE JUDGMENT AND DECREE DATED 23/01/2023 PASSED BY THE PRL. DISTRICT AND SESSIONS, CHIKKAMAGALUR IN COM.O.S.NO. 13/2022 AND ETC.

THIS COMMERCIAL APPEAL, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 11.08.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **T.P.VIVEKANANDA J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T P VIVEKANANDA)

Though the matter is listed for admission, with the consent of learned counsels for both the parties, the matter is taken up for final disposal.

2. The appellant is before this Court being aggrieved by the judgment and decree dated 23.01.2023 passed in Com.OS.No.13 of 2022 by Principal District and Sessions Judge at Chikkamagaluru.

3. For the sake of convenience, the parties shall be referred to as per their rank/status before the Trial Court.

4. Brief facts of the case are that, the plaintiff is the proprietor of Manjunatha Veneers and Timbers situated at Hiremagaluru. The defendant is the timber merchant. It is the contention of the plaintiff that the defendant approached the plaintiff stating that he intends to sell 1400 silver oak trees to him and as such, they entered into an agreement to sale dated 19.07.2017, under which, the plaintiff has paid sum of Rs.6,00,000/- as advance and agreed to pay the balance amount depending upon the transportation of timber logs.

5. It is the further case of the plaintiff that when he along with his workers visited the estate of defendant in the month of September, 2017, it was noticed that the silver oak logs have already been sold. It was further pleaded that the plaintiff has approached the defendant seeking return of the advance amount. The defendant has assured that the amount would be paid by April, 2018. Since the amount was not paid as assured, the plaintiff had approached DLSA for Pre-Institution Mediation. Since the defendant did not respond to the notice of Pre-Institution Mediation, the plaintiff has approached the Commercial Court for recovery of Rs.6,00,000/- together with interest at 18% per annum.

6. After service of suit summons, the defendant had appeared and filed his written statement. The defendant has denied the agreement to sell and the receipt of Rs.6,00,000/- as advance amount. It is stated that the plaintiff and defendant were doing business, however, at no point of time there was written agreement between them. It is asserted by the defendant that the plaintiff has used the signed blank stamp papers obtained from him, which ought to have destroyed after the earlier transactions. It is further stated that the amount transferred by the plaintiff to the current account of the defendant at Vijaya Bank, Nallur Gate Branch was the balance payable in respect of the earlier transaction and not in respect of the alleged transaction. It is further stated that the suit is barred by limitation and sought for dismissal of the suit.

7. Based on the pleadings, the Trial Court has framed the following issues for consideration:

"(1) Whether the plaintiff proves that there was an agreement of sale dated 19.07.2027 between him and the defendant for sale of silver logs and paid advance amount of Rs.6,00,000/- to the defendant as averred in para No.4 of the plaint?"

(2) Whether the defendant proves that the plaintiff transferred the amount to his savings account,

relating to earlier transaction between them, as averred in para No.7 of his written statement.

(3) Whether the plaintiff is entitled for recovery of Rs.6,00,000/- from the defendant with court costs and interest at the rate of 18% p.a. from the date of suit till realization?

(4) What order or decree?

Additional Issue:

(1) Whether the defendant proves that suit of the plaintiff is barred by time?"

8. In order to prove the aforesaid issues, on behalf of the plaintiff, Sri K R Vijayan, General Power of Attorney holder was examined as PW1 and got marked Exs.P1 to P12. Though the defendant has examined himself as DW1, however, no documentary evidence are adduced.

9. On considering the oral and documentary evidence adduced by the plaintiff and defendant, the Trial Court has partly decreed the suit of the plaintiff, entitling the plaintiff to recover a sum of Rs.6,00,000/- with simple interest at 6% per annum from the date of the suit till realization and the defendant was also made liable to pay the cost of the proceedings in favour of the plaintiff.

10. It is the said judgment and decree is challenged in this Commercial Appeal.

11. We have heard the learned counsel for the appellant and the respondent.

12. Learned counsel for the appellant by re-iterating the grounds urged in the memorandum of appeal contended that the plaintiff has not entered the witness box and chosen to examine GPA holder who had no personal knowledge about the transactions. When PW1 was cross examined, in respect of every question, the answer of PW1 was that he do not know the answer. He further contended that the suit is based on Ex.P2 which is the agreement of sale in respect of silver oak trees and the GPA holder is only a witness to the said document. Apart from affixing his signature in the document as witness, he had no knowledge about the entire transaction, therefore, evidence of PW1 ought to have been discarded and suit ought to have been dismissed. It is his further submission that power of attorney holder cannot act as a substitute for the principal in the witness box for the matters, which are within the knowledge of the principal. Hence, he prays to allow the appeal.

13. Learned counsel for the respondent opposing the submissions made by the learned counsel for the appellant sought to justify the impugned judgment and decree passed by the Trial Court. It is his contention that the GPA holder is not a stranger. However, he is the uncle of the plaintiff. Incidentally, the GPA holder is also the witness to Ex.P2. Therefore, the contention of the defendant that the GPA holder has no knowledge of the transaction, is without any substance. He further contends that in the cross examination of DW1, there are several inconsistent statements, more particularly, the portion of the cross examination where at one breadth, DW1 states that he has not done any past transactions with the plaintiff and in the other breadth, states that the amount of Rs.6,00,000/- paid by the plaintiff is in respect of the earlier transactions. He further contended that in the cross examination of DW1, he has admitted that he affixes his signature only upon knowing the contents of the document and his son is a graduate who has also signed Ex.P2 as witness. Thus, it is his contention that the plea of defendant that the signatures have been obtained in blank stamp papers, is far from truth. Hence, he prays for dismissal of the appeal.

14. We have given our anxious consideration to the submissions made by the respective learned counsels and have perused the material on record.

15. On perusal of the materials placed on record, it is discernable that the entire attack on the judgment and decree of the Trial Court is on the ground that the plaintiff has not examined himself and only on the basis of PW1 - GPA holder of the plaintiff who had no knowledge about the transactions, the suit could not have been decreed.

16. The agreement at Ex.P2 is dated 19.07.2017 and the amount of Rs.6,00,000/- transferred by the plaintiff through RTGS to the account of the defendant is on 20.07.2017. The date of the agreement and the transfer of the amount could be correlated, because of the proximity between the two events. Except contending that the transfer of Rs.6,00,000/- was towards earlier transaction, the defendant has not proved the said contention.

17. The other contention urged by the defendant that the plaintiff has misused the blank signed stamp papers, is not proved by producing any oral or documentary evidence. In the cross examination, PW1 has admitted the receipt of amount

through RTGS. However, when the witness was asked to state about the documents relating to earlier transaction, the answer of the witness was that, he possess the document and that he would produce the same before the Court. The records of the Trial Court shows no documents are produced after the cross examination of DW1.

18. Ex.P8 - passbook of Canara Bank standing in the name of the plaintiff, discloses the transfer of amount of Rs.6,00,000/- on 20.09.2017 and Ex.P9 is the deposit challan, which corroborates the contention of the plaintiff that amount of Rs.6,00,000/- was paid pursuant to Ex.P2.

19. The stand of the defendant that the blank stamp paper, which was signed earlier was misused by the plaintiff does not stand to reason because the e-stamp paper has been purchased in the name of the defendant on 19.07.2017 i.e., the date on which the agreement was entered into by the plaintiff and the defendant. The contention of the defendant that amount of Rs.6,00,000/- was transferred by the plaintiff on 20.07.2017 is in respect of the earlier transaction also does not stand, because in Ex.P12 which is the receipt issued by the plaintiff on 21.03.2017 acknowledged the receipt of Rs.96,78,702/- towards the sale of 20,000 cft of silver oak. It

is specifically stated in the said receipt that there are no dues. If the defendant has received the amount in respect of earlier transaction on 21.03.2017 itself, question of plaintiff paying Rs.6,00,000/- on 20.07.2017 in respect of the earlier balance also does not hold any water. The aforesaid aspect has been rightly considered by the Trial Court in the impugned judgment. The Trial Court has also taken note of the cross examination of DW1 at paragraph 10, wherein the defendant has clearly admitted that he has affixed his signature on Ex.P2 in the month of July, 2017 in the same mill of Rajan & Vijayan. It is also admitted that the said agreement was in respect of sale of silver oak trees.

20. We have noticed that several inconsistent stand have been taken by the defendant with regard to the payment of the amount and the earlier transactions. The defendant in the course of cross examination clarifies that the amount of Rs.6,00,000/- was paid for the earlier transaction. However, in the later portion of the cross examination, he further states that he has supplied the silver oak logs equivalent to value of Rs.6,00,000/-. Neither in the pleadings nor in the course of his submissions, it is not the submission of the defendant that he has supplied the silver oak logs equivalent to the value of

Rs.6,00,000/-. Therefore, we have no hesitation to conclude that the plaintiff has proved the payment of Rs.6,00,000/- as advance towards purchase of silver oak logs. However, the defendant has not proved the supply of silver oak logs equivalent to value of Rs.6,00,000/- nor the contention that the amount of Rs.6,00,000/- was paid towards the past transaction.

21. Added to the above reasoning, we may hasten to add that the entire transaction is based on the agreement of sale at Ex.P2 and the payment of amount of Rs.6,00,000/- through RTGS. The payment of amount is not in dispute. Therefore, the analogy of the plaintiff being not entered the witness box and the GPA holder had no personal knowledge about the transaction and therefore, the evidence of PW1 cannot be relied upon, is not applicable to the present case, inasmuch as, there was nothing to be proved by oral evidence, insofar as the transaction in question.

22. As regards the contention of the defendant that the suit filed by the plaintiff is barred by limitation, the Trial Court while answering additional issue No.1 has taken note of the order passed by the Hon'ble Apex Court in Misc.Appl.No.21 of 2022 in Suo Moto Petition (C)No.3 of 2020, wherein the period

between 2020 to 2022 has been excluded and accordingly, the suit filed on 24.02.2022 was within the period of limitation. No grounds are urged in memorandum of appeal or in the oral submission to controvert the aforesaid findings of the Trial Court.

23. This Court while considering the application for interim stay, has directed the appellant to deposit 50% of the decretal amount with accrued interest before the Trial Court. In the order dated 16.07.2024, it is recorded that the appellant has deposited the amount in terms of the interim order of this Court on 05.01.2024.

24. Taking note of the pleadings of the parties and on re-appreciation of the oral and documentary evidenced led in by plaintiff and defendant, we are of the view that the appellant - defendant has not made out any grounds to admit the appeal. We see no error or illegality in the impugned judgment.

25. In the result:-

(i) The appeal being devoid of merits is ***dismissed.***

(ii) In view of the dismissal of appeal at the stage of admission, we permit the respondent - plaintiff to seek release of the amount before the Trial Court and it is also open for the

respondent - plaintiff to recover the balance decretal amount along with accrued interest, in the manner known to law.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(T.P.VIVEKANANDA)
JUDGE**

BGN