



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 2078 OF 2021 (SP)

BETWEEN:

SMT. KANAKALAKSHMI
W/O SHIVANNA
AGED ABOUT 56 YEARS
R/AT NEELAKANTA NAGAR
NANJANAGUD - 571 301
MYSORE DISTRICT.

...APPELLANT

(BY SRI. M.J. ALVA, ADVOCATE)

AND:

1. SMT. MAHADEVAMMA
W/O LATE M. MADASHETTY
AGED ABOUT 54 YEARS
R/AT PWD QUARTERS,
OOTY MYSORE ROAD
NEAR HULLAHALLI CIRLCE,
NANJANGUD TOWN - 571 301,
MYSORE DISTRICT.
2. MADASHETTY
W/O LATE M. MADASHETTY
AGED ABOUT 30 YEARS
R/AT PWD QUARTERS,
OOTY MYSORE ROAD
NEAR HULLAHALLI CIRLCE
NANJANGUD TOWN - 571 301
MYSORE DISTRICT.

...RESPONDENTS

(R2 - SERVED;
VIDE ORDER DATED 04.06.2026, NOTICE TO R1 IS HELD
SUFFICIENT)

Digitally
signed by
MALATESH
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Location:
HIGH
COURT OF
KARNATAKA



THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 30.11.2020 PASSED IN RA.NO.94/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, NANJANGUD. DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 29.09.2016 PASSED IN O.S.NO.162/2010 ON THE FILE OF THE I ADDL. CIVIL JUDGE AND JMFC, NANJANGUD.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri.M.J.Alva, learned counsel for the appellant. None appears for the respondents.

2. Present second appeal is filed by the plaintiff being aggrieved by the order passed by both the Courts in decreeing the suit in part and ordering refund of advance sale consideration/earnest money in a sum of Rs.1,05,000/- with interest at the rate of 9% p.a.



3. Facts of the case are as under:

3.1. A suit for specific enforcement of the agreement to sell dated 19.04.2007 came to be filed in O.S.No.162/2010.

3.2. Plaint averments would reveal that on 19.04.2007 an agreement came into being between the plaintiff and defendant and , a sum of Rs.1,05,000/- was paid as earnest money as against the sale consideration of Rs.2,35,000/-. Plaintiff had to pay next installment of the sale consideration in a sum of Rs.1,20,000/- on or before June, 2007 which he was ready to pay but for the reasons best known, parties did not see eye to eye and payment was not made.

3.3. Left with no alternative, on 06.10.2007, defendants got issued a legal notice intimating the plaintiff that since the next installment of sum of Rs.1,20,000/- was not paid on or before June, 2007, defendants have forfeited sum of Rs.1,05,000/- as per the terms of the contract and cancelled the agreement. Thereafter, plaintiff instituted the present suit on 01.04.2010.



4. Pursuant to the suit summons, defendants entered appearance and resisted the suit by contending that plaintiff did not adhere to the terms of the contract despite issuing two legal notices one on 06.10.2007 and yet another notice on 03.11.2007. Belatedly a suit is filed after the suit agreement was cancelled and advance amount was forfeited.

5. Learned Trial Judge in the light of the rival contentions of the parties, raised necessary issues and decreed the suit of the plaintiff in part and directed the refund of Rs.1,05,000/- earnest money with interest at the rate of 9% p.a. noting the fact that there could not have been unilateral forfeiture of the advance amount and also noting the fact that earnest money retained by the defendants would result in unjust enrichment.

6. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in RA No.94/2016.

7. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappraisal of the material evidence placed



on record, dismissed the appeal inter alia holding in paragraph Nos.15 to 18 as under:

"15. The terms of Ex.P1 clearly discloses that, in addition to the advance consideration paid at the time of the execution of the agreement, the plaintiff ought to have paid Rs.1,20,000/ in the month of June 2007 in favour of the defendant, even the execution of the registered sale deed. Had the plaintiff made that payment in time, only Rs.10,000/ would have remained as balance sale consideration at the time of registration of sale deed. The said condition found in page No.2 of Ex.P1 is as follows :

ಇನ್ನುಳಿಕೆ ಕ್ರಯದ ಮೊಬಲಗು 1,30,000 00 ರೂ.ಗಳ ಪೈಕಿ 1,20,000-00 (ಒಂದು ಲಕ್ಷದ ಇಪ್ಪತ್ತು ಸಾವಿರ) ರೂ.ಗಳನ್ನು ಜೂನ್ ತಿಂಗಳಲ್ಲಿ ಹಣ ಸಂದಾಯ ರಶೀತಿಯ ಮೂಲಕ ಪಡೆದುಕೊಂಡು ಹಣ ಸಂದಾಯ ರಶೀತಿ ಬರೆದುಕೊಡುತ್ತೇನೆ. ಇನ್ನು ಉಳಿಕೆ ಕ್ರಯದ ಮೊಬಲಗು 10,000-00 (ಹತ್ತು ಸಾವಿರ) ರೂ.ಗಳನ್ನು ಮುಂದೆ ಕ್ರಯಪತ್ರದ ರಿಜಿಸ್ಟ್ರಾರ್ ಆಗುವ ವೇಳೆ ಸಬ್ ರಿಜಿಸ್ಟ್ರಾರ್ ರವರ ಸಮಕ್ಷಮ ಪಡೆದುಕೊಳ್ಳುತ್ತೇವೆ.

16. The defendant initiated the correspondence, but not the plaintiff. The Ex.P2 is the legal notice got issued by the defendants to the plaintiff on 06.10.2007. They have stated there in that the plaintiff has failed to perform her part of contract and that the defendant would forfeit the advance amount paid by the plaintiff under the agreement. Whether the defendant is entitled to forfeit the amount need not be considered, as already the decree for refund of advance consideration has remained unchallenged by the defendants. The Ex.P3 is the reply notice got issued by the plaintiff. The plaintiff was



demanding that the defendant should make ready the documents necessary for registration and then she would pay the balance consideration. Thereafter, the defendants got issued Ex.P7 legal notice dated 03.11.2007 therein they have demanding specifically as follows :

"Therefore, you are hereby called upon to pay further advance amount of Rs.1,30,000/ to our client within 10 days from the date of receipt of this notice....."

17. To the said Ex.P7 the plaintiff got issued reply notice that she is ready to pay the balance consideration provided proper documents are got ready by the defendant. However, money is not sent either by cheque or DD in favour of the defendants, at any point of time, be it either through Ex.P3 or through Ex.P8. This is important aspect to be noted while giving finding on the Issue No.1. The payment of Rs.1,20,000/ ought to have been made by the plaintiff in the month of June 2007. However, in the month of October and November 2007, the plaintiff though got issued reply notices to the defendant, but not made the payment either through cheque or through DD in favour of the defendant. The plaintiff insisted the defendants to get ready with the documents, in both the said reply notices in Ex.P3 and 8. Thereafter, the plaintiff did not take steps till filing of this suit on 15.04.2010. Thus, considering the date of the first reply notice dated 06.10.2007 the limitation of three years would have elapsed in the month of October 2010. Thus, the plaintiff has approached the court at the fag



end of the limitation period, that too without any explanation for silence of the plaintiff during the period in interregnum, after the exchange of notices and before the filing of the suit. However, without making payment of Rs.1,20,000/ as agreed in the Ex.P1, the plaintiff waited till the month of April 2010 and filed the present suit, which goes contrary to the claim of her readiness and willingness. It is a matter of fact that till today the plaintiff has not tendered such payment to the defendant. Except mere claim that the plaintiff had personally visited the defendant and offered to pay the said amount, which is not proved by the plaintiff, even the conduct of the plaintiff as forthcoming in Ex.P3 and 8 does not support such a claim. The readiness and willingness of the plaintiff must be, continuous from the date of execution of agreement till the date of conclusion of the contract. Therefore, this one ground is sufficient to hold that the plaintiff has failed to perform her part of contract as agreed under Ex.P1.

18. At the cost of repetition it is stated once more that the terms in Ex.P1 are not in general format of agreeing to pay the balance consideration at the time of registration of the sale deed. Per contra, there was an installment agreed to be paid by the plaintiff to the defendant towards part advance sale consideration in the interregnum, between the date of agreement and the date of registration of the sale deed. Such an undertaking made by the plaintiff being not complied by the plaintiff within the time as agreed in Ex.P1, it cannot be held that the plaintiff's ever readiness and willingness is proved in



the present set of facts. Appreciation of oral and other documentary evidence would not outweigh this important piece of evidence is the opinion of this court. Person may lie, but not the circumstances, is a phrase which aptly applies to the present set of circumstances, in the opinion of this court. Therefore, for the above reasons and for the reasons already stated by the trial court, the finding on Issue No.1 is proper and correct. Hence, plaintiff is not entitled for the relief of specific performance. Hence, Point No.1 is answered in the Negative."

8. Being further aggrieved by the same, plaintiff has filed the present second appeal on following grounds:

- *"The judgement impugned passed by the First Appellate Court on 30.11.2020 in RA No. 94/2016 confirming the judgement and decree dated 29.9.2016 passed by the trial court in OS No. 162/2010 is illegal, improper, perverse and the same is an error apparent on the face of the records. Hence the impugned judgement is liable to be set aside.*
- *Both the courts have misdirected themselves about the factum of readiness and willingness on the part of the appellant and failed to take judicious notice about the non-furnishing of the title deeds by the respondents which is the mandatory requirements of law for the completion of the transaction. The notice of demand at Ex. P2 dated 6.10.2007 had been suitably replied by the appellant through her Counsel on*



23.10.2007 at Ex. P3 wherein it had been specifically recited that the copies of the title deeds have not been furnished and therefore the appellant had requested the respondents to furnish the copies of the title deeds and the same had not been complied by the respondents. This vital aspect had not been considered by both the courts below.

- *The trial court had harped upon the non-issue of separate notice by the appellant seeking specific performance and in the process both the courts have failed to appreciate that in the reply notice at Ex. P3 the appellant had specifically demanded the execution of the sale deed against the receipt of the balance sale price. The First Appellate Court had failed to consider this aspect from its proper perspective and erroneously concurred with the trial court. Hence the impugned judgement is liable to be set aside.*

- *The observation of the trial court in para 32 of the impugned judgement is erroneous and the First Appellate Court had failed to critically examine the inferences drawn from the material evidences placed on record. The total consideration amount is Rs. 2,35,000/- out of which the sum of Rs. 1,05,000/-had been admittedly paid as on the date of the agreement itself and therefore the balance amount remaining to be paid was only Rs. 1,30,000/-. There was sufficient material evidences placed on record to substantiate that the appellant was having the said amount and*



despite the clinching evidences the courts below have carried with the first demand notice made by the respondents.

- *The observation of the trial court in paras 32 & 47 with regard to the issue of separate demand notice is erroneous. In the reply notice at Ex. P3 the appellant had clarified all the circumstances leading to the failure on the part of the respondents to furnish their title deeds and in the agreement at Ex. P1 dated 19.4.2007 that the registration had been stopped by the Registering Authority and there was absolutely no evidence led by the respondents to substantiate as to when it was reopened. Therefore the view taken by the trial court and the First Appellate Court are wholly erroneous.*
- *The trial court had bifurcated the concept of readiness and willingness into two part and came to the conclusion that mere readiness is not sufficient in the absence of attending circumstances to substantiate willingness. The courts below have failed to consider this aspect from its proper perspective and erroneously held issue No. 1 negatively.*
- *The trial court had rightly held that time was not the essence of the contract and the respondents had failed to substantiate the same in the absence of corresponding recital made in the agreement with the rider of lifting of the restrictions imposed by the*



Registering Authority for registration of the sale deed. Having held the issue No. 2 negatively against the respondents, the courts below ought to have decreed the suit directing the specific performance of the contract of sale. By refusing specific performance the courts below have erred in law and on facts which has resulted in gross failure of justice.

- *The courts below have failed to consider the aspect that the appellant is capable of making the payment of the balance consideration amount of Rs. 1,30,000/- and therefore she would be entitled for specific performance in terms of Section 16 (b) of Specific Relief Act. This vital aspect had lost the sight of the courts below which has resulted in gross failure of justice.*
- *The courts below have failed to notice that making out marketable title is the primary aspect which is required to be considered before analysing the payment aspect in respect of which the reply notice at Ex. P3 had specifically thrown light. But the courts below have ignored this aspect in the backdrop of Section 17 of the Specific Relief Act.*
- *The impugned judgements suffers from error of law and error of jurisdiction. The appellant is entitled for specific performance and the trial court had granted only the refund of the amount. It is the specific case of the respondents that they had financial constraints*



and therefore they had offered to sell the suit schedule property. In such situation it would be appropriate to direct the specific performance of the contract of sale since the respondents are not in a position to refund the advance amount also.

- *The impugned judgements are not passed by the courts below in The courts below have consonance with the settled principles of law. committed error of law and error of jurisdiction by relying upon the abstract principles of absence of notice and not proving willingness despite proved readiness. The courts below have dismissed the specific performance on erroneous conclusions as a result of mis-appreciation of material evidences available on record. The plaint averments are substantiated through the documentary evidences supported with the evidence of PW2 & PW3.*
- *The appellant has not filed any other appeal on the same cause of action and no other appeal or proceedings are pending between the parties in any court of law."*

9. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that unilateral forfeiture of the advance amount by the defendants having been accepted by the learned Trial Judge,



suit for specific enforcement of the agreement to sell dated 19.04.2007 should have been decreed by both the Courts and non decreeing the suit in its entirety has resulted in miscarriage of justice and sought for admitting on following substantial questions of law:

"i) Whether the courts below are justified in refusing specific performance on the solitary ground of issue of separate demand notice ignoring the demands made in the reply notice?

ii) Whether readiness and willingness are separate and distinct phenomenon or whether willingness is the shadow of readiness?

iii) Whether the courts below have incorrectly appreciated the material evidences available on record and erred in law while deciding the suit on merits?

iv) Whether the courts below have ignored the material evidences available on record and acted on no evidence?

v) Whether the courts below have drawn wrong inferences from proved facts by applying the law erroneously?

vi) Whether the courts below have wrongly cast the burden of proof and the decision is based on no evidence?



vii) Whether the findings and the conclusions of the courts below are legally valid and justified?"

10. Respondents are served with the notice and remained absent.

11. In the light of the argument put forth on behalf of the appellants, this Court perused the material on record meticulously.

12. On such perusal of the material on record, it is noticed that there is no dispute as to the suit agreement. In fact, the legal notice was not issued by the plaintiff calling upon the defendants to execute the agreement as he did not perform his portion of the agreement under the agreement to sell by paying balance sum of Rs.1,20,000/- on or before June, 2007.

13. Again another notice came to be issued by the defendants on 03.11.2007. There was no proper response to the notices by the plaintiff in fulfilling his portion of the contract but suit came to be filed on 15.04.2010.



14. What prevented the plaintiff to exercise his right immediately after the notice dated 03.11.2007 is a question that remains unanswered. Even after the second notice is served, plaintiff did not choose to take immediate action inasmuch as intention of the defendant was very clear that defendants not only denied to execute the sale deed pursuant to the sale agreement but also specifically contended that there is a forfeiture of the advance amount.

15. In other words, the cause of action paragraph as is mentioned in the plaint is far away from the actual aspects of the matter.

16. In this regard, it is pertinent to cull out cause of action paragraph which reads as under:

"Cause of action for the above suit arose on 19.04.2007 on the date on which the defendants have executed the sale agreement in favour of the plaintiff to sell the suit shceudle property and subsequently when the defendants have not executed the registered sale deed according to the terms and conditions of the sale agreement inspite of the reply notices got issued to her at Nanjangud and subsequently refused and denied to execute the sale deed within the jurisdiction of this Hon'ble Court."



17. Pertinently, the legal notices issued on 06.10.2007 and 03.11.2007 by the defendant do not find place in the cause of action paragraph before the Trial Court.

18. What prevented the plaintiff to mention about the same and insist for the specific enforcement of the contract despite the two notices issued by the defendant is a question that remains unanswered.

19. Further, atleast on the date of filing the suit, plaintiff could have deposited the entire sale consideration before the Court if he was ready and willing to perform his portion of the contract.

20. In other words, material on record would not fulfill the requirements of Section 16(c) of the Specific Relief Act and therefore, ordering of the refund of the advance amount by both the Courts is just and proper which requires no further consideration as on the factual aspects; both the Courts have denied the relief of specific performance to the plaintiff.



21. Accordingly, following:

ORDER

- i. Admission declined.
- ii. Appeal is ***dismissed***.

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

KAV
List No.: 1 Sl No.: 52