



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO.277 OF 2018 (SP)

BETWEEN:

MR. SIRAJ REHAMATHULLA,
AGED ABOUT 65 YEARS,
S/O REHAMATHULLA,
PRESENTLY R/A NO.S-01
SECOND FLOOR,EASTERN COURT,
NO.24, COLES ROAD,
BANGALORE - 560 005.

...APPELLANT

(BY SRI. PRABHULING K. NAVADGI, SR. COUNSEL FOR
SRI. REGO L.P.E., ADVOCATE)

AND:

1. MESSRS. GOLD ENTERPRISES,
A FIRM CONSTITUTED UNDER
THE PROVISIONS OF THE
INDIAN PARTNERSHIP ACT, 1932
WITH ITS OFFICE AT NO.79/1,
2ND CROSS, LAVELLE ROAD,
BANGALORE - 560 001.

REPRESENTED HEREIN BY
ITS PARTNERS

- 1(a). MR. MOHAMMED SHABBIR,
AGED ABOUT 49 YEARS,
S/O HAJI ISMAIL SAIT,
PRESENTLY R/A "GOLD CARAT",



NO.3/2, CLEVELAND ROAD,
FRAZER TOWN,
BANGALORE - 560 005, AND

- 1(b). MRS. NIKHAT SHABBIR,
AGED ABOUT 47 YEARS,
W/O MOHAMMED SHABBIR,
PRESENTLY R/A "GOLD CARAT"
NO.3/2, CLEVELAND ROAD,
FRAZER TOWN,
BANGALORE - 560 005.
2. MESSRS SATTVA DEVELOPERS PRIVATE LIMITED
(SATTVA GROUP)
A BODY INCORPORATED UNDER THE PROVISIONS
OF THE INDIAN COMPANIES ACT, 1956,
WITH ITS REGISTERED OFFICE AT
4TH FLOOR, SALARPURIA WINDSOR,
NO. 3, ULSOOR ROAD, BANGALORE - 560 042.
REPRESENTED HEREIN BY
ITS MANAGING DIRECTOR/
CHAIRMAN, MR. BIJAY AGARWAL.
3. MRS. N. TASNEENA PARVEEN,
AGED ABOUT 50 YEARS,
WIFE OF SRI. G. MOHAMMED ANWAR,
RESIDING AT NO.54, STEPHENS ROAD,
FRAZER TOWN,
BANGALORE - 560 005.
4. MR. FAIZAN TAHER,
AGED ABOUT 41 YEARS,
SON OF MR. TAHER WAHID,
RESIDING AT NO.14,
JAYAMAHAL EXTENSION,
BANGALORE - 560 046.

...RESPONDENTS

(BY SRI. PALLAVA R., ADVOCATE FOR R1 (a & b),
R2 SERVED AND UNREPRESENTED,
SRI. PUNEETH K., ADVOCATE FOR R3 AND R4)



THIS RFA IS FILED UNDER SECTION 96 OF CPC., 1908, AGAINST THE JUDGMENT AND DECREE DATED:02.11.2017 PASSED IN OS.NO.1202/2011 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, DISMISSING THE SUIT FOR SPECIFIC PERFORMANCE.

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

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This regular first appeal is filed under Section 96 r/w Order 41 Rule 1 of CPC, by the unsuccessful plaintiff in O.S.No.1202/2011, assailing the judgment and decree dated 02.11.2017, passed by the I Addl. Senior Civil Judge, Bangalore Rural District, Bangalore. The trial court under the impugned judgment and decree dismissed the suit of the plaintiff.

2. The parties are referred to as per their rankings before the Writ Court.



FACTS IN BRIEF LEADING TO FILE THIS APPEAL ARE AS UNDER:

3. It is the case of the plaintiff that the defendant No.1 i.e., Messers Gold Enterprises represented by his Partners – defendant Nos.1(a) and 1(b), that they are the absolute owners of suit 'A' schedule property. The defendants are representing to the general public that they have formulated a scheme for the development of the said property to be compositely called as "Gold Towers" project, comprising of cluster of buildings containing residential apartments, having modern amenities and facilities. After seeing the amenities the plaintiff believed the representation of defendant No.1-Firm and approached defendant No.1-Firm in the first week of February of 2009 in its office and negotiated to purchase suit schedule 'B' property i.e., super built-up area to an extent of 5000 sq. ft. with proportionate undivided share, right, title and interest in the suit schedule 'A' property, which comprises apartment bearing No.A-202 measuring 1884 sq.ft., apartment bearing No.1102 measuring 2011 sq.ft. and



balance 1105 sq.ft. in A Block along with one car parking space for each apartment in the basement of the residential enclave known as 'Gold Towers', together with proportionate share in all common areas, lobbies, staircase, club-house, swimming pool, children play areas, landscaped garden health club, tennis court, amphi theatre, jogging track and all other amenities and facilities, with rights to pass through all the common passage leading to the main road and free egress and ingress at all times, from defendant No.1-Firm for a lawful consideration of Rs.1 Crore. Agreement came to be entered between the plaintiff and defendant No.1-Firm on 05.02.2009. Entire sale consideration of Rs.1 Crore was paid in cash as on the date of agreement itself. The plaintiff has performed his part of commitment under the sale agreement.

4. The defendant No.1-Firm despite receiving the entire sale consideration from the plaintiff and also large sums of money from other buyers of the apartments in the said 'Gold Towers Residential Complex Project', failed to



commence construction work undertaken and contracted by it. The defendant No.1-Firm also failed to arrange for registration of the agreement of sale, as mandated by law. The plaintiff repeatedly approached the defendant No.1-Firm for the purpose of having the sale agreement registered, but his efforts in this regard ended in futile exercise. However, the defendant No.1-Firm time and again assured the plaintiff that the envisaged project/scheme would commence in a short period of time.

5. As the matter stood thus, on 19.03.2010 the plaintiff observed a public notice in Times of India issued by Mr. Anup S. Shah, Advocate informing the Members of the general public that his client had negotiated with defendant No.1-Firm, for the development of the suit 'A' schedule property. Immediately thereafter the plaintiff approached the defendant No.1-Firm and confronted it with the said development. However, the defendant No.1-Firm apprised the plaintiff that it had not yet entered into proposed Joint Development Agreement and it was likely



to resile from the said proposal soon. Further assured that the defendant No.1-Firm would honour its commitment in terms of sale agreement dated 05.02.2009. Thereafter, during the year 2010, the plaintiff noticed series of advertisements published in various newspapers informing the Members of the general public that a project known as "Sattva Gold Summit" was being promoted on suit 'A' schedule property by defendant No.2 i.e., M/s. Sattva Developers Private Limited.

6. The plaintiff further noticed that the sale of apartments of the said project was in progress and construction work was also underway on the site in question. When this was brought to the notice of the defendant No.1-Firm by the plaintiff, again plaintiff was apprised that there was no real cause for him to be concerned as the said Firm would ensure that his rights under the agreement of sale dated 05.02.2009 would not be abrogated, abridged or altered in any manner. Further apprised that the money paid under the agreement of sale



and the liability under the said agreement dated 05.02.2009 should be honoured and performed in its entirety, as the new project was virtually identical to the one originally promoted by it and therefore, the task could be achieved without much difficulty. Believing the words of defendant No.1-Firm as they were in long association, the plaintiff thought to wait for a while and give the defendant No.1-Firm an opportunity to perform its commitments in terms of agreement dated 05.02.2009.

7. In the meanwhile, the plaintiff came to know that the defendant No.1-Firm contracted to sell the apartment bearing No.A-202 measuring 1884 sq.ft. and attached car parking space in the basement of the residential enclave known as 'Gold Towers', which forms integral part of the suit 'B' schedule property and one of the subject matter covered under agreement dated 05.02.2009 in favour of one Sri. Rajendra Batavia for a sale consideration of Rs.38,73,800/- and executed a sale agreement dated 10.11.2009 by receiving advance sale



consideration of Rs.1,00,000/-. It was further discovered that the defendant No.1-Firm has received further advance amount of Rs.75,000/- from the aforesaid Rajendra Batavia. Though the plaintiff was ever ready and willing to perform his part of the contract in getting the sale deed registered, the defendant No.1-Firm itself has breached the terms of sale agreement dated 05.02.2009.

8. Apart from this, defendant No.1-Firm entered into a Joint Development Agreement with defendant No.2-company on 19.06.2010 and also executed an indemnity bond in favour of said the company. The plaintiff came to know that all his attempts to get the sale deed registered in his favour in terms of the agreement dated 05.02.2009 ended in futile exercise when he received a letter/notice dated 12.09.2011 by the defendant No.1-Firm through its counsel stating that the Gold Towers Residential Complex Scheme has been abandoned by plaintiff. Having left with no other alternative, the plaintiff has approached the Civil Court seeking specific performance of the contract in



terms of agreement of sale dated 05.02.2009 seeking direction to the defendant to execute the sale deed in terms of the property covered under the agreement or in the alternative, to refund the principal amount of Rs.1 Crore paid towards sale consideration along with interest at 18% p.a. from 05.02.2009 to 26.10.2011 amounting to Rs.1,49,12,417.80 by instituting a suit in O.S.No.1202/2011.

9. In pursuance of issuance of summons, defendant Nos.1 and 2 put their appearance through their learned counsel. The defendant No.1-Firm filed its written statement. However, defendant No.2 though appeared has not filed written statement inspite of repeated opportunities.

10. In the written statement the defendant No.1-Firm though admitted regarding the sale agreement dated 05.02.2009, also in respect of properties covered under the said agreement and receipt of Rs.1 Crore, but denied



the enforcement of the agreement and also denied the receipt of Rs.1 Crore on the date of sale agreement as alleged. It was contended by the defendant No.1-Firm that the plaintiff has never lent any monies to the defendant No.1-Firm nor defendant No.1-Firm has ever borrowed monies from the plaintiff. The plaintiff has paid money to defendant No.1-Firm from time-to-time as and by way of sale consideration for the purpose of purchase of residential/commercial unit being developed/proposed to be developed by the defendant No.1/Firm. It was further contended that under the agreement dated 05.02.2009 the plaintiff agreed to purchase suit 'B' schedule property i.e., an aggregate super built-up space measuring 5000 sq.ft. comprise of two or three residential units, then proposed to be developed by the defendant No.1-Firm in the project titled as "Gold Towers" for an aggregate sale consideration of Rs.1 Crore paid partly in cash and partly in cheques, which had already been placed with the defendant No.1-Firm during July 2008 to October



2008 i.e., Rs.64 Lakhs in cash and Rs.36 lakhs through various cheques.

11. The agreement dated 05.02.2009 was never intended to be acted upon and it was drawn up only to safeguard the plaintiff's interest for having placed a sum of Rs.64 Lakhs in cash and Rs.36 Lakhs in cheques to defendant No.1-Firm. It was further contended that on 03.04.2009 the plaintiff and his son Yassir Siraj had agreed to purchase an office unit from defendant No.1-Firm under a project titled 'Gold Signature' for an aggregate sale consideration of Rs.22,50,000/-, of which the plaintiff has paid a sum of Rs.13 Lakhs only and the remaining balance of Rs.9,50,000/- was due to be paid at the time of registration of the sale deed. It was further contended by the defendant No.1-Firm that plaintiff having observed that the construction of "Gold Towers" is proceeding in a slow manner or progressing too slowly, he had requested the defendant No.1-Firm to invest the amount paid in some other project being developed by



defendant No.1-Firm. Accordingly, a further agreement was entered into on 25.09.2009 executed by defendant No.1-Firm in favour of plaintiff, wherein the plaintiff had agreed to purchase a residential unit from defendant No.1-Firm under a project titled "Gold Flora" for an aggregate sale consideration of Rs.1 Crore and the entire sale consideration of Rs.1 Crore paid by the plaintiff to the defendant No.1-Firm, which was adjusted in the earlier 'Gold Towers Agreement' dated 05.02.2009, was transferred to and accounted towards the sale consideration under the 'Gold Flora' under the Agreement dated 25.09.2009. It is was further contended that plaintiff has purchased the office unit in Gold Signature under a registered sale deed dated 16.01.2010 wherein only a sum of Rs.13 Lakhs was shown as sale consideration. However, balance sum of Rs.9,50,000/- was not disclosed in order to avoid stamp duty.

12. The defendant No.1-Firm further contends that it has renamed its project 'Gold Flora' as 'Gold Casa' and



thereafter, at the request of the plaintiff, defendant No.1-Firm has executed a sale agreement dated 01.04.2011 for the sale of undivided share in the land project 'Gold Casa' (formerly known as Gold Flora) being developed for a sale consideration of Rs.8 Lakhs and also executed a registered construction agreement dated 01.04.2011 to construct and deliver residential unit in its project Gold Casa for an aggregate consideration of Rs.28 Lakhs. In this manner, the entire sum of Rs.36 Lakhs received by the defendant No.1-Firm through cheques, which was referred in 'Gold Flora' was duly accounted for and a sum of Rs.64 Lakhs received in cash, which was referred in Gold Flora Agreement, is agreed to be adjusted towards the balance sale consideration for the residential unit in project Gold Casa.

13. It was further contended by the defendant No.1-Firm that the Firm is ready and willing to convey a residential unit in project 'Gold Casa' in favour of plaintiff or his sons or any other persons nominated by them for



the aggregate sale consideration of Rs.1 Crore, for which sale consideration was received by the defendant No.1-Firm i.e., Rs.36 Lakhs by way of cheques and Rs.64 Lakhs by cash. It was further contended by the defendant No.1-Firm that the plaintiff has paid defendant No.1-Firm an aggregate sum of Rs.2.56 Crores and the same has been repaid and conveyed by means of property i.e., one residential unit in project 'Gold Casa' aggregating to a value of Rs.2.53 Crores and only inadvertent error committed by the defendant No.1-Firm is that on every occasion at the request of the plaintiff, the defendant No.1-Firm accounted his sale consideration to a different project. The defendant No.1-Firm omitted to endorse cancellation of previous agreement thereon while entering into fresh agreement and however, but stated that the plaintiff has made separate and multiple payments under each of the agreements. The projects under agreement dated 05.02.2009 and 25.09.2009 has been abandoned by the plaintiff. Now the plaintiff is entitled to receive



conveyance of one residential unit in the project 'Gold Casa' in pursuance of Gold Casa Agreement dated 01.04.2011 and the construction agreement of even date. It was further contended that the plaintiff taking undue advantage of the defendant No.1-Firm's inadvertence, misused the earlier agreements to make unjust enrichment. In that regard, the defendant No.1-Firm got issued a legal notice dated 12.09.2011 by intimating the above stated facts including the abandonment of 'Gold Towers' and 'Gold Flora' agreements. There are two other suits in O.S.Nos.26757/2011 and 26758/2011 on the file of Addl. City Civil Judge, Bangalore City at Mayo Hall against the defendant No.1-Firm on matters relating to and arising out of the transactions that are the subject matter in the present suit. Further it was contended that there was no cause of action for the plaintiff to file the present suit. Accordingly, it is stated that the plaintiff is not entitled either for the relief of specific performance of the terms of the sale agreement or for refund of the



amount sought in the alternative prayer. Accordingly, sought to dismiss the suit with exemplary costs.

14. On completion of pleadings, the trial court framed the following issues:

- (1) *Whether the plaintiff proves that on 05/02/2009, he has entered into an agreement of sale with the defendant no.1 in respect of B schedule property?*
- (2) *If so, whether he further prove that entire sale consideration of Rupees one crore was passed to defendant no.1?*
- (3) *Whether he further proves that he was/is always ready and willing to perform his part of obligations as per the agreement dated 05/02/2009?*
- (4) *Whether he further proves the inactivity of defendant no.1 in performing the commitments under the agreement of sale dated 05/02/2009?*
- (5) *Whether the plaintiff further proves that joint development agreement between defendant no.1 and 2, dated 19/06/2010 is not binding on him and said joint development agreement is void ab-initio?*
- (6) *Whether he further proves that the defendant had further to execution of the agreement of sale dated 05/02/2009 had on 10/11/2009 contracted with one Rajendra Batavia to sell the very same apartment bearing No.A-202 with an extent of 1884 square feet at a price of Rs.38,73,800/- and had collected advance amount of Rs. 1,75,000/- from him?*
- (7) *Whether the defendant no.1 prove that the plaintiff had requested the defendant no.1 to transfer the sale consideration amount of Rs.1 crore available*



with the defendant no.1 to some other project, being developed by defendant no.1 and accordingly, an agreement of sale dated 25/09/2009 executed by defendant no.1 in favour of plaintiff?

- (8) Whether he further proves by virtue of sale deed dated 16/11/2010 executed by defendant no.1 in favour of plaintiff and his son, the defendant no.1 sold and conveyed an office unit for an aggregate sale consideration of Rs.22,50,000/-?*
- (9) Whether he further proves that under a registered agreement to sell dated 01/04/2011, executed by defendant no.1 in favour of plaintiff's sons, defendant no.1 agreed to purchase an undivided share in the land on which the project was being developed?*
- (10) Whether the plaintiff is entitle for a decree of specific performance of agreement dated 05/02/2009?*
- (11) Whether the plaintiff is entitle for the alternative relief sought in the suit?*
- (12) What Order or Decree?*

Thereafter, Issue No.9 was recasted as under:

"Whether the defendant No.1 further proves that under a registered agreement to sell dated 01/04/2011, the defendant No.1 firm agreed to convey a residential unit in Gold Casa project (formerly known as project Gold Flora) in favour of the plaintiff's sons?"

15. The plaintiff in order to prove his case examined himself as PW1 and produced 92 documents and



got them marked as Exs.P-1 to P-92 and examined two more witnesses as PWs.2 and 3. The letter dated 21.09.2015 submitted by the Income Tax Officer to the Court has been re-exhibited as Ex.P-88A. The defendant No.1-Firm examined one of its Partners i.e., defendant No.1(a) as DW1 and produced 17 documents and got them marked as Exs.D-1 to D-17 and closed their side. On the application made by the defendant No.1-Firm, the concerned Income tax Officer was summoned to give evidence as DW2.

TRIAL COURT FINDINGS:

16. The trial court thereafter heard the rival submissions and after considering the materials placed on record, answered Issue Nos.1 and 2 in the affirmative and all other issues against the plaintiff and dismissed the suit holding that the amount paid in Exs.P-1 and P-37 are one and the same. The defendant No.1-Firm has accounted for repayment of amount and concluded that the amounts have been repaid under the documents produced by them.



The trial court has observed that the plaintiff has failed to prove his case regarding payment of amount, reasoning its judgment that if the plaintiff really found that the defendant No.1-Firm breached the terms of Ex.P-1 – sale agreement and he was having a credible doubt regarding performance of commitments by the defendant No.1-Firm, he would not have ventured to pay another sum of Rs.64 Lakhs in cash under Ex.P-37 and Rs.36 Lakhs by way of cheques. As such the unusual conduct of plaintiff also gives rise to a reasonable doubt regarding the truthfulness of his contention insofar as separate payment of Rs.1 Crore under Ex.P-1 is concerned. Accordingly, held that the amount paid under Ex.P-1 i.e., sale agreement dated 05.02.2009 was transferred to and adjusted towards sale consideration of Rs.1 Crore fixed under Ex.P-37 - sale agreement dated 25.09.2009, as the same seems to be more probable rather than the contention of plaintiff that Ex.P-1 is a distinct and standalone document and he has made a separate payment of Rs.1 Crore in connection with



Ex.P-1, and whereas his sons have made separate payment of Rs.1 Crore in connection with Ex.P-37.

17. Trial court further deliberated that the plaintiff mainly relied on Ex.P-88 – Statement of Affairs as on 31.03.2007, which is alleged to be the part of Ex.P-80 i.e., his Income Tax Returns for the Assessment Year 2009-10. The Trial Court further observed that the plaintiff has further relied on Ex.P-79 – Statement of Affairs as on 31.03.2010, which is alleged to be part of Ex.P-76 i.e., his Income Tax Returns for the Assessment Year 2010-11 to substantiate his contention that he has made separate payment of Rs.1 Crore towards 'Gold Towers Agreement' found to be doubtful, as the conduct of the plaintiff at the initial stage was most unusual regarding the contention of plaintiff that the Statement of Affairs and other additional documents forms part of said document. As such the trial court has come to the conclusion that the payment of Rs.1 Crore in cash is doubtful and the documents much less the Income Tax Returns filed by him would not enure to his



benefit and has given a finding that, the materials available before the Court are much sufficient to hold that it is highly unsafe to rely upon the additional documents filed by the plaintiff, when the matter reached to the stage of arguments, to corroborate the contention of the plaintiff that he has made a separate payment of Rs.1 Crore in cash to defendant No.1-Firm on 05.02.2009 under Ex.P-1 i.e., in respect of 'Gold Towers Agreement' and held that the amount paid under Ex.P-1 has been adjusted towards Ex.P-37.

18. On this, the trial court has held that the plaintiff has not at all explained as to why he has made a separate payment of Rs.1 Crore in cash under Ex.P-1 towards sale consideration fixed under the said agreement even though an amount of Rs.1 Crore was already placed with the defendant No.1-Firm much prior to the date of said agreement in terms of the records. Further the trial court has held that the plaintiff has conveniently avoided the witness Khurram Abid from entering to the dockyard by



categorizing him as not an eyewitness to the money transaction and further the time taken by the plaintiff in instituting the suit after considerable time, that too, after having noticed the indifferent attitude of defendant Nos.1(a) and 1(b) also appears to be uncommon and cannot be expected from the plaintiff who used to advance amount to defendant No.1-Firm with profit motive.

19. The trial court has held that the defendant No.1-Firm was able to give proper account for the repayment/adjustment of amount admittedly received by it from the plaintiff and his sons, which indicates that no separate payments were made towards 'Gold Tower Agreement' and 'Gold Flora Agreement'. The defendant No.1-Firm was also able to convince the Court that, it is highly unsafe to believe the Statement of Accounts and Statement of Affairs which are allegedly the integral component of Income Tax Returns submitted by the plaintiff, which reflects the payment of Rs.1 Crore made by



the plaintiff to the defendant No.1-Firm towards purchase of apartments in 'Gold Towers' project.

20. Further the trial court has held that besides evidence of the plaintiff found short regarding mobilization of said amount of Rs.1 Crore, the same appears to be an afterthought and a made believable story. The huge amount paid in cash against the provisions of Income Tax Act, 1961, though he was able to give proper accounts in respect of the said amount in his Income Tax Returns, also appears to be unusual. Having reasoned so, the trial court has concluded that the plaintiff has failed to prove his stand that transaction under Ex.P-1 is a standalone transaction and not connected to the transaction under Ex.P-37 and as such, he has made a separate payment of Rs.1 Crore to the defendant No.1-Firm under Ex.P-37. The trial court also held that the defendant No.1-Firm has probablized its contention that the amount of Rs.1 Crore i.e., Rs.36 Lakhs paid through cheques and Rs.64 Lakhs paid in cash was already placed by the plaintiff with the



defendant No.1-Firm and it was initially adjusted under 'Gold Towers Agreement' (Ex.P-1) and subsequently, transferred to Ex.P-37 i.e., 'Gold Flora Agreement' and subsequently the amount paid under Ex.P-37 was transferred to and adjusted to Exs.P-38 and P-39 agreements.

21. Though the trial court observes that the plaintiff has proved the agreement as well as payment of amount, at the same time, the defendant No.1-Firm has proved that the amount paid under Ex.P-1 has been adjusted towards Ex.P-37 and subsequently adjusted towards sale consideration of a residential plot in 'Gold Casa' project under Exs.P-38 and P-39 and as such held that the plaintiff has abandoned Ex.P-1 – sale agreement. In those circumstances, the Trial Court held that once the plaintiff having abandoned the agreement, consideration of his readiness and willingness does not arise. As such answered all the issues against the plaintiff except Issue Nos.1 and 2 holding that plaintiff has failed to prove his



case and dismissed the suit. It is this judgment and decree, is called in question in this appeal by the plaintiff.

22. Heard Sri.Prabhuling K. Navadgi, learned Senior Counsel appearing on behalf of Sri. Regol P.E. for the appellant/plaintiff and Sri.Pallava R., learned counsel appearing on behalf of Sri.Puneeth K for the respondent Nos.1 and 2/defendants.

CONTENTIONS OF SRI. PRABHULING K. NAVADGI:

23. Sri.Prabhuling K. Navadgi, learned Senior Counsel submits that, the trial court has failed to take into consideration the Statement of Accounts and the Income Tax Returns filed by the plaintiff wherein the cash transaction of Rs.1 Crore paid under Ex.P-1 i.e., agreement dated 05.02.2009 has been accounted. He further submits that no person would venture to disclose payment of Rs.1 Crore in cash in his Income Tax Returns, if the transaction has not been really taken place. It is a disclosure to the Income Tax Department for which he is



liable to pay tax. The Statement of Accounts came to be submitted before the Court, which are integral part of the Income Tax Returns. An Officer of the Income Tax Department was summoned on the application filed by the defendants and examined as DW2. The DW2 has given evidence categorically regarding the amount paid under the Income Tax Returns. The trial court having answered that it is highly improbable to accept the contention of defendant No.1-Firm, has stated that the theory of defendant No.1-Firm that subsequent insertion of Statement of Accounts in the Income Tax Returns of the plaintiff, during the pendency of the suit, as projected by defendant No.1-Firm, is not an unfounded or baseless allegation but backed with valid reasons, cannot be accepted in law.

24. The Income Tax Returns are filed on the basis of the statement of accounts, which are integral part and there cannot be any attempt of insertion of the documents subsequent to Income Tax Returns filed as held by the



trial court i.e., during the pendency of the suit to suit the case of the plaintiff. Any insertion subsequent to filing of Income Tax Returns cannot be accepted. A mere say of the Income Tax Officer that there is no scrutiny of the records of the Income Tax Returns of the plaintiff will not give a room to assume that there is subsequent insertion. The Income Tax Department is the source of revenue to the country, whose image cannot be tarnished on assumptions only on the say of defendant No.1-Firm by means of its self serving statements in the absence of any corroborative evidence to that effect. The witness who has been summoned on behalf of the Income Tax Department has given evidence in favour of the returns filed. The trial court has taken much pain while referring to various provisions of Income Tax Act and Rules, but failed to come to a proper conclusion by way of reason for referring those provisions. The only reason shown are the plaintiff ought not to have paid the amount in cash as against the provisions. What the provision of Income Tax



Act say is acceptance of the amount not more than Rs.20,000/- in cash and not making payment. Thus, learned Senior Counsel submits that in these circumstances, the findings of the trial court that the amount paid, has been though says in cash, but strangely refers to the earlier transactions and again concludes that the amounts were earlier paid and subsequently, adjusted towards different transactions under Exs.P-38 and P-39. These shaky reasons are unsustainable in law. The trial court is not definite of its own reasons.

25. He further submits that in the written statement it is clearly admitted regarding payment of amounts wherein the defendant No.1-Firm specifically states that the amounts paid under Ex.P-1 has been stated as per its legal notice issued on 12.09.2011. Once the defendant No.1-Firm having accepted in its written statement regarding payment of total amount of Rs.2.56 Crores, the defendant No.1-Firm cannot thereafter be permitted to take different contention in the trial stating that amount



was paid much earlier to the agreement and the amount paid under agreement Ex.P-1 subsequently adjusted in Ex.P-37 and subsequently, the same amount adjusted under Exs.P-38 and P-39. These indifferent contentions cannot be permitted. Though defendants can take inconsistent plea, but they cannot take contrary statements in the written statement.

26. Learned Senior Counsel further submits that the defendant No.1-Firm also refers to notice dated 12.09.2011 that he has issued notice regarding abandonment of the agreements and contended in paragraph 8 of the written statement that the plaintiff is not so affluent as to be able to afford to pay Rs.1 Crore as claimed by him. These contrary statements take away the case of the defendant No.1-Firm. He further refers to Ex.P-14 - notice issued by the defendant No.1-Firm through its counsel, wherein there is categorical admission regarding payment of Rs.1 Crore under agreement dated 05.02.2009, subsequent payment of other amounts under



agreement dated 03.04.2009 and further subsequent payment of Rs.1 Crore i.e., Rs.64 Lakhs in cash and Rs.36 Lakhs in cheques under agreement dated 25.09.2009. Further it was admitted in the said notice that an aggregate amount of Rs.2.56 Crores including Rs.13 Lakhs towards 'Gold Signature' has been paid.

27. The documents relied on by the defendant No.1-Firm regarding repayment and adjustment are incongruent to the contentions taken in the legal notice Ex.P-14. If really the amounts are repaid starting from 2006 to 2008, the same could have been mentioned in the agreement or atleast in the legal notice, which was issued on 12.09.2011. By that time, all the agreements including the new agreement of the year 2011 which was the last agreement as per defendant No.1-Firm, was executed between the parties and as per the defendant No.1-Firm the amount paid under Ex.P-1 came to be either adjusted or repaid, continuously in the further agreements.



28. Further referring to the evidence of DW2 he submits that the Income Tax Officer has clearly given evidence with respect to the Income Tax Returns that is in favour of the plaintiff. The trial court has failed to consider these aspects of the matter and has given more weightage to the Statement of Accounts of the defendant No.1-Firm, which were much prior to the agreement starting from 2006 to ending in 2008 as the same are much prior to the sale agreement dated 05.02.2009. As such the same cannot be sustained in law. With this, learned Senior Counsel sought to allow the appeal by setting aside the order passed by the trial court.

CONTENTIONS OF SRI.PALLAVA R:

29. Sri.Pallava R., learned counsel appearing on behalf of respondents/defendants argued in support of the judgment and decree passed by the trial court and submits that the amount paid under Ex.P-1 has been adjusted towards Ex.P-37 and the amount paid has already been repaid under the Statement of Accounts produced by the



defendant No.1-Firm. He further submits that the trial Court elaborately considering the materials and evidence placed on record, has recorded a finding that the plaintiff has failed to prove regarding payment of Rs.1 Crore under Ex.P-1 as a standalone agreement. The trial Court having considered the entire evidence has properly given its reasons to the case and held that the plaintiff has failed to prove his case and accordingly dismissed the suit, which does not call for any interventions at the hands of this Court.

30. We having considered the rival submissions, perused the entire material on record, the points that would arise for our consideration are:

- (1) Whether the trial Court is right in dismissing the suit holding that the plaintiff has failed to prove the payment of Rs.1 Crore under Ex.P-1?
- (2) Whether the trial Court is right in holding that the amount paid under Ex.P-1 has



been adjusted under Ex. P-37 and further adjusted in Exs.P-38 and P-39.

31. Our answer to both the points are in ***negative*** and in favour of the plaintiff.

RE: POINTS FOR CONSIDERATION:

32. It is the case of the plaintiff that he has paid the amount under Ex.P-1 for the purchase of three residential plots under sale agreement dated 05.02.2009 by making payment of entire sale consideration of Rs.1 Crore in cash. Further he has stated that he has reflected the payment of said amount in his Income Tax Returns and filed the same before the Income Tax Authorities along with the Statement of Accounts. It was further stated that he has further invested the amount of Rs.1 Crore in another project under Ex.P-37 by making payment of Rs.1 Crore, wherein Rs.36 Lakhs has been paid through cheques and Rs.64 Lakhs has been paid in cash. There were further agreements between the parties for purchase of office unit and other properties. Totally a



sum of Rs.2.53 Crores has been paid by the plaintiff to the defendant in respect of various projects under various agreements. The present suit is filed by the plaintiff only with respect to Ex.P-1 i.e., sale agreement dated 05.02.2009.

33. It is the contention of defendant No.1-Firm that the amount paid under Ex.P-1 has been adjusted under Ex.P-37 and further the same was adjusted in Exs.P-38 and P-39 and this claim shows that there is abandonment of agreement under Exs.P-1 and P-37. Further it was contented that the amount has already been paid on various occasions even prior to entering into the agreement. The documents placed on record by way of additional evidence are all concocted documents and insertions subsequent to the filing of the suit in order to support their contention in the suit. As such, the suit itself filed is without cause of action and not maintainable either for specific performance or for refund of amount as the



amount has already been adjusted at the request of plaintiff under various agreements.

34. Before proceeding further in the matter, in order to ascertain the stand of the defendant No.1-Firm, we queried the learned counsel appearing for the defendant No.1-Firm with regard to the crucial document i.e., Ex. P14 - legal notice issued by defendant No.1-Firm through its counsel, which reads as under:

"SREEVATSA ASSOCIATES
Advocates
50, II STAGE, INDIRANAGAR, BANGALORE 560 038
91-80-25252898, 25297715, 25295506

REF. FILE NO. /2011-12
Date: 12th September, 2011

REGISTERED POST ACK DUE
UNDER CERTIFICATE OF POSTING
BY COURIER

REF: NO: /SA/SKM/NOTICE/2011
DATED: 11 September, 2011

MR SIRAJ REHAMATHULLA
#S-01, 2nd Floor, Eastern Court,
No: 24, Coles Road, Frazer Town,
BANGALORE 560 005

Sir,



We act for Gold Enterprises, 72/1, 2nd Cross, Lavelle Road, Bangalore 560 001 represented its partner Mr Mohammed Shabbir.

Our client informs us that it had entered into an agreement with you on 05-02-2009 by which it was agreed that Property being Apartments bearing Nos A 202 and A 1102 in **Gold Towers** would be sold to you for a total consideration of Rs. 1,00,00,000 (Rupees one crore only) and the agreement further recorded that you had paid the entire sale consideration.

On 03-04-2009 you had entered into another agreement with our client for purchase of G-02 in **Gold Signature** for a total sale price of Rs.22,50,000/- (Rupees twenty two Lakhs fifty thousand only) of which you paid Rs. 13,00,000/- (Rupees thirteen Lakhs only).

On 25-09-2009 you had entered into yet another agreement with our client for purchase of an apartment No: T-02 in **Gold Flora** for a total sale consideration of Rs. 1,00,00,000 (Rupees one crore only) the entire sale consideration having been paid by you.

In all you had paid our client an aggregate sum of Rs. 2,56,00,000/- including a sum of Rs 13,00,000/- for Gold Signature. The Property agreed to be purchased by you in Gold Signature has already been conveyed to you. Another Property has been conveyed to you in Gold Casa. Monies paid by you to our client in cash and cheque have been returned / adjusted. You have as on date received Property and repayments totalling 2,53,00,000/-. The Agreements for Gold Towers and Gold Flora have been abandoned. All monies stated to be paid under those agreements have been adjusted / repaid.



This communication is being addressed to you to seek your confirmation in order to enable our client to finalize and file his tax returns later this month.

Yours sincerely,
For **SREEVATSA ASSOCIATES**

ADVOCATE"

35. There are several agreements mentioned in the said legal notice and there is clear admission regarding acceptance of the amount paid under the agreements. The learned counsel for the defendant No.1-Firm submits that he is not disputing Ex.P-14, but he reiterates his contention that the amount has been adjusted in Ex.P-37 and in view of abandonment of the agreements, the amount has already been repaid on various occasions starting from 2006 to 2008. This stand of the learned counsel for the defendant No.1-Firm cannot be countenanced. It is very difficult for this Court to comprehend such a contrary statement and argument. The notice was issued after all the contentions taken by the defendant No.1-Firm starting from Exs.P-1 to P-39. The legal notice was issued lastly in the month of



September 2011. There is categorical admission regarding the agreement dated 05.02.2009 and payment of amount of Rs.1 Crore under the said agreement. Admission of agreement dated 03.04.2009 wherein a sum of Rs.22,50,000/- has been admitted as sale consideration and acknowledgement of Rs.13,00,000/- under the said agreement. Further there is statement regarding agreement dated 25.09.2009 and payment of amount of Rs.1 Crore. Further it was admitted in the said notice that an aggregate sum of Rs.2,56,00,000/- has been paid by the plaintiff to defendant No.1-Firm. If these statements are to be seen, it is very hard for us to comprehend how the defendant No.1-Firm has again maintained its stand that there is payment of only Rs.1 Crore which was paid much prior to the agreement dated 05.02.2009 and the same was again adjusted to Ex.P-37 and further in Exs.P-38 and P-39 and also contended to be repaid. This argument and contention itself goes against the Ex.P-14, which is the first statement even prior to institution of this



suit, made under legal notice by the defendant No.1-Firm to the plaintiff.

36. The trial Court has given much weightage to the documents i.e., Statement of Accounts produced by the defendant No.1-Firm, which is again contrary to Ex.P-14. There is no discussion and deliberation on Ex.P-14 by the trial Court. Trial Court has brushed aside in its entirety Ex.P-14, wherein there is categorical admission regarding receipt of a total sum of Rs.2,56,00,000/- under various agreements. Though an attempt has been made by the defendant No.1-Firm to say that the amount has been either adjusted in another agreement or repaid, however, there is no statement found with respect to the adjustment by way of Statement of Accounts of the year 2006 to 2008 in the said notice. Even the agreements are very much silent regarding mode of payment and adjustment as per the contention of the defendant No.1-Firm. The entire case of the defendant No.1-Firm goes against Ex. P-14.



37. A strange contention has been taken by the learned counsel for the defendant No.1-Firm that there is no mention in the agreement regarding the amount of Rs.1 Crore being paid in cash. Again this dismays us with respect to the contention of the defendant No.1-Firm. When there is an admission regarding payment and receipt of Rs.1 Crore under agreement in the year 2009, whether it is paid in cash or otherwise as contented, has got any importance at this stage? Admittedly, in the Income Tax Returns the amount of payment of cash of Rs.1 Crore has been reflected. Even the Statement of Accounts to that effect has been filed, which is even admitted by the DW2 - Income Tax Officer as integral part of the Income Tax Returns. We have perused the evidence of DW2.

38. The trial Court misdirected itself with the evidence placed by the defendant No.1-Firm even to observe that the theory of defendant No.1-Firm regarding



subsequent insertion of documents i.e., Statement of Accounts in the ITRs cannot be found to be unfounded or baseless allegations, as the same are backed with valid reasons in the absence of any proof or corroborative evidence to that effect. As rightly pointed out by the learned Senior Counsel, the Income Tax Department which is a Revenue Department accountable to the economy of the country cannot be expected to permit any person to insert any documents in the Income Tax Returns, which were not earlier placed. This theory put forward by the defendant No.1-Firm is highly unbelievable and cannot be countenanced. If accepted, it will lead to economical chaos and destroy the entire economic system.

39. The trial Court has not at all deliberated on the admitted facts by the defendant No.1-Firm in its written statement as well as Ex.P-14, which is the first document by the defendant No.1-Firm, with respect to the agreements and payment of amounts under the agreements. Once having admitted in the said notice that



the amount is paid under the agreement, the defendants are not permitted in law to take any contrary contentions though they are permitted to take inconsistent pleas in written statement. The trial court has failed to consider these aspects of the matter and swayed on the self-serving statements and documents produced by the defendant No.1-Firm, which is just-opposite to Ex.P-14. In that view of the matter, we hold that the entire reasons of the trial court in stating that the plaintiff has failed to prove its case is misplaced. Accordingly, the judgment and decree passed by the trial Court is not sustainable in law.

40. For the foregoing reasons, we answer both the points for consideration in favour of the plaintiff and proceed to pass the following:

ORDER

- (1) The appeal is ***allowed***.
- (2) The judgment and decree dated 02.11.2017 passed by the I Addl. Senior



Civil Judge, Bangalore Rural District,
Bangalore, in O.S.No.1202/2011, is set
aside.

- (3) However, the suit of the plaintiff is partly
decreed directing the defendant No.1-
Firm to refund a sum of Rs.1 Crore with
interest @ 10% p.a. from the date of
payment i.e., 05.02.2009 till realisation.
- (4) No order as to costs.
- (5) Let the decree be drawn in terms of the
order.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(T.M.NADAF)
JUDGE