



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

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

REGULAR FIRST APPEAL NO. 1629 OF 2012 (SP)

BETWEEN:

SRI T.S.S. RAMACHANDRA MURTY,
S/O T.NARAYANA RAO,
AGED 62 YEARS
R/AT NO.1011, 2ND FLOOR,
13TH MAIN, 3RD CROSS,
HAL 2ND STAGE,
BANGALORE-560 008.

...APPELLANT

(BY SRI.M.U.POONACHA, ADVOCATE)

AND:

1. SRI.NAREN KUMAR,
S/O M.A.LAKSHMAN,
AGED 48 YEARS,
R/AT NO.164/1, CHIKKAHULLUR,
NEAR KIADB INDUSTRIAL AREA,
CHINTAMANI ROAD, HOSKOTE,
BANGALORE RURAL DISTRICT,
PIN-560 053.
2. SMT.HARITHA MOHARLA,
D/O R.G.VASANTH,
AGED 33 YEARS,
3. MISS. HASITHA GUNRAJU

Digitally
signed by K G
RENUKAMBA
Location:
HIGH COURT
OF
KARNATAKA



RATHNAKARAM,
D/O R.G.VASANTH,
AGED 31 YEARS,

RESPONDENT NO. 2 AND 3 ARE
R/AT NO.G-4, "PARAGON RESIDENCY"
SERPENTINE STREET,
RICHMOND TOWN,
BANGALORE-560 026.

...RESPONDENTS

(BY SRI.M.V.CHANDRASHEKARA REDDY, ADVOCATE
FOR R1; V/O DTD 12.09.2014 NOTICE TO R2
AND R3 IS DISPENSED WITH)

THIS RFA IS FILED U/SEC 96 OF CPC, AGAINST THE
JUDGMENT AND DECREE DATED 31.07.2012 PASSED IN
O.S.NO.2684/2006 ON THE FILE OF PRESIDING OFFICER,
FTC-II, BANGALORE RURAL DISTRICT, BANGALORE, PARTLY
DECREEING THE SUIT FILED FOR SPECIFIC PERFORMANCE.

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

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

Heard the learned counsel for the appellant.

2. The appellant is the plaintiff in the suit filed for
specific performance. By means of the decree under



appeal, the relief of specific performance of contract entered into on 24.04.2005 was rejected and defendant No.1 was directed to refund the advance sale consideration amount received by him from the plaintiff to the extent of Rs.5,50,000/- together with the interest at the rate of 7.5% per annum from the date of suit till the date of realisation of the amount.

3. The contention of the learned counsel for the appellant is that the appellant was entitled to specific performance of the contract dated 24.04.2005 and the trial Court committed a factual error as well as a legal error in not decreeing specific performance but directing refund of the amount of Rs.5,50,000/- with interest given the fact that the amount advanced was far in excess of Rs.5,50,000/- and the defence of the defendant was struck off. It is stated that the plaintiff was ever ready and willing to perform his part of the contract and the trial Court committed gross error in refusing to consider the same.



4. We have perused the record of the case.

5. In the plaint the defendant is described as the absolute owner of the site/property bearing North Middle Portion of New No.56 (portion of old site Nos. 213, 214, 215, 216, 217 and 218) house list No.172, khata No.134/1, New Mahadevapura, CMC Khata No.95, situated at Pattanduru Agrahara village, Prithvi Layout, Krishnarajapura Hobli, Bengaluru East Taluk, earlier Bengaluru South Taluk, that is stated to be morefully described in the schedule to the plaint. The defendant represented to the plaintiff that he has got a clear and marketable title to the suit schedule property and offered to sell the same to the plaintiff for valuable sale consideration. Accordingly, an agreement of 24.04.2005, agreeing to sell the suit schedule property in favour of the plaintiff, was executed by the defendant wherein the sale consideration was fixed at Rs.17,85,000/-. An advance sale consideration of Rs.4,85,000/- was paid by the plaintiff to the defendant who acknowledged receipt of the



same. Out of the balance sale consideration of Rs.13,00,000/-, which was agreed to be paid in three months from the date of execution of the aforesaid sale agreement. A further amount of Rs.3,00,000/- was, later, paid by the plaintiff to the defendant who acknowledged receipt of the same. The balance sale consideration was to be paid at the time of execution and registration of the sale deed. This transaction was endorsed on the agreement to sell dated 24.04.2005 on 09.07.2005.

6. The defendant made a second endorsement/ amendment dated 24.10.2005 to the original sale agreement of 24.04.2005 acknowledging receipt of a further amount of Rs.7,00,000/- and agreed to receive the balance sale consideration of Rs.3,00,000/- at the time of execution and registration of the sale deed. It was stated that though the defendant had received substantial portion of the sale consideration amounting to Rs.14,85,000/-, defendant did not perform his part of the contract given the terms mentioned in the agreement to sell. The plaintiff



submitted that he was always ready and willing to perform his part of the contract by paying the balance sale consideration of Rs.3,00,000/- for completing the sale transaction. Repeated letters in this regard were issued by the plaintiff to the defendant on 09.08.2006, 18.08.2006 and 26.08.2006, but to no avail.

7. A registered legal notice dated 11.09.2006 was sent by the plaintiff to the defendant which was returned with the endorsement that the party is not in station. A fresh legal notice was issued on 28.09.2006 by registered post to the defendant who failed and neglected to comply with the demand made in the legal notice. Accordingly, the suit was filed seeking specific performance of the agreement to sell.

8. A written statement dated 14.03.2008 was filed by the defendant. The amount of Rs.4,85,000/- paid as advance under the sale agreement of 24.04.2005, was acknowledged. The statement made in paragraph No.5 of



the plaint regarding the first endorsement dated 09.07.2005 being made by the defendant on the agreement to sell dated 21.04.2005 on receipt of a further sum of Rs.3,00,000/- was not denied. The second endorsement dated 24.10.2005 made on the agreement to sell by the defendant acknowledging the receipt of additional Rs.7,00,000/- towards balance sale consideration was not specifically denied. However, in that regard it is stated that an amount of Rs.1,50,000/- was paid by way of cheque and an amount of Rs.5,50,000/- was to be paid by cash on the next day of the endorsement/amendment, but the same was not paid.

9. On the basis of the pleadings between the parties, the following issues were framed.

- (1) *Whether the defendant proves the agreement of sale dated 24//2005 is not in force as defendants refunded the entire advance to the plaintiff?*
- (2) *Whether the defendants prove that the suit is bad for non-joinder of necessary parties?*
- (3) *Whether the defendants prove that he had sold the property for the sale consideration amount through the knowledge of the plaintiff?*



(4) To what decree or order?

10. As is evident from perusal of the issues, the issues framed are vague and not specific to a suit for specific performance. The plaintiff filed his evidence by way of affidavit, being his examination-in-chief in which the plaint case was iterated. He also appeared in Court and submitted his examination-in-chief orally on 20.09.2011. He was cross-examined by the advocate for defendant No.1. The suggestions put by the counsel for the defendant that he had not paid the part consideration amount of Rs.7,00,000/- and only paid Rs.1,50,000/- by way of cheque and that the balance amount was agreed to be paid on a subsequent date were denied.

11. Defendant No.1 filed his evidence by way of affidavit in each contents of the written statement were reiterated. It is further admitted that a sum of Rs.4,85,000/- was paid to him as advance and another amount of Rs.1,50,000/- was paid by way of cheque. But



it was stated that the amount of Rs.5,50,000/- was required to be paid by cash which was not paid. As far as the payment of Rs.3,00,000/- was concerned, which found mention in the first endorsement/amendment in the agreement to sell, there is nothing stated in the examination-in-chief by way of affidavit.

12. Defendant No.1 (DW-1) never appeared for cross-examination. Therefore, the examination of DW-1 was "expunged" by the order of the Court dated 04.06.2012.

13. A perusal of the sale agreement Ex.P.1 also reflects that the execution of the sale deed was contingent upon certain other terms which also find mention just above the description of the schedule property.

14. In this view of the matter, the finding of the trial Court rejecting the specific performance of contract and directing refund advance sale consideration and that too to an extent of Rs.5,50,000/- together with interest, is



based on misreading of the evidence and pleadings and non-application of mind. In our considered opinion neither the issues were properly framed nor was the pleadings /evidence duly considered by the trial Court. This has led to failure of justice.

15. For the reason aforesaid we find a fit case for remand under Order 41 Rule 23 of Code of Civil Procedure, 1908. The decree is accordingly set aside and the matter is remanded to the trial Court to take a decision afresh in terms of Order 41 Rule 23 of Code of Civil Procedure, 1908.

16. The learned counsel for the appellant is present in Court and therefore the appellant is directed to appear before the trial Court on 17.02.2026 at 11.00 a.m. If on that day the Court having jurisdiction is not sitting, the appellant shall appear on the next working day. The Court shall then proceed to fix a date, issue notice to the defendant and proceed further with the matter.



17. Subject to the aforesaid observation, this appeal is disposed of.

It is left open to the appellant to move such application before the trial Court as permissible and as advised. It is made clear that the parties shall cooperate in the expeditious disposal of the case and no unnecessary adjournment will be sought.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(T.M.NADAF)
JUDGE