



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1659 OF 2017 (SP)

BETWEEN:

1. MRS. PYRAIJAN
W/O LATE MR. GULAM DASTGIR,
AGED 74 YEARS
(APPELLANT DEAD, BY ITS ORDER
DATED 02.06.2026 ALL OTHER
APPELLANTS ARE ON RECORD)
2. MR. ANSAR PASHA
S/O LATE MR. GULAM DASTGIR,
AGED 60 YEARS
3. MR. APSAR PASHA
S/O LATE MR. GULAM DASTGIR
AGED 49 YEARS
4. MS. SAGEELABANU
W/O LATE MR. KAISAR PASHA
AGED 42 YEARS
5. MR. MULBARAK PASHA
W/O LATE MR. KAISAR PASHA
AGED 23 YEARS
ALL AT JOGIHALLI ROAD,
CHIKKANAYAKANAHALLI TOWN,
TUMUKUR DISTRICT - 572 225.

...APPELLANTS

(BY SRI. RAMESH P KULKARNI, ADVOCATE FOR A2 TO A5;
VIDE ORDER DATED 02.06.2026 OTHER APPELLANTS ARE
LR'S OF A1)

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signed by
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Location:
HIGH
COURT OF
KARNATAKA



AND:

1. SMT. DURGAMMA
W/O LATE MR. GANGADHARIAH
AGED 49 YEARS
2. MR. MADHUSUDAN
S/O LATE MR. GANGADHARIAH
AGED 20 YEARS

BOTH AT BANASHANKARI EXTENSION,
BESIDE KARNATAKA SAW MILL,
SETTIKERE ROAD,
CHIKKANAYAKANAHALLI TOWN,
TUMKUR DIST. - 572 228.

...RESPONDENTS

(R1 AND R2 ARE SERVED BUT UNREPRESENTED)

THIS RSA IS FILED U/S.100 OF CPC., AGAINST THE
JUDGMENT AND DECREE AND 09.03.2017 PASSED IN
R.A.NO.122/2013 ON THE FILE OF THE SENIOR CIVIL JUDGE
AND JMFC., CHIKKANAYAKANAHALLI DISMISSING THE APPEAL
AND CONFIRMING THE JUDGMENT AND DECREE DATED
07.10.2013 PASSED IN O.S. NO.353/1994 ON THE FILE OF THE
PRL.CIVIL JUDGE AND JMFC., AT CHIKKANAYAKANAHALLI.

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 learned counsel for the appellants. None appears for the respondents.

2. Plaintiffs second appeal challenging the dismissal of the suit for specific performance of agreement to sell dated 09.06.1986 in respect of following immovable properties (hereinafter referred to as suit agreement) which was confirmed by the First Appellate Court in RA No.122/2013:

"Land comprised in Sy.No.160/1 measuring East to West 95 and North to South 20 feet situated at kasaba Hobli, Chikkanayakanahalli Taluk and bounded by:

East: Thimmarayappa's plaining machine

West: Land now sold to third person

North: Defendants house

South: Plaintiffs saw mill and house"



3. Facts which are utmost necessary for disposal of the appeal are as under:

3.1. A suit came to be filed in O.S.No.353/1994 seeking specific enforcement of agreement to sell dated 09.04.1986 by contending that defendant No.1 - Gangadharaiah is the absolute owner of the suit property and he executed an agreement to sell wherein valuable consideration for the property was fixed at Rs.1,300/- and Gangadharaiah had received Rs.700/- as advance amount and put the plaintiff into the possession of the property and balance sum of Rs.600/- was agreed to be paid at the time of registration.

3.2. Since there was an embargo for sale of the property on account of the fact that Prevention of Fragmentation Act was in force, execution of the sale deed was postponed and plaintiff had agreed to convey the land soon after the embargo is lifted by the Government.



3.3. It is further contended by the plaintiff that after the statutory embargo was lifted, plaintiff demanded defendants several times to execute the sale deed.

4. It is also contended that defendants received a sum of Rs.550/- for his personal necessity and on 18.02.1994, he received another sum of Rs.200/- towards municipality and layout charges and agreed to execute the sale deed on 20.07.1994 but despite receipt of those amount, defendants went on postponing of execution of the sale deed which necessitated the plaintiff to approach the Court with a prayer to pass a decree specifically enforcing agreement to sell dated 09.04.1986.

5. Pursuant to the suit summons, defendant No.1 appeared before the Court and filed written statement contending that he is the absolute owner of the suit property but denied the fact that he has executed suit agreement.



6. He has further contended that plaintiff is the owner of the saw mill and he is rich and influential person and taking advantage the inability and power of the defendants and in order to knock off the property, suit agreement is concocted.

7. Based on the rival contentions of the parties, learned Trial Judge raised following issues and additional issue:

"1. Whether the plaintiff proves that, the defendant has agreed to sell the suit schedule property to him for Rs. 1300/- on 9.3.1986 and received the part of the consideration amount of Rs.700/- by executing the agreement deed?

2. Whether the plaintiff further proves that he has paid Rs.200/- on 18.2.1994 to defendant towards sale consideration and defendant as assured to execute the registered sale deed after getting order under Prevention of Fragmentation Act and postponed the execution of the sale deed?

3. Whether the plaintiff is ever ready and willing to perform of his part of the contract?



4. Whether the defendant proves that, the plaintiff in order to knock of the valuable suit schedule property of the defendant has created the documents with the help of his own scribe and attestors and he never executed any agreement deed?

5. Whether the plaintiff is entitled for the relief of specific performance of the Contract as prayed in the plaint?

6. What order or decree?

ADDL.ISSUES DATED 29.9.2012:

1. Whether the suit is barred by limitation?

2. Whether suit is bad for non-compliance of section 17 of Registration Act?"

8. In order to prove the case of the plaintiff, plaintiff – Gulam Dasthageer was examined as P.W.1 and two more witnesses namely Shivanna and Answar Pasha as P.W.2 and P.W.3 and placed on record seven documents which were exhibited and marked as Exs.P.1 to



P.7 comprising of suit agreement dated 09.04.1986, legal notice, signature of the witness in legal notice, original sale deed dated 06.07.1988, original sale deed dated 04.01.2001 and General Power of Attorney.

9. As against the material evidence placed on record, Gangadharaiah got examined himself as D.W.1 and placed on record a document which is assessment register extract. Defendant No.2 is none other than the minor son of defendant No.1.

10. Learned Trial Judge thereafter heard the arguments of the parties and on cumulative consideration of the oral and documentary evidence placed on record, dismissed the suit of the plaintiffs.

11. Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court in RA No.122/2013.

12. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties and on reappraisal of the material on record, dismissed



the appeal filed by the plaintiff *inter alia* holding in paragraph Nos.23 to 29 as under:

"23. Point No.1:- It is not disputed fact that the defendant was the absolute owner of suit property but he has denied the alleged sale transaction, sale agreement and delivery of possession in favor of the plaintiff. That the trial court held that only on the ground that the Ex.P1 is compulsorily registerable document as per Section 17 and it cannot be looked into for any purpose. So for that reasons I have discussed point no.2 earlier and when the Ex.P1 has been executed it is not necessary to register the sale agreement as per the above decisions. In the cross examination of PW1 he has deposed that he has not remembering the persons who were present during the time of sale talks and fixing the total consideration amount and further deposed that the Ex.P1 has been executed in between 10.00am to 11.00am. PW2 being the scribe of Ex.P1 has deposed that Ex.P1 has been executed at about 1.30.pm. That the trial court taking contradiction with regard to said aspect in between PW1 and PW2 has held that it is not established about the execution of Ex.P1. As per the case of the plaintiff Ex.P1 has been executed on 09.04.1986 and the evidence of PW1 and PW2 have been recorded in the year 2005 and it



is quite natural for the human being in remembering the incidents and things which were happened 10 years ago. In this case also there are some minor contradictions in between PW1 and PW2 and they are not the ground to hold that the execution of Ex.P1 sale agreement has not been established. 24. Further the trial court has also observed that now the value of the suit property is grown and it is highly improbable to believe that the agreement was entered into for a meager amount of Rs.1,300/-. In this aspect the defendant has not produced any material evidence to show that on the date of execution of the sale agreement value of the suit property is more than the amount mentioned in Ex.P1. So the trial court has hypothetically given finding that there is no absolute necessity for the defendant to agree to sell the suit property in favor of the plaintiff for a meager amount of Rs.1,300/-.

25. That the trial court has not at all compared the signatures of the deceased defendant in Ex.P1 with his signatures in the written statement and in his vakalathnama. In the cross examination of DW1, he has admitted after confronting 2 sale deeds and accordingly they have been marked as Ex.P3 and Ex.P4. Ex.P3 is the registered sale deed executed by the deceased defendant in favor of one Sheshaiah and Ex.P4 is another registered sale deed dated



04.01.2001 executed by the deceased defendant in favor of wife of the plaintiff. After comparing the signatures of the defendant in Ex.P3 and Ex.P4 with his signatures in Ex.P1 it appears that they are one and the same and also their signatures are tallying with the signatures of the defendant in the written statement and in his vakalathnama.

26. Further the trial court has dismissed the application filed by the defendants for sending Ex.P1 to handwriting expert. As per section 45 of Indian Evidence Act court can compare the admitted and disputed signatures of the executant of the document. That the trial court has no considered these aspects in its judgment in holding that the execution of sale agreement has not been proved which is the error committed by the trial court. So after perusal of Ex.P1.Ex.P3 and Ex.P4, the signatures of defendant are tallying with each other and on the other hand the defendants though he has taken the contentions that the plaintiff has created the document colluding with scribe and attester but he has not substantiated the same and he has not taken any steps against the plaintiff if the plaintiff really could have created and forged the document as pleaded by him. That the plaintiff before the trial court by producing Ex.P1 and by adducing his evidence coupled with the evidence of scribe has



proved the due execution of sale agreement which has been marked as Ex.P1.

27. That the plaintiff has also pleaded that he has paid Rs.200/- out of remaining balance consideration amount to the defendant on 18.02.1994 who in turn to execute the registered sale deed after alienation but postponed the same. In this aspect there is no evidence put forth by the plaintiff and he has not produced any receipts executed by the deceased defendant for acknowledging the receipt of remaining balance sale consideration amount. Therefore the trial court is rightly held issue no.2 in the Negative.

28. It is the case of the plaintiff that he has already paid Rs.700/- to the defendant towards part performance of the contract and agreed to pay remaining balance amount of Rs.600/- at the time of registration. Subsequently the defendant received Rs.550/- for his personal necessity and again on 08.02.1994 he received Rs.200/- towards municipality and layout charges. So by this way he was always ready and willing to perform his part of contract. If really the defendant subsequently had received Rs.550/- and Rs.200/- on 18.02.1994 definitely the plaintiff could have received the receipt from the defendant and also there might be some acknowledgment by the defendant in Ex.P1 itself. Therefore about the subsequent payment of balance



consideration amount as pleaded by the plaintiff is not proved by him. Further as per the recital of Ex.P1 the defendant had received Rs.700/- towards part payment of sale consideration amount but subsequent payment has not been proved by the plaintiff. Then on 20.07.1994 the plaintiff had issued legal notice as per Ex.P1 and though there are no pleadings with regard to the issuance of legal notice as per Ex.P2 but the plaintiff has produced the said legal notice. Ex.P2 has been issued on 20.07.1994 and plaintiff has filed the suit on the next day itself that is on 21.07.1994 and there are no pleadings in the plaint to show the said notice has been served to the defendant or not. Further the plaintiff has not produced any such postal acknowledgment or receipt to establish the service of notice to the defendant. Further the trial court has considered about the repeal of Fragmentation Act and soon after the said repeal, the plaintiff has not shown his readiness and willingness to perform his part of contract but as I have already discussed that it is not a condition for the execution of the registered sale deed only after repealing the said act and it is recited that after alienation is made the defendant has to execute the registered sale deed. Further it appears that to create cause of action the plaintiff had issued the legal notice as per Ex.P2 just before one day of filing of the suit. Therefore the plaintiff has not shown



readiness and willingness to perform his part of contract. Though the learned counsel of the appellant has relied number of decisions and argued that hike in value of suit property is not a ground for refusal of specific performance of contract but the plaintiff has failed to prove his readiness and willingness to perform his part of contract.

29. Further in the cross examination of PW1 it is suggested to him that some portion of suit property has been sold to one Kempamma for which he has denied. PW2 has ignored about the alienation of some portion of the suit property to Kempamma. That the DW1 has produced Ex.D1 which is the assessment register extract of site no.160/1 and its total measurement is 33x34+33/2. In the suit schedule survey number is mentioned as 160/1 and its total extent is east-west 95 feet and north-south 20 feet. Then as per Ex.D1 no such extent is available to get the registered sale deed as mentioned in the suit schedule. Moreover the plaintiff has not produced the property extract of suit property and for that reason the defendant has produced the Ex.D1 to show that no such extent of the suit property is in existence. Therefore the execution of registered sale deed in respect of the entire suit property is not possible. Hence in view of the above discussion though the due execution of



sale agreement is proved but the plaintiff has not established his readiness and willingness to perform his part of contract and also there is no such extent of the suit property is available as mentioned in the suit schedule. Hence my finding to point no.1 is partly in the Affirmative."

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

- *"The judgments of the courts below are contrary to the facts of the case and law.*
- *Proper legal and factual inferences are not drawn by the courts below.*
- *The courts below erred in holding that there is no evidence to establish payment of Rs.550 and Rs.200 to the defendant after the Agreement and as such the issue No.2 has to be held against the appellant.*
- *The courts below erred in holding that the appellants had not stated anything in the plaint about the issue of legal notice, that no postal acknowledgement is produced and as such the same cannot be believed. The courts below failed to note that the defendant did not dispute the issue of the legal notice at all*



which amounted to admission of the receipt of the same.

- *The courts below erred in holding that specific performance cannot be ordered as the notice is not proved. They failed to note that the law does not require issuing of any notice demanding execution and registration of sale deed.*
- *The courts below erred in holding that the readiness and willingness is not established as the plaintiff has not filed the suit immediately after the lifting of the ban under the Fragmentation Act.*
- *The courts below erred in not appreciate the fact that the plaintiff has been put in possession of the suit property and had also paid the major portion of the sale consideration. No evidence is lead by the defendant to indicate that the plaintiff was not ready and willing to take the sale deed by paying the balance consideration.*
- *The courts below erred in holding that the entire suit property is not available for selling it to the plaintiff as the defendant had already alienated a small portion thereof. The court below ought to have directed the specific performance of the agreement*



of sale in respect of the available portion of the same.

- *The courts below erred in holding that it is not possible to direct the specific performance of the Agreement of Sale as part of the suit property is not available with the vendor-respondents.*
- *The courts below having held that the time is not the essence of the contract ought to have ordered the specific performance of the Agreement of Sale.*
- *The courts below failed to note that the respondents had suggested that the original plaintiff has been a rich and capable of paying the balance consideration which indicated that he was ready to perform his part of the contract.*
- *The courts below erred in not granting specific performance in spite of the fact that the original defendant was found to be lying before the courts."*

14. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that both the Courts have failed to note that plaintiff was put into the possession of the property as



part specific performance of agreement to sell marked at Ex.P.1 and therefore, committed a grave error in dismissing the suit and sought for admitting the appeal on following substantial questions of law:

"(i) Whether the courts below are right in holding that the original plaintiff was not ready and willing to perform his part of the contract?

(ii) Whether specific performance can be refused on the ground that no legal notice demanding specific performance was got issued by the original plaintiff though he was ready and willing to perform his part of the contract?

(iii) Whether the courts below are right in refusing the specific performance of the Agreement of Sale dated 09.04.1986?"

15. None appears for the respondents though served with the notice of the appeal.

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



17. On such perusal of the material on record, Trial Court after supplying necessary reasons, found that oral evidence placed on record and the document that is placed on record was not sufficient enough to establish that defendant No.1 - Gangadharaiah has executed the suit agreement.

18. In that regard, answer elicited in cross-examination of P.W.1 is taken into consideration by the trial Court.

19. Learned Trial Judge has also noted the contents of Ex.P.1 in paragraph No.13 of its judgment.

20. Likewise, cross-examination of P.W.1 is extracted and noticed that at the time of execution of Ex.P.1, price of the suit land was to the extent of Rs.300/- to Rs.400/- per gunta whereas in the suit agreement, land that has agreed to be sold is to the extent of 95 x 20 feet and therefore, suit agreement would not be believed.



21. Likewise, in the cross-examination of P.W.2, P.W.2 was unable to say that what are the denomination of notes which was paid as advance amount in a sum of Rs.700/-.

22. The discrepancies with regard to the material evidence and the cross-examination of P.W.1 and 2 is taken into consideration by the learned Trial Judge especially with regard to the fact that subsequent payment is to the extent of Rs.500/- wherein he has given two notes of Rs.50/- denominations.

23. Based on these material evidence, the finding recorded by the learned Trial Judge that agreement stood not proved was reappreciated by the learned Judge in the First Appellate Court as referred to supra.

24. In fact in paragraph No.29, learned Judge in the First Appellate Court took into consideration the probative value of Ex.D.1 and has recorded a specific finding that plaintiffs have not produced the property extract to the



suit property and Ex.D.1 would make it clear that land in Sy.No.160/1 measures totally 33 x 34 + 34/2.

25. In other words, the subject matter of the suit agreement was not the land possessed by the defendants is the finding recorded by the learned Judge in the First Appellate Court.

26. Thus, when the plaintiffs have failed to establish the proper execution of Ex.P.1, the factual finding recorded by both the Courts needs no interference by admitting the appeal for further consideration on the aforesaid substantial questions of law.

27. Accordingly, following:

ORDER

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

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

KAV
List No.: 2 Sl No.: 66