



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO. 1977 OF 2013 (SP)

BETWEEN:

1. SMT. T.H. THIMMARAJAMMA
W/O D.N. NARASARAJAIAH
AGED ABOUT 61 YEARS
R/AT BEHIND POST OFFICE
RAILWAY STATION ROAD
GUBBI TOWN (TALUK)
TUMKUR DISTRICT-573201.

...APPELLANT

(BY SRI. VIGNESHWAR S. SHASTRI, SENIOR COUNSEL FOR
SRI. GURURAJ R., ADVOCATE)

AND:

1. SRI G.C. LAKSHMINARAYANA SWAMY
SINCE DECEASED REP. BY LRS.
- 1(a). SMT. G.L. LALITHA DEVI
D/O LATE G.C. LAKSHMINARAYANA SWAMY
AGED ABOUT 41 YEARS
NOW R/A TNO.411, 17TH CROSS
WEST PARK ROAD,
MALLESHWARAM
BENGALURU - 560 055.

...RESPONDENT



(BY SRI. PRAMOD N. KATHARI, SENIOR COUNSEL FOR
SRI. RAVISHANKAR S., ADVOCATE)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE JUDGEMENT & DECREE DATED 27.09.2013 PASSED IN R.A.NO.149/2011 ON THE FILE OF THE III ADDITIONAL DISTRICT JUDGE, TUMKUR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DATED 28.07.2011 PASSED IN O.S.NO.194/2001 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE & CJM, TUMKUR.

THIS REGULAR SECOND APPEAL HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, ***E.S. INDIRESH J.***, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

CAV JUDGMENT

This appeal is preferred by the defendant assailing the judgment and decree dated 27.09.2013 in R.A.No.149/2011 on the file of the III Additional District Judge at Tumkur, (hereinafter referred to as "First Appellate Court") dismissing the appeal and confirming the judgment and decree dated 28.07.2011 in O.S.No.194/2001 on the file of Additional Senior Civil



Judge and CJM, Tumkur, (hereinafter referred to as "Trial Court") decreeing the suit of the plaintiff.

2. For the sake of convenience, the parties are referred to their rank before the Trial Court.

3. It is the case of the plaintiff that the defendant is the owner of the suit schedule property and has entered into an Sale Agreement dated 29.04.2000 with the plaintiff agreeing to sell the suit schedule property for a total sum of Rs.1,30,000/-. It is also stated that, on the date of the agreement, the defendant has received Rs.50,000/- as an advance. It is also stated that the defendant also received Rs.30,000/- by way of a cheque dated 15.05.2000 from one L.Doreswamy (brother-in-law of the plaintiff) towards the sale consideration. It is the case of the plaintiff that though the defendant has received Rs.80,000/- as advance amount from the plaintiff, however, has failed to execute the registered Sale Deed and therefore, the plaintiff has caused the legal notice and thereafter, the



defendant has issued an Endorsement on 26.10.2000 agreeing to execute the Sale Deed in favour of the plaintiff. However, the defendant has not executed the registered Sale Deed pursuant to the Agreement of Sale dated 29.04.2000 and therefore, the plaintiff has filed O.S.No.194/2001 before the Trial Court seeking the relief of specific performance of the Agreement of Sale dated 29.04.2000.

4. After service of notice, the defendant entered appearance and denied the averments made in the plaint. It is the specific contention of the defendant that, the defendant has not entered into an Agreement of Sale dated 29.04.2000 with the plaintiff.

5. The Trial Court based on pleadings and records has formulated the issues for its consideration.

6. In order to establish their case, plaintiff has examined three witnesses as PW1 to PW3 and produced 30 documents as Exs.P1 to P30. The defendant has



examined two witnesses as DW1 and DW2 and marked 7 documents as Exs.D1 to D7.

7. The Trial Court, after considering the material on record by its judgment and decree dated 28.07.2011, decreed the suit of the plaintiff and directed the defendant to execute the registered Sale Deed in favour of the plaintiff in terms of the Agreement dated 29.04.2000. Feeling aggrieved by the same, the defendant has preferred R.A.No.149/2011 before the First Appellate Court. The said appeal was resisted by the plaintiff. The First Appellate Court after re-appreciating the material on record, by its judgment and decree dated 27.09.2013 dismissed the appeal, consequently confirmed the judgment and decree in O.S.No.194/2001. Feeling aggrieved by the same, the defendant has preferred this appeal under Section 100 of CPC.

8. This Court vide order dated 16.06.2014 formulated the following substantial questions of law, which reads as under:



- "a) Whether the judgment and decree of the courts below granting decree for specific performance of contract as prayed for by the plaintiff is supported by reasons justifying the specific performance?
- b) Whether the courts below have examined the case projected by the plaintiff and the defence of the defendant in the light of clauses (a)(b) and (c) of sub section 20 of the Specific Relief Act?"

9. I have heard Sri.Vigneshwar S. Shastri, learned Senior Counsel on behalf of Sri.Gururaj R., appearing for the appellant and Sri.Pramod N.Kathavi, learned Senior Counsel on behalf of Sri.Ravishankar S., appearing for the respondent.

10. It is contended by Sri.Vigneshwar S. Shastri, learned Senior Counsel appearing for the appellant that both the courts below have committed an error in arriving at a conclusion as to the payment of consideration as per Ex.P1 and learned Senior Counsel further contended that, part of the consideration made by one L.Doreswamy, who is only a witness to the Agreement of Sale and not a party to the Agreement of Sale and the said aspect has been ignored by both the courts below and accordingly, sought



for interference of this Court. It is also submitted by the learned Senior Counsel that, the signatures in the agreement were disputed and the said aspect has been ignored by both the courts below and accordingly, sought for interference of this Court. It is also contended by the learned Senior Counsel appearing for the appellant that, both the courts below have failed to take into consideration as to the fact that Ex.P9 was not received by the defendant, wherein the signature has been forged and therefore sought for interference of this Court. Finally, it is argued by learned Senior Counsel appearing for the appellant by referring to 'Shara' at Ex.P18(d) and argued that, the said aspect of the matter was not considered by both the courts below and the suit filed by the plaintiff is premature without there being an adjudication of the pending suit in O.S.No.102/2000 and R.A.No.92/2000 and therefore, sought for interference of this Court.

11. *Per contra*, Sri.Pramod N. Kathavi, learned Senior Counsel appearing for the respondent argued that,



the plaintiff has proved the execution of the Agreement of Sale produced at Ex.P18(a) and also by referring to the evidence of the parties, it is contended by the learned Senior Counsel appearing for the respondent that, as due execution of the signature of the defendant has been proved at Ex.P18(d) and therefore, sought for dismissal of the appeal. It is also contended by the learned Senior Counsel appearing for the respondent as to the argument advanced by the learned Senior Counsel for the appellant to the 'Shara' at Ex.P18 and learned Senior Counsel contended that, the said plea has not been taken in the written statement filed before the Trial Court nor in the evidence and therefore, the said plea has been urged before this Court for the first time and therefore contended that, the arguments advanced by the learned Senior Counsel appearing for the appellant cannot be accepted and finally argued that since both the courts below have concurrently held against the defendant and therefore this Court cannot exercise its jurisdiction under Section 100 of



CPC to interfere with the finding of fact. Accordingly, sought for dismissal of the appeal.

12. In order to buttress his arguments, learned Senior Counsel appearing for the respondent refers to the judgment of the Hon'ble Supreme Court in the case of ***Vithalbhai Pvt. Ltd. Vs. Union Of India*** reported in ***(2005) 4 SC 315*** and contended that the arguments advanced by the learned Senior Counsel appearing for the appellant as to the maintainability of the suit cannot be taken into consideration in the light of the observation made by the Hon'ble Supreme Court at paragraph No.22 of the above judgment and accordingly sought for dismissal of the appeal. It is also argued by the learned Senior Counsel appearing for the respondent by referring to the judgment of the Hon'ble Supreme Court in the case of ***M/s.Virgo Industries (Eng) P. Ltd. Vs. M/S. Venturetech Solutions P. Ltd.,*** reported in ***(2013) 1 SCC 625*** at paragraphs 15 and 16 of the said judgment that the plea raised by the appellant herein as to the



maintainability of the suit cannot be considered at this stage of the proceedings, as both the courts below have concurrently held against the appellant herein and therefore sought for dismissal of the appeal.

13. In the light of the submission made by the learned Senior Counsel representing the parties, I have carefully examined the findings recorded by both the courts below. I have perused the original records. It is the case of the plaintiff that, the plaintiff has entered into a Sale Agreement dated 29.04.2000 (Ex.P18(a)), wherein the defendant claims to be the owner of the suit schedule property and has agreed to sell the suit schedule property for a sum of Rs.1,30,000/- and as such received Rs.50,000/- on the date of the agreement as advance. It is also stated in Ex.P18(a) the agreement of sale that the parties have to execute the registered sale deed within six months from the date of enter into an Agreement of Sale. It is also stated in the said agreement that the brother-in-law of the Plaintiff - L.Doreswamy, has issued the cheque



dated 15.05.2000 for a sum of Rs.30,000/- to the defendant and the said aspect is forthcoming from the Agreement of Sale at Ex.P18(d). However, the 'Shara' dated 26.10.2000 annexed to the agreement of sale at Ex.P18(d) would indicate as to the civil proceedings in O.S.No.102/2000 and R.A.No.92/2000. It is also stated in the said 'Shara' that the registered sale deed will be made after the conclusion of the aforementioned litigations.

14. In this regard, in order to prove the execution of agreement of sale at Ex.P18, the plaintiff has examined the witness to the agreement as PW2, who deposed that at the time of entering into an agreement, the defendant, her husband, plaintiff and one witness Chikkanna along with himself were present and as per the instructions of the defendant and husband and agreement was reduced into writing by one M.N.Kadari Narsimaiah at Tumkur. Taking into consideration the evidence of PWs.2 and 3, I am of the view that the agreement of sale has been proved by the plaintiff.



15. Insofar as the arguments advanced by the learned Senior Counsel appearing for the appellant as to the 'Shara' dated 26.10.2000 at Ex.P18(d), wherein the condition has been stipulated to execute the registered Sale Deed after the conclusion of the proceedings in O.S.No.102/2000 and R.A.No.92/2000. In this regard, paragraph 7 of the plaint, wherein it is stated about the proceedings referred to above. It is also to be noted from the legal notice dated 13.09.2001 (Ex.P8), wherein the plaintiff has referred to the aforementioned proceedings at paragraph 4 of the legal notice.

16. Paragraph 6 of the legal notice dated 13.09.2001 reads as under:

"Therefore, I am hereby calling upon you to come and execute the registered sale deed in my clients favour after getting the decision about the case in your favour in respect of the above said land under the agreement within thirty days from the date of receipt of this notice. Failing which my client has no option but to approach the Court of law for specific performance of the contract dated



29.04.2000 at your cost and risk and my client is kept ready with the balance amount of Rs.50,000/-.

The charges of this notice is Rs.500/- which you are liable to pay my client as you have failed to perform your part of the contract and before entering into the agreement of sale you have failed to bring to the notice of my client about the case pending before the Court and at the time of the said agreement you have promised that no litigations are pending in respect of the above said property and so far you have received an advance amount of Rs.80,000/- from my client. I hope that you will certainly clarify the pending cases in respect of the above said land and execute the registered sale deed in my clients favour."

17. The plaintiff has also produced the acknowledgment, wherein the aforementioned legal notice was served to the defendant as per Ex.P9. In this regard, the reply dated 19.09.2001 said to have been issued by the defendant as per Ex.P10. It is to be noticed that, the defendant has not signed the aforementioned document, however, the husband of the defendant has signed the aforementioned reply and same was sent to the counsel representing the plaintiff as per the legal notice dated



13.09.2001. In all practical purposes, there is no reply by the defendant.

18. A perusal of the evidence of the parties would indicate that, the defendant and her husband were residing separately. In the light of the aforementioned aspects as carved out from the original records, I have carefully examined the written statement filed by the defendant, wherein the plea as to the premature of the suit has not been taken by the defendant. In that view of the matter, the declaration of law made by the Hon'ble Supreme Court in the case of **Vithalbhai Pvt Ltd.**, at paragraph Nos.7 to 9, 21 and 22 reads as under:

"7. To be entitled to file a civil suit the plaintiff must be entitled to a relief and the suit must be of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred (see Section 9 of the Code of Civil Procedure, 1908). Section 3 of the Limitation Act, 1963 provides that a suit filed after the prescribed period of limitation, shall be dismissed without regard to the fact whether limitation has been set up as a defence or not. However, there is no such provision (and none brought to our notice at the Bar in spite of a specific query in that



regard having been raised) which mandates a premature suit being dismissed for this reason. The only relevant provision is the one contained in Rule 11 of Order 7 of the CPC which provides for a plaint being rejected where it does not disclose a cause of action. Though the plaint is not rejected, yet a suit may be dismissed if the court on trial holds that the plaintiff was not entitled on the date of the institution of the suit to the relief sought for in the plaint.

8. The learned counsel for the plaintiff-appellant submitted that in the present case the suit cannot be said to have been filed as premature on the date of its institution. He submits that in the response dated 8-11-1983, the defendant-respondent had clearly disputed the plaintiff's entitlement to evict the defendant-respondent on 25-6-1984, the date of expiry of the lease and therefore a cloud was cast on the title of the plaintiff. The plaintiff was therefore fully justified in bringing the suit after the receipt of the reply dated 8-11-1983. In the alternative, it was submitted that assuming that the suit was premature on the date of its institution, it became ripe during its pendency and was certainly so on the date on which the written statement was filed by the defendant, and that the court has the power to take notice of such event and, therefore, to decree the suit.

9. In our opinion, a suit based on a plaint which discloses a cause of action is not necessarily to be



dismissed on trial solely because it was premature on the date of its institution if by the time the written statement came to be filed or by the time the court is called upon to pass a decree, the plaintiff is found entitled to the relief prayed for in the plaint. Though there is no direct decision available on the point but a few cases showing the trend of judicial opinion may be noticed.

21. Where the right to sue has not matured on the date of the institution of the suit an objection in that regard must be promptly taken by the defendant. The court may reject the plaint if it does not disclose a cause of action. It may dismiss the suit with liberty to the plaintiff to file a fresh suit on its maturity. The plaintiff may himself withdraw the suit at that stage and such withdrawal would not come in the way of the plaintiff in filing the suit on its maturity. In either case, the plaintiff would not be prejudiced. On the other hand, if the defendant by his inaction amounting to acquiescence or waiver allows the suit to proceed ahead then he cannot be permitted to belatedly urge such a plea as that would cause hardship, maybe irreparable prejudice, to the plaintiff because of lapse of time. If the suit proceeds ahead and at a much later stage the court is called upon to decide the plea as to non-maintainability of the suit on account of its being premature, then the court shall not necessarily dismiss the suit. The court would examine if any prejudice has been caused to the defendant or any



manifest injustice would result to the defendant if the suit is to be decreed. The court would also examine if in the facts and circumstances of the case it is necessary to drive the plaintiff to the need of filing a fresh suit or grant a decree in the same suit inasmuch as it would not make any real difference at that stage if the suit would have to be filed again on its having matured for filing.

22. We may now briefly sum up the correct position of law which is as follows:

A suit of a civil nature disclosing a cause of action even if filed before the date on which the plaintiff became actually entitled to sue and claim the relief founded on such cause of action is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the court; the court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the court to grant decree or not. The court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been filed a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit a manifest injustice would be caused to the defendant. Taking into consideration the explanation offered by the plaintiff for filing the suit before the date of maturity of cause of action, the court may deny the plaintiff his costs or



*may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to the plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. A plea as to non-maintainability of the suit on the ground of its being premature should be promptly raised by the defendant and pressed for decision. It will equally be the responsibility of the court to examine and promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit. However, the court shall not exercise its discretion in favour of decreeing a premature suit in the following cases: (i) when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the court's jurisdiction; and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. (See *Samar Singh v. Kedar Nath* [1987 Supp SCC 663] .) One more category of suits which may be added to the above, is: where leave of*



the court or some authority is mandatorily required to
be obtained before the institution of the suit and was
not so obtained."

(Underlined by me)

19. A perusal of the aforementioned judgment would makes it clear that, in order to consider a case as a premature, the Hon'ble Supreme Court has made out five instances in which the suit can be held to be premature. Taking into consideration the cause of action for filing the present suit is pursuant to the issuance of notice by the plaintiff as per Ex.P8 and also Ex.P10 - reply notice (though the defendant disputes the same), I am of the view that, no interference is called for in this regard. It is also to be noted that, if the appellant/defendant has taken a plea that the defendant has not issued the reply to the legal notice at Ex.P8, in that view of the matter, the defendant cannot raise the said plea in the proceedings under Section 100 of CPC. At this stage, it is also relevant to cite the judgment of the Hon'ble Supreme Court in the



case of ***M/S.Virgo Industries (Eng.) Pvt. Ltd. (supra)***,
at paragraphs 15 reads as under:

"15. Furthermore, according to the plaintiff, which fact is also stated in the plaints filed in C.S.Nos. 831 and 833, on the date when the aforesaid two suits were filed the relief of specific performance was premature inasmuch as the time for execution of the sale documents by the defendant in terms of the agreements dated 27-7-2005 had not elapsed. According to the plaintiff, it is only after the expiry of the aforesaid period of time and upon failure of the defendant to execute the sale deeds despite the issuance of legal notice dated 24-2-2006 that the cause of action to claim the relief of specific performance had accrued. The above stand of the plaintiff found favour with the High Court. We disagree. A suit claiming a relief to which the plaintiff may become entitled at a subsequent point of time, though may be termed as premature, yet, cannot per se be dismissed to be presented on a future date. There is no universal rule to the above effect inasmuch as "the question of a suit being premature does not go to the root of the jurisdiction of the Court" as held by this Court in Vithalbhai (P) Ltd. v. Union Bank of India [(2005) 4 SCC 315].

16. In the aforesaid case this Court has taken the view that whether a premature suit is required to be entertained or not is a question of discretion and unless "there is a mandatory bar created by a statute which disables the plaintiff from filing the suit



on or before a particular date or the occurrence of a particular event", the Court must weigh and balance the several competing factors that are required to be considered including the question as to whether any useful purpose would be served by dismissing the suit as premature as the same would entitle the plaintiff to file a fresh suit on a subsequent date. We may usefully add in this connection that there is no provision in the Specific Relief Act, 1963 requiring a plaintiff claiming the relief of specific performance to wait for expiry of the due date for performance of the agreement in a situation where the defendant may have made his intentions clear by his overt acts."

20. Following the declaration of law made by the Hon'ble Supreme Court referred to above, as there is no provision in the Specific Relief Act requiring the plaintiff claiming the relief of specific performance to wait for expiry of the due date for performance of the agreement in a situation where the defendant may have made its intention clear by not replying to the legal notice at Ex.P8, I am of the view that, the contentions raised by the learned Senior Counsel appearing for the respondent is to be accepted. It is well settled principle in law that the



parties are precluded from raising new plea in the proceedings under Section 100 of CPC.

21. In this regard it is relevant to cite the judgment of the Hon'ble Supreme Court in the case of ***Sri. Siddu Venkappa Devadiga Vs. Smt. Rangu S. Devadiga & Ors*** reported in ***AIR 1977 SC 890*** and in the case of ***A.V.G.P. Chettiar & Sons & Ors Vs. T.Palanisamy Gounder*** reported in ***(2002) 5 SCC 337***, wherein it is held that the plea which has not been raised by the defendant as to the premature of the suit before the courts below and same cannot be urged for the first time in second appeal as it would be deciding the case on entirely new issue. In that view of the matter, I am of the view that, the substantial questions of law referred to above favours the plaintiff and I do not find any perversity in the judgment and decree passed by the courts below. Accordingly, the appeal is ***dismissed***.

SD/-
(E.S.INDIRESH)
JUDGE