



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1515 OF 2022 (SP)

BETWEEN:

1. MR. CODANDA M. SOMANNA
S/O LATE CODANDA MANDANNA
AGED ABOUT 52 YEARS,
RESIDING AT BALELE VILLAGE AND POST
SOUTH KODAGU - 571 219.
2. MRS. CODANDA SHANTHI MANDANNA
W/O LATE CODANDA MANDANNA
AGED ABOUT 83 YEARS,
RESIDING AT BALELE VILLAGE AND POST
SOUTH KODAGU - 571 219
REPRESENTED THROUGH HER P.A HOLDER
SON, CODANDA M. SOMANNA
3. MRS. KOKKENGADA YESHIKA VASANTHA
D/O LATE CODANDA MANDANNA
W/O MR. KOKKENGADA S. VASANTHA
AGED ABOUT 57 YEARS,
RESIDING AT SULUGODU VILLAGE AND POST
VIA KONANAKATTE,
SOUTH KODAGU - 571 216
REPRESENTED THROUGH HER P.A HOLDER
BROTHER, CODANDA M SOMANNA
4. MRS. MEKERIRA NIVITHA PARTHA
D/O LATE CODANDA MANDANNA

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W/O DR. MEKIRARA PARTHA
AGED ABOUT 56 YEARS,
RESIDING AT DEVARACADOO ROAD
VIRAJPET, SOUTH KODAGU - 571 218
REPRESENTED THROUGH HER P.A HOLDER
BROTHER, CODANDA M. SOMANNA.

...APPELLANTS

(BY SRI. S. SRIRANGA, SR. COUNSEL FOR
SMT. SUMANA NAGANAND, ADVOCATE)

AND:

1. MR. B.L NARAYAN RAO
S/O LATE LINGAPPAIAH
AGED ABOUT 70 YEARS,

2. MR. B.L. RAMACHANDRA RAO
S/O LATE LINGAPPAIAH
AGED ABOUT 65 YEARS,

BOTH RESIDING AT
KADANGAMURROR VILLAGE AND POST
VIRAJPET TALUK, KODAGU - 571 212.

3. MRS. B.L. RUKUMINI
W/O JANARDHANA
SINCE DEAD BY LR'S

3(A). MR. B.J. CHIDANANDA
JANARDHANA
AGED ABOUT 35 YEARS
RESIDING AT KADANGAMARUR VILLAGE AND POST
VIRAJPET, KODAGU DISTRICT - 571 212.



4. MRS. B.L. SEETHALAKSHMI
D/O LATE LINGAPPAIAH
AGED ABOUT 65 YEARS,
BOTH RESIDING AT KADANOR
VILLAGE AND POST, SOUTH KODAGU
(DELETED BY ORDER DATED 14.01.2026)
...RESPONDENTS
(BY SRI. VIJAY KUMAR, ADVOCATE FOR
SRI. S.R. SREEPRASAD, ADVOCATE FOR R1, R2 AND
R3(A);
VIDE ORDER DATED 14.01.2026, R4 IS DELETED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 07.12.2021
PASSED IN RA.NO.29/2014 ON THE FILE OF THE SENIOR CIVIL
JUDGE, VIRAJPET. DISMISSING THE APPEAL AND CONFIRMING
THE JUDGMENT AND DECREE DATED 21.10.2014 PASSED IN
O.S.NO.5/1995 ON THE FILE OF THE CIVIL JUDGE, VIRAJPET.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri.S.Sriranga, learned Senior Counsel for
the appellant, Smt.Sumana Naganand, learned counsel for the
appellant and Sri.Vijay Kumar, learned counsel appearing for
Sri.S.R.Sreeprasad, learned counsel for the respondent Nos.1,
2 and 3(a).



2. Defendant has suffered the decree in O.S.No.5/1995 whereby he was directed to specifically enforce the agreement to sale dated 15.06.1984 in respect of the following properties (hereinafter referred to as suit properties):

- a. *"The Privileged Jahageer Bane Lands bearing Sy.No.240 of 2.75 acres out of 4.61 acres with a tiled house consists of 5 rooms bounded by East: the remaining portion of the bane lands Sy.No.240, West: the remaining portion of the bane lands Sy.No.240, North: Wet lands Sy.No.208/1 and South: by the bane lands Sy.No.241.*
- b. *The Privileged Jahageer Bane Lands bearing Sy.No.241 of 1.86 acres out of 4.57 acres bounded by East: the remaining portion of the bane lands Sy.No.241 and 242, West: remaining portion of the bane lands Sy.No.241, North: Sy.No.240 and south: Sy.Nos.243 and 244.*

In all 4.61 acre sof bane lands cultivated with coffee, orange, cardamom etc., situated at Kadangamaroor village, Virajpet Nad, S. Kodagu. The patta stands in Kula No.18."

3. The said judgment and decree was confirmed by the First Appellate Court in RA No.29/2014.



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

4.1. Plaintiffs filed a suit for specific enforcement of agreement to sale dated 15.06.1984 (Ex.P.1) by contending that defendant has executed Ex.P.1 in favour of plaintiffs in respect of the suit properties entered into an agreement in respect of the suit land by contending that father of the plaintiffs agreed to sell the jahageer bane lands bearing Sy.No.240 of 2.75 acres and Sy.No.241 of 1.86 acres of Kadangamaroor village for a sum of Rs.34,000/-. Said agreement was registered in the office of the Sub-Registrar on 15.06.1984 as document No.264/1984-85.

4.2. As per the agreement, defendant received sum of Rs.5,000/- as advance sale consideration and delivered the possession of the suit properties in favour of the plaintiffs and their father Lingappaiah. It is further contended that the balance sale consideration is received by the defendant.

4.3. It is further contended that on 18.04.1988, defendant has made an endorsement on the agreement having received the balance sale consideration and took time to



execute the registered sale deed after obtaining necessary permission from the Government.

4.4. When the matter stood thus, Lingappaiah died in the month of January, 1989 and thereby right, title and interest possessed by Lingappaiah in the registered agreement to sale dated 15.06.1984 was succeeded to by the plaintiffs and they continued to be in possession of the suit properties.

4.5. Plaintiffs further contended that on 05.10.1993, defendant has made an endorsement on the agreement and undertook to obtain permission from the Government after payment of nazarana and got the sale deed executed in favour of the plaintiffs. However, there was no registration of the sale deed and there was a demand.

4.6. Plaintiffs further contended that they were ready and willing to pay Rs.7,250/- to the defendant and get the property registered in their favour. Balance consideration was also paid by the plaintiffs and therefore, they demanded for the execution of the sale deed. When there was no proper response from the defendant, legal notice was issued. An untenable reply by the defendant was issued which



necessitated the plaintiffs to file the suit for specific enforcement of the agreement to sale.

4.7. Pursuant to the suit summons, defendant entered appearance and filed written statement denying the suit agreement.

4.8. It is also denied by the defendant that plaintiffs were never put in possession of the properties and the payment of advance sale consideration made by the plaintiffs and their father is also denied. It is further contended that Lingappaiah has left behind three more daughters as well and therefore, suit filed by the plaintiffs is not maintainable for non-joinder of necessary parties.

4.9. It is further contended that defendant never undertook to obtain permission from the Government as is contended by the plaintiffs and he further contended that it is the plaintiffs who were required to obtain permission from the Government after payment of nazarana as per the Coorg Land Revenue Regulation and thus, sought for dismissal of the suit.



5. Learned Trial Judge after considering the rival contentions of the parties, raised following issues and additional issues:

"1. Whether the plaintiffs prove that the defendant has executed an agreement of sale in their favour and in favour of their father to sell the plaint schedule properties for a sum of Rs.34,000/- ?

2. Whether the plaintiffs prove that the defendant delivered the possession of the suit schedule properties in their favour, as per agreement dated 15.6.1994 ?

3. Whether the plaintiffs prove that the defendant has received in total sum of Rs.26,750/- as part of sale consideration ?

4. Whether the plaintiffs prove that they are ready and willing to perform their part of contract ?

5. Whether the suit is bad for non joinder of necessary parties ?

6. What Decree or Order ?

Addl. Issues:

1. Whether the plaintiffs prove that, they are the tenants under the defendant in respect of the suit schedule property ?

2. Whether the plaintiffs proves that, they are in lawful possession and enjoyment of the suit schedule property ?



3. Whether the plaintiffs are entitled for the relief of permanent Injunction against the defendant ?

4. Whether the suit is barred under the provisions of Inam Abolition Act 1977?"

6. To prove the case of the plaintiffs, one of the plaintiffs namely B.L.Narayana was examined as P.W.1 and B.K.Gangadhara one of the witness to Ex.P.1 was examined as P.W.2.

7. On behalf of the plaintiffs, as many as thirty documents were placed on record which were exhibited and marked as Exs.P.1 to 30.

8. On behalf of the defendant, GPA Holder of the defendant was examined as D.W.1 and marked General Power of Attorney as Ex.D.1.

9. Learned Trial Judge after hearing the parties, noted that there was a suggestion made to P.W.1 by the defendant to the effect that in respect of land in Sy.No.240 and 241 of Kadangamaroor village, there was a declaration given to the land reforms and in respect of the land to the extent of 4.5 acres, Lingappaiah has been shown as tenant and also a



suggestion was made and that at that juncture, Lingappaiah and plaintiffs were residing in a old tiled roof house belonging to the defendant. Further suggestion was also made that those details are mentioned in Ex.P.1.

10. Likewise, learned Trial Judge noted that in the cross-examination of D.W.1, there is an admission that plaintiffs are residing in the house mentioned in the agreement but he does not know from what date he is residing in the said house but there is an old tiled house existing in the suit property.

11. Learned Trial Judge also noted that the defence taken by the defendant that permission is required for registration of the property in favour of the plaintiffs would not be applicable in view of the report received from the Tahsildar, Virajpet Taluk to the effect that there was no judgment given by the Land Tribunal in respect of the land in Sy.No.240 and 241 and except in respect of religious institutions, there is no necessity to obtain any permission for alienation of Jahageer Jodi Batamanya Umbali lands and decreed the suit of the plaintiffs.



12. Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court in RA No.29/2014.

13. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappreciation of the material evidence placed on record, took into consideration about the main plank on which the judgment of the Trial Court was assailed namely non-obtaining the permission and dismissed the appeal *inter alia* holding in paragraph Nos.16, 17 and 24 to 26 as under:

"16. It has not been specifically denied by the deceased Mandanna in the written statement about maintainability of suit U/S 4 of Karnataka Certain Inams Abolition Act 1977 and U/S 23 of Indian Contract Act. It is clear from the report of the Tahasildar dated 15.7.2011 that suit properties are not Inam lands and it is also clear that the private properties i.e. suit properties will not come under the Inam Abolition Act. The suit schedule wet lands are the private Jahageer properties and the said Act does not apply. In the report of the Tahasildar, it is also mentioned about the circular issued by the Government of Karnataka and the order of Deputy Commissioner dated 07.12.2000. The materials on record show that there is no bar to sell the suit properties by the deceased Mandanna in favour of the respondents. It is also mentioned in Ex.P.1 that Nazarana has to be paid to the Government and



permission has to be obtained. Therefore, I am of the opinion that, Ex.P.1 agreement does not come U/S 23 of Indian Contract Act. As per the materials placed on the record, the Trial Court has come to the conclusion rightly that there is no bar for sale of suit properties. Therefore, deceased Mandanna was the absolute lawful owner of the suit properties and now also he is the owner of suit property. But, he is not in possession of the suit property. Because, the possession has already been delivered in favour of the respondents. It is also clear that, on perusal of Ex.P.1 that there is no detail to pay 6 cart load of paddy or its value to the deceased appellant as per letter written by Mandanna about his readiness to execute sale deed. Therefore, letter cannot be taken into consideration and it has not been taken into consideration by the Trial Court.

17. The appellants have not produced documents in respect of their case except Ex.D.1 General Power of Attorney executed by Mandanna. Now also the appellants have not produced any documents to show the report of the Tahasildar is not proper. They have also not produced the recent circulars or orders of the Government to substantiate their version that suit properties are Inams lands and deceased Mandanna is the Inamdar under the Karnataka Certain Inams Abolition Act. Therefore, I hold that the grounds urged by the appellants in the appeal do not hold good. In respect of dispute with regard to boundary of suit property in plaint and in Ex.P.1 and 2 also, the appellants did not raise specific objections in their pleading. Apart from this, the advocate for



appellants has stated that, the appellants are ready to pay the advance amount. It shows that there has been valid agreement executed between the parties, and payment of consideration has also been passed. Apart from this, the possession has also been handed over to the respondents. The grounds without having valid materials and valid support, cannot be taken into consideration in the appeal.

24. The Trial Court has also framed the issue that, whether the suit is barred under the provisions of Inam Abolition Act 1977. It is observed in the Judgment that the Court referred the matter to the Tahasildar to decide regarding tenancy and submit a report. The Tahasildar submitted a report stating that no application is pending in respect of suit properties under Inam Abolition Act. The application filed by the plaintiffs does not come under the purview of Land Tribunal. It has also extracted the report of the Tahasildar as follows;

“ ಸರ್ವೆ ನಂ.240 ಮತ್ತು 241 ಕ್ಕೆ ಅರ್ಜಿದಾರರು ಭೂನ್ಯಾಯಮಂಡಳಿಗೆ ಡಿಕ್ಲರೇಷನ್ ನೀಡಿರುತ್ತಾರೆ ಎಂದು ತಿಳಿಸಿದ್ದು ಈ ಸರ್ವೆ ನಂಬರುಗಳಿಗೆ ಅರ್ಜಿದಾರರಿಗೆ ಭೂನ್ಯಾಯ ಮಂಡಳಿಯಿಂದ ಗೇಣಿದಾರರೆಂದು ಹಕ್ಕು ತೀರ್ಪು ನೀಡಿರುವುದಿಲ್ಲ. ಅಲ್ಲದೇ ಹಾಲಿ ಭೂನ್ಯಾಯ ಮಂಡಳಿ ಮುಂದೆ ಯಾವುದೇ ಗೇಣಿ ಅರ್ಜಿಗಳು ವಿಚಾರಣೆಗೆ ಬಾಕಿ ಇರುವುದಿಲ್ಲ. ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಕಛೇರಿ ಸುತ್ತೋಲೆ ಸಂಖ್ಯೆ ಪರಭಾರೆ: 30:99-2000 ದಿಂದ 7.1.2000 ದಂತೆ ದೇವಸ್ಥಾನ ಧಾರ್ಮಿಕ ಸಂಸ್ಥೆಗಳು ಹೊರತುಪಡಿಸಿ ಇತರರು ಹೊಂದಿದ ವಿವಿಧ ನಿಭಂದನೆಯ "ಅಂದರೆ ಜಹಗೀರ್ ಜೋಡಿ ಭಟಮ್ಯಾನ



ಉಂಬಳಿ ಜಮೀನುಗಳು ಹಲವು ಇನಾಂ ರದ್ದಾಯತಿ ಕಾಯ್ದೆ ಗೆ ಒಳಪಡುವುದಿಲ್ಲವೆಂದು ತಿಳಿಸಿದೆ.”

25. As per the report of Tahasildar, I am also of the opinion that the suit properties do not come under the Inam Abolition Act. This is not the proper Forum to decide as to the provisions of Karnataka Certain Inam Abolition Act and violation of the provisions of the said Act. Only on the basis of argument of the appellants, it cannot be said that suit properties come under the Karnataka Certain Inam Abolition Act and the deceased appellant was the Inamdar. Therefore, I am of the opinion that, the observation made by the Trial Court that suit is not barred under the provisions of Inam Abolition Act 1977 is proper.

26. It is also observed by the Trial Court that after removal of legal hurdle, the plaintiffs demanded to execute the sale deed through the notice. It also appears to me that the plaintiffs/respondents exercised their right as per the provisions of Specific Relief Act. By holding that the possession of the plaintiffs in respect of suit property is admitted by the defendant and execution of agreement is also admitted by the defendant, the Trial Court has granted the decree of Specific Performance of Contract along with the relief of permanent injunction. Hence, there is no fault in the Judgment passed by the Trial Court in my opinion also. Since the agreement has not been denied or disputed, it is the duty of the defendant/ appellant to execute the sale deed as per the



decree of the trial court. In respect of cross examination of DW.1, there is an admission, which is as follows;

“...ಸದರಿ 1960 ರಿಂದ ವಾದಿಗಳು ಮತ್ತು ಅವರ ತಂದೆ ದಾವಾ ಸೂತ್ತಿನಲ್ಲಿರುವ ಮನೆಯ ಸ್ವಾಧೀನದಲ್ಲಿದ್ದಾರೆ ಎನ್ನುವ ಪ್ರಶ್ನೆಗೆ ಸಾಕ್ಷಿ ಯಾವಾಗಿನಿಂದ ಇದ್ದಾರೆ ಎನ್ನುವುದು ಗೊತ್ತಿಲ್ಲ ಆದರೆ ನಾನು ನೋಡಿದ್ದಾಗಿನಿಂದ ಇರುತ್ತಾರೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ದಾವಾ ಸೂತ್ತಿನಲ್ಲಿ ಒಂದು ಹಳೆಯ ಹಂಚಿನ ಮನೆ ಇದೆ ಎನ್ನುವುದು ನಿಜ...”

14. Being further aggrieved by the same, legal representatives of the original defendant has filed the present appeal on following grounds:

- *The suit filed by the Plaintiffs for specific performance of the Agreement of Sale dated 15.06.1984 with respect to the suit Schedule Properties is not maintainable under law. The contention of the Plaintiffs in the suit before the Trial Court is that they have paid the consideration amount in part to the extent of Rs. 26,750/- to the Defendant and that the Defendant has endorsed on the Agreement of Sale to execute the agreement after obtaining the necessary permissions from the Government in respect of the Nazarana. That, as the Government has removed all such restrictions, the Defendant no longer has any impediment to execute the Agreement of Sale, that the Plaintiffs are ready and willing to pay the balance amount of consideration of Rs. 7,250/- to the Defendant and thereafter have the Agreement of Sale dated 15.06.1984 executed in their favour.*



- *However, the Defendant has brought to the attention of the Trial Court below that the Defendant is incapable of executing the Agreement of Sale dated 15.06.1984 as the said Agreement of Sale has to fail on several counts.*
- *Firstly, the Defendant who was formerly a revenue official had to move across several places in Karnataka for serving in his position. At that time, since the Plaintiffs were cultivating his wetlands, he voluntarily declared Late B.M. Lingappaiah as his tenant with respect to a portion of the wetlands and at that time the Plaintiffs were nowhere in the picture. However, Late B.M. Lingappaiah started to pester the Defendant to sell the lands including the ancestral house that belonged to the Defendant. Out of love and affection, the Defendant agreed to sell the portion of wetlands situated in the Schedule Properties including the house for consideration of Rs. 34,000/- which was to be paid in four equal instalments of Rs. 7,250/- p.a. along with interest to be paid before 31.05.1988. However, neither the Plaintiffs nor Late B.M. Lingappaiah were able to perform their part of the contract within the stipulated time period i.e., before 31.05.1988.*
- *Further, there was also an oral agreement entered into between the Plaintiff's father Late B.M. Lingappaiah and the Defendant that they shall deliver one cartload of B.K.B variety of paddy every year till the final transaction to the Defendant. This was only to*



compensate the Defendant because of the extended period of time for the conclusion of the transaction. Late B.M. Lingappaiah delivered the two cartloads of paddy for two consecutive years in 1985 and 1986. Thereafter they failed to deliver the paddy despite repeated requests. The Plaintiffs have failed to perform at their end terms of a time bound contract and therefore are not entitled to the relief of specific performance. The said contention was not appreciated by the Trial Court. The Trial Court failed to take note of the fact that time was the essence of the contract. The First Appellate Court also failed to appreciate the ground stated supra.

➤ *The Defendant further raised a contention before the Trial Court with respect to their incapacity to execute the said agreement as the Schedule Properties had already been vested with the State Government by virtue of Section 3(1)(e) and Section 4 of the Karnataka Certain Inams Abolition Act, 1977. The relevant extracts of the Karnataka Certain Inams Abolition Act, 1977 are reproduced below:*

➤ *Definitions.- (1) In this Act, unless the context otherwise requires,-*

(e) "inam" includes an inam village and a minor inam, a jagir, whether personal, religious, charitable or otherwise;



- *Abolition, vesting of inams and the consequences thereof.- (1) Notwithstanding anything contained in any contract, grant or other instrument or in any decree or order of court or in any other law for the time being in force, with effect from and on the appointed date, the inam tenure of all inams and minor inams to which this Act applies under section 2 shall stand abolished.*

(2) Save as otherwise expressly provided in this Act with effect from and on the appointed date, the following consequences shall ensue, namely:-

- *the provisions of the Act relating to inams of alienated holding shall be deemed to have been repealed in their application to inam or alienated holding and the provisions of the Act and all other enactments applicable to unalienated villages or lands shall apply to the said inams or alienated holding;*
- *all rights, title and interest vesting in the inamdar including those in all communal lands, cultivated lands, uncultivated lands, whether assessed or not, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries, and ferries shall cease and be vested absolutely in the State Government, free from all encumbrances;*



- *the inamdar shall cease to have any interest in the inam other than interests expressly saved by or under the provisions of this Act;*
- *all land revenue including the cesses and royalties accruing in respect of lands comprised in such inam villages or minor inams on or after the date of vesting shall be paid to the State Government and not to the inamdar and any payment made in contravention of this clause shall not be valid;*
- *all arrears of land revenue, whether as jodi or quit rent and cesses remaining lawfully due on the date of vesting in respect of any such inam village or minor inam shall, after such date continue to be recovered from the inamdar by whom they were payable and may, without prejudice to any other mode of recovery, be realised by the deduction of the amount of such arrears and cesses from the amount payable to such inamdar under this Act;*
- *no such inam shall be liable to attachment in execution of any decree or other process of any court and any attachment existing, on the date of vesting or any other order for attachment passed before such date in respect of such inam village or minor inam shall cease to be in force;*



- *the State Government may, after removing any obstruction that may be offered, forthwith take possession of the inam and all accounts, registers, pattas, muchalikas, maps, plans and other documents relating to the inam which the State Government may require for the administration thereof;*
- *the inamdar whose rights have vested in the State Government under clause (b) shall be entitled only to such amount from the State Government as provided in this Act;*
- *the relationship of a superior holder and inferior holder shall, as between the inamdar and the holder of a minor inam, be extinguished ;*
- *the tenants in the inam and persons holding under them and holders of minor inams shall, as against the State Government, be entitled only to such rights and privileges and be subject to such conditions as are provided for by or under the Karnataka Land Reforms Act, 1961 and any other rights and privileges which may have accrued to them in the inam before the date of vesting against the inamdar shall cease and determine and shall not be enforceable against the State Government or such inamdar.*

(3) Nothing contained in sub-section (1) or sub-section (2) shall operate as a bar to the recovery by the



inamdar of any sum which becomes due to him before the date of vesting by virtue of his rights as inamdar and any such sum may be recovered by him by any process of law which, but for this Act, would be available to him.

- *It is clear from the provisions extracted supra that the examination into the contentions raised by the Defendant went beyond the purview of the and jurisdiction of the civil court. The learned Trial Court Judge while perusing the case of both the parties has at Para 23 of the Judgment and Decree dated 21.10.2014, recorded a clear finding regarding jurisdiction and has held that the court is having the jurisdiction to peruse and examine the question as to whether the said transaction / agreement between the parties was in contravention of the provisions of the Inams Abolition Act. Having so declared, the question of deciding the merits of the matter could not arise.*

- *The question of specific performance of the Agreement of Sale would only arise for determination when both the parties have the ability to perform their part of the contract. However, when the Defendant has clearly contended his incapacity to execute the agreement owing to lapse of time as well as the same attracting the provisions under Section 23 of the Indian Contract Act, 1872 in light of the Schedule Properties coming under the purview of Section 3(1)(e) of the Act of 1977, the learned Trial Court Judge ought to have*



taken into account this material contention raised by the Defendant. The relevant provision under the Indian Contract Act, 1872 is reproduced below for the reference of this Hon'ble Court:

- *What considerations and objects are lawful, and what not.-The consideration or object of an agreement is lawful, unless- it is forbidden by law⁴; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.*
- *The impugned orders which did not consider this vital question of law is liable to be set aside.*
- *The learned Trial Court despite being made aware of the settled legal position with respect to the Schedule Properties in light of the Inams Abolition laws in the State of Karnataka, despite being aware of its lack of jurisdiction to entertain a dispute in relation to the Inams Abolition laws has failed to take note of the same and has erred grossly by deciding the dispute on merits, restricting its scope only to the extent of specific performance of the contract, wholly basing its decision on the averments made by the Plaintiffs. The*



impugned orders are not sustainable in law and liable to be set aside.

- *It is respectfully submitted that, when the fundamental argument put forth by the Defendant is regarding the very incapacity to perform the Agreement of Sale dated 11.11.1987 in view of the provisions of the Karnataka Certain Inams Abolition Act, 1977 and the Indian Contract Act, 1872, being attracted in relation to the Schedule Properties, the Trial Court has blatantly ignored the same and has decided the suit in favour of the Plaintiffs despite being aware of its lack of jurisdiction and competence to examine the issue at hand. In such a scenario as put forth by the Defendant, the learned Trial Court Judge ought to have dismissed the suit on this ground alone.*
- *When there is clarity by the Trial Court itself of its lack of jurisdiction to entertain the suit in relation to the Schedule Properties coming within the ambit of the Karnataka Certain Inams Abolition Act, 1977, the learned Trial Court has gone on to ignore the same and decide the dispute by arbitrarily initiating an enquiry into the same through reference made to the Tahsildar.*
- *A bare reading of the entire Judgment dated 21.10.2014 clearly shows that there is nowhere a whisper by the learned Trial Court of the basis for initiating an enquiry in relation to the Schedule Properties by referring the same to the Tahsildar. The*



learned Trial Court does not provide for any reasoning or background as to what persuaded the Hon'ble Court to refer the matter for an enquiry report by the Tahsildar. There is no clarity as to the jurisdiction and competence of the Tahsildar to initiate an enquiry into the Schedule Properties.

- *The question before the Trial Court as put forth by the Defendants had nothing to do with tenancy rights but rather was regarding the ambit of Inams Abolition laws over the suit Schedule Properties. However, the Trial Court failed to consider the contradiction between the two and considered the report by the Tahsildar whose opinion was confined to the aspects regarding the tenancy rights over the Schedule Properties which has no bearing on the issue at hand.*

- *Further, the learned Trial Court Judge, in the entire judgment, has only relied upon one specific paragraph of the Tahsildar report and has arbitrarily decided the dispute in favour of the Plaintiffs. When the Plaintiffs have admitted to having filed an application for grant of tenancy rights under the Inams Abolition Act, the question of initiating an enquiry through reference to the Tahsildar does not arise. However, for reasons best known to the learned Trial Court Judge, the court has ordered for the report of the Tahsildar without recording the reasons for the same. The report dated 15.07.2011 submitted by the Tahsildar is nowhere been brought on record nor has been marked as an exhibit*



by the Trial Court Judge thereby clouding the veracity of the Tahsildar report. When the report was not part of the record, the question of considering the same or basing the judgment on the same did not arise. The impugned orders are wholly opposed to law and liable to be set aside.

- *Without any basis for initiating an enquiry, without providing the reason for reference of the matter to the local Tahsildar, the learned Trial Court Judge has grossly erred in exercising its jurisdiction in deciding the dispute at hand by relying entirely on the report and arriving at a conclusion that has greatly affected the rights of the Defendant.*
- *It is respectfully submitted that, the learned Trial Court Judge has failed to take into account the visibly evident contradiction present in the averments made by the Plaintiffs and the contents of the Tahsildar report.*
- *It is an admitted fact by the Plaintiffs that they have filed applications (Form No. 1) under Section 4 of the Karnataka Certain Inams Abolition Act, 1977 for registration / declaration of occupancy / tenancy rights with respect to the Schedule Properties before the Land Tribunal. The said applications have also been marked as exhibits before the Trial Court by the Plaintiffs. During the pendency of the dispute before the Trial Court, it was the contention of the Plaintiffs that the said applications were pending adjudication before the*



Land Tribunal. In view of the admitted position, the suit was liable to be dismissed.

- *While this being the fact, the Trial Court has taken the extract from the report dated 15.07.2011 submitted by the Tahsildar, which clearly mentions that there is no application pending in respect of the suit Schedule Properties under Inams Abolition Act and further that the applications filed by the Plaintiffs does not come within the purview of the Land Tribunal. The finding is contrary to admitted factual position emerging from the pleading of parties. The order impugned ignores admissions which is the best evidence. Such ignoring of vital evidence vitiates the orders and hence liable to be set aside.*

- *There can be two inferences drawn from the above. Firstly, that there is lack of clarity with respect to the jurisdiction and competence of the Tahsildar in examining into the purview of Inams Abolition laws in relation to the Schedule Properties and submitting a report to that effect and secondly, there is lack of clarity with respect to the jurisdiction of the Land Tribunal as well as the Trial Court in entertaining a dispute that clearly stands on the question of the ambit of the Inams Abolition laws in the State of Karnataka and the scope and jurisdiction of the Trial Court and the Land Tribunal in relation to the same.*



- *When there is contradiction and ambiguity about the jurisdiction of the Trial Court having regard to the nature of the property, the learned Trial Court Judge ought to have dismissed the suit.*

- *The Trial Court has relied upon a judgment in Manasa Housing Co-operative Society Ltd. v. Marikallappa AIR 2006 Kar 273, wherein the dispute was with regard to the provisions of the Land Reforms Act and the maintainability of the suit of specific performance. The said judgment holds that Section 79B, 82 and 83 of the Land Reforms Act does not create any bar on the Civil Court to decide as to whether the Plaintiff is entitled for a decree of specific performance. The question in the instant case is with regard to Inams Abolition laws and not the aforementioned provisions of the Land Reforms Act, however, the Trial Court has wrongly interpreted the judgment and applied the same to the case at hand and gone ahead to decide the dispute illegally in favour of the Plaintiffs.*

- *It is further relevant to point out that both before the Trial Court and at the First Appellate Court, the raised the contention about inconsistencies present in the pleadings submitted by the Plaintiffs, the Agreement of Sale dated 15.06.1984 (Ex. P-1) and the legal notice dated 05.11.1994 (Ex. P-2) issued by the Plaintiffs to the Defendant in relation to the boundaries of the suit Schedule Properties. It has been held in a catena of decisions that when the location and identity of the*



Schedule Property is doubtful, relief of injunction cannot be granted. Therefore, the Trial Court and the First Appellate Court could not and ought not to have granted the relief of permanent injunction in favour of the Plaintiffs. The impugned Judgment and Decree passed by the Trial Court and the First Appellate Court are liable to be interfered with on this ground as well.

- *From the above, it is clear that there is stark contradiction between the Plaintiffs' averments, clear inconsistency in relation to the boundaries of the Schedule Properties, there is a glaring question of jurisdiction of the Trial Court to entertain the suit, there is evident ambiguity of the purview and scope of jurisdiction of the Trial Court and the Land Tribunal, there is a clear question of competence and jurisdiction of the Tahsildar to enquire into the dispute and produce a report to that effect on the Schedule Properties, the settled position of law with respect to time being of essence in a contract and inams lands falling within the ambit of Section 23 of the Indian Contract Act, 1872 have not been taken into account. Ignoring all such patent errors of law made by the learned Trial Court, the First Appellate Court has upheld the Judgment and Decree dated 21.10.2014 passed by the learned Trial Court and thereby severely affected the rights and interests of the Defendant.*

- *When the suit Schedule Properties no longer vests with the Defendant for the reasons stated supra, when the*



Plaintiffs have failed to perform their part of the contract in a time bound manner, the question of execution of the Agreement of Sale dated 11.11.1987 does not arise at all. The impugned Judgment and Decree passed by the learned Trial Court dated 21.10.2014 and the impugned Judgment and Decree passed by the learned First Appellate Court dated 07.12.2021 has failed to take note of all the aforementioned material irregularities and has grossly erred in deciding the dispute in favour of the Plaintiffs thereby causing grave injury and loss to the Defendant.

- *The findings recorded by the Trial Court and the First Appellate Court are contrary to the settled position of law and are based on impermissible surmises. Even otherwise the impugned judgments suffer from several infirmities and has been passed without considering the contentions raised by the Defendant. Hence, the impugned Judgment and Decree passed by the Trial Court dated 21.10.2014 and the impugned Judgment and Decree passed by the First Appellate Court dated 07.12.2021 in R.A. No. 29/2014 are liable to be set aside and the suit is liable to be dismissed.”*

15. Sri.S.Sriranga, Learned Senior Counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that decreeing of the suit of the plaintiffs by both the Courts is incorrect and even assuming



that appeal is dismissed, decree is incapable of specific enforcement having regard to the fact that the lands are inam lands and application filed by the original defendant is still pending in the proceedings of Inam Abolition Act and sought for admitting the appeal on following substantial questions of law:

- i. "Whether the suit is maintainable in view of the provisions of Section 4 of the Karnataka Certain Inam Abolitions Act, 1977 read with Section 23 of the Indian Contract Act, 1872?*
- ii. Whether the Trial Court can entertain the suit in question when admittedly the Trial Court has no jurisdiction to decide issues with respect to questions arising under Inam Abolition laws?*
- iii. Whether the Trial Court has any jurisdiction to refer the dispute to the Land Tribunal and direct the Tahsildar for submission of a report with respect to the suit Schedule Properties?*
- iv. pWhether the report of the Tahsildar can be relied upon when admittedly the Court has jurisdiction to entertain the suit concerned with no Inam Abolition laws?*
- v. Whether the report of the Tahsildar has any evidentiary value?*



- vi. Whether the Courts can grant the relief of permanent injunction and specific performance when the boundaries of the Schedule Properties mentioned in the Plaint is at variance with the boundaries mentioned in the title document and other records?*
- vii. Whether, on pleadings and evidence placed on record by the parties, the Trial Court and the First Appellate Court were right in holding that the Plaintiffs-Respondents have proved their contentions with respect to the suit Schedule Properties?*
- viii. Whether the Judgment and Decree of the Trial Court and the First Appellate Court suffers from material irregularity on account of the failure of both the courts in appreciating the established principles of law, oral and documentary evidence on record?"*

16. Per contra, Sri.Vijay Kumar, learned counsel appearing for Sri.S.R.Sreeprasad, learned counsel for the respondents supports the impugned judgments.

17. He would contend that question of lands being inam lands and permission under the Inam Abolition Act is necessary for concluding the sale transaction is answered by both the



Courts properly by taking into consideration the report filed by the Tahsildar, Virajpet.

18. He would further emphasize that the report was filed into the Court on 15.07.2011 and there was ample time for the parties to question the report as the suit came to be disposed of on 21.10.2014. In the absence of any effort made by the defendant to question the report or to place any material on record to show that the permission under the Inam Abolition Act was necessary for conclusion of the sale transaction, the present appeal by the legal representatives of the deceased original defendant cannot be admitted on the aforesaid substantial questions of law and sought for dismissal of the appeal.

19. Having heard the arguments of both sides, this Court perused the material on record meticulously.

20. On such perusal of the material on record, admittedly, there was a registered agreement entered into by the original defendant with the father of plaintiffs.



21. In the reply notice, there is no denial to the suit agreement but all that the defendant has pleaded is he must put be given six cart loads of paddy and he would be ready to execute the sale deed.

22. Admittedly, by then, Lingappaiah was no more. In order to find out whether the claim made by the defendant that the plaintiffs were required to be give six cart loads of paddy to the defendant, this Court bestowed its attention to contents of Ex.P.1 – sale agreement. In the said agreement, no such condition is forthcoming.

23. In other words, at the time of issuing of reply, defendant did not raise the objection of execution of the sale deed for want of necessary permission. All that the defendant wanted was demand of six cart loads of paddy. But in the written statement, defendant denies the very suit agreement itself.

24. Having received the sale consideration, there is an endorsement found in Ex.P.1 which is not denied by the defendant. Conveniently, defendant did not enter the box and sent his Power of Attorney who is examined as D.W.1 who did



not have the personal knowledge with regard to endorsement made by the original defendant.

25. Further, the question of taking permission was subject matter which was considered by the learned Trial Judge and in that regard; report was called for from the Tahsildar, Virajpet to find out whether such permission was necessary.

26. There was also a suggestion made to P.W.1 that father of the plaintiffs had been declared as tenant. In that regard also, report was called for by the learned Trial Judge to find out if he is already declared as tenant and whether the suit would continue.

27. Report of the Tahsildar, Virajpet was placed on record on 15.07.2011. In the said report, it is crystal clear that there is no order passed by the Land Tribunal with regard to granting of tenancy rights to the father of the plaintiffs namely Lingappaiah.

28. Likewise, referring to the circular issued by the Deputy Commissioner, there is a clear report filed by the Tahsildar, Virajpet that in respect of the lands which are not



belonging to the religious institutions no such permission is necessary to alienate jahageer bane lands.

29. Therefore, contention of the defendant that the contract of agreement to sale is incapable of performance for want of necessary permission is not accepted by the learned Trial Judge and decreed the suit of the plaintiffs.

30. Learned Judge in the First Appellate Court not only accepted the reasons assigned by the learned Trial Judge while passing the judgment but has also supplemented additional reasons as referred to supra in paragraph No.16 with regard to the permission which is the main plank on which the enforcement of agreement to sale is denied and rightly dismissed the appeal filed by legal representatives of defendant.

31. In the absence of any contra evidence placed on record, nor pleading any hardship, only on the technical ground, the enforcement of the sale agreement was denied all along by defendant. When defendant failed to establish his case that there was no sale agreement at all, decreeing the suit is just and proper.



32. Thus, on the factual aspects and legal aspects, both the Courts have rightly taken into consideration the rival contentions of the parties and categorically held that plaintiffs are entitled for enforcement of agreement of sale.

33. Thus, from the above discussion, this Court does not find any merit in any one of the substantial questions of law referred to supra.

34. Hence, following:

ORDER

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

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

KAV
List No.: 1 Sl No.: 82