



CNR: KAHC010546152017

NC: 2026:KHC:42094
RSA No. 708 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.708 OF 2017 (SP)

BETWEEN:

SHRI SRINIVASA MURTHY
S/O VENKATARAYAPPA
AGED ABOUT 59 YEARS
RESIDING AT KALAVARA VILLAGE
KASABA HOBLI-562 101
CHICKBALLAPUR TALUK
CHICKBALLAPUR DIST.

...APPELLANT

(BY SRI ADITYA BHAT FOR SRI G S BHAT, ADVOCATES)

AND:

1. SHRI VENKATESHWARA PRASAD
S/O KRISHNAPPA
AGED ABOUT 54 YEARS
R/A DOOR NO.36
NEHRU CIRCLE
SESHADRIPURAM
BANGALORE-560 020

2. SHRI K M BYRAPPA
S/O MUNISWAMAPPA
SINCE DEAD REPRESENTED BY
LEGAL REPRESENTATIVES

2(a) K.B.MUNISHAMI REDDY
AGED ABOUT 63 YEARS
S/O LATE K.M.BYRAPPA

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



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2(b) K.B.ANANDA REDDY
AGED ABOUT 61 YEARS
S/O LATE K.M.BYRAPPA

2(c) K.B.CHANDRASHEKAR
AGED ABOUT 59 YEARS
S/O LATE K.M.BYRAPPA

(a), (b) AND (c) ARE RESIDING AT
KALAVARA VILLAGE
KASABA HOBLI
CHIKKABALLAPURA -562 101

2(d) K.B.RAJESHWARI
AGED ABOUT 56 YEARS
D/O LATE K.M.BYRAPPA
RESIDING AT MALLURU VILLAGE
SHIDLUGATTA HOBLI
CHIKKABALLAPURA – 562 101

2(e) K.B.BHARATH
AGED ABOUT 54 YEARS
D/O LATE K.M.BYRAPPA
RESIDING AT GANTAGANAHALLI
DODDABALLAPURA TALUK
BANGALORE RURAL DISTRICT.

2(f) K.B.RAMESH
AGED ABOUT 52 YEARS
S/O LATE K.M.BYRAPPA
RESIDING AT H.A.L WORKERS QUARTERS
BANGALORE.

2(g) K.B.PREMA
AGED ABOUT 50 YEARS
D/O LATE K.B.BYRAPPA
RESIDING AT DINNUR
KALAVARA POST
CHIKKABALLAPURA



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2(h) K.B.LAKSHMANNA REDDY
AGED ABOUT 46 YEARS
S/O LATE K.M.BYRAPPA
RESIDING AT KALAVARA
KALAVARA POST
CHIKKABALLAPURA

2(i) K.B.GEETA
AGED ABOUT 42 YEARS
D/O LATE K.M.BYRAPPA
RESIDING AT PARAMANAHALLI VILLAGE
HOSAKOTE TALUK
BANGALORE RURAL DISTRICT.

2(j) K.B.KIRAN
AGED ABOUT 40 YEARS
D/O LATE K.M.BYRAPPA
KALAVARA VILLAGE
KASABA HOBLI-562101
CHICKBALLAPUR DISTRICT-562 101

...RESPONDENTS

(BY SRI G.V.SHASHI KUMAR FOR SRI M.K.SHIVARAM,
ADVOCATE FOR R2(a) to (j);

R1 -APPEAL DISMISSED)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE AGAINST THE JUDGMENT & DECREE DATED
22.02.2017 PASSED IN R.A.NO.42/2015 ON THE FILE OF THE
ADDL. SENIOR CIVIL JUDGE & JMFC., CHICKBALLAPUR.,
ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT
AND DECREE DATED 17.01.2015 PASSED IN O.S.NO.209/2015
ON THE FILE OF THE I ADDL. CIVIL JUDGE AT
CHIKKABALLPUR.

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



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CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Second defendant is the appellant challenging the judgment passed in R.A No.42/2015 dated 22.02.2017 by the Additional Senior Civil Judge and JMFC, Chikkaballapura, decreeing the suit of the plaintiff by reversing the judgment and decree passed in O.S No.209/1995 dated 17.01.2015 on the file of the I Additional Civil Judge, Chikkaballapura.

2. Appeal got dismissed as against respondent No.1 vide Order dated 25.06.2026.

3. Parties are referred to as plaintiff and defendants as per their original ranking before the Trial Court, for the sake of convenience.

4. Facts in the nutshell which are utmost necessary for disposal of the present Second Appeal are as under:

4.1 A suit in OS No. 209 of 1995 for specific enforcement of the contract dated 03.12.1993 came to be filed in respect of the following property by the respondent No.2/plaintiff:



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"Sy.No.155, measuring 1-14 guntas, situated at Kalavara village, Kasaba Hobli, Chickballapura Taluk, which is bounded as under:

East by: Defendant's land (Sy.No.156/2 which is in possession of the plaintiff on the strength of another agreement),

West by: Halla,

North by: K.Venkataramaiah's land now purchased by Lakshminarayana Reddy and,

South by: Defendant's land (Sy.No.156/1 which is in possession of the plaintiff on the strength of another agreement.)

4.2 Plaintiff contended that he is in possession and enjoyment of the suit property pursuant to the agreement to sell executed by Smt.Sarojamma, who is the mother of first defendant on 03.12.1993 for a valuable sale consideration of Rs.25,000/-.

4.3 Plaintiff further contended that sum of Rs.24,000/- was paid towards the sale consideration and balance amount Rs.1,000/- was agreed to be paid at the time of registration.



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4.4 When the matter stood thus, on 29.06.1994, Sarojamma, who was the original vendor, died leaving behind defendant No.1 as the legal heir, who was also a witness to the agreement to sell.

4.5 It is further contented that demand of the plaintiff to execute the sale deed pursuant to the sale agreement was postponed for one reason or the other by the defendant No.1, though plaintiff was all along ready and willing to perform his portion of the contract. On 19.04.1995, plaintiff received a legal notice sent by the defendants stating that, power of attorney of the first defendant and his deceased mother Sarojamma has been cancelled on 12.01.1992.

4.6 It is also contented by the plaintiff that such a notice was issued only to avoid execution of the sale deed. It is further contented by the plaintiff that there was a suit earlier filed in O.S No.281/1989 by the second defendant-Srinivasa Murthy for the relief of partition and separate possession against his father Venkatarayappa, Sarojamma, first defendant and one Venkatesh Prasad, who are the vendors of plaintiff.



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4.7 Venkatarayappa, father of second defendant also filed suit in O.S.No.385/1989 for partition and separate possession against his son who is defendant No.2, first defendant and Sarojamma who is the mother of first defendant.

4.8 It is further contented that until the said suit is disposed, the sale could not be concluded. Therefore plaintiff waited for conclusion of the proceedings.

4.9 It is further contented by the plaintiff that, O.S No.7/1995 and O.S No.96/1996, were filed for bare junction and same stood withdrawn.

4.10 Plaintiff further contended that, father of the second defendant had relinquished his rights in respect of suit property through a release deed which has been placed on record in O.S No.15/1995. As such, registered document said to have been executed in favour of defendant No.2 by defendant No.1 on 07.09.1995 did not convey any right, title or interest in respect of the suit property and sought for specific enforcement of the agreement to sell.



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5. Pursuant to the suit summons, defendants entered appearance through their advocate and filed their respective written statement.

6. Sri Venkateshwara Prasad being the first defendant, in his written statement, contended that there is no agreement at all executed by his mother-Sarojamma. He admitted that on 29.06.1994 his mother Sarojamma died leaving behind defendant No.1 as her legal representative.

7. He also admits the issuance of notice to the plaintiff on 15.04.1995 and other averments in regard to the same. It is the contention of the defendant No.1 that his mother had executed a Will on 10.06.1994 bequeathing the land in Sy.No.156/1 and 156/2 equally in favour of defendant No. 1 and defendant No.2-Sri. K.V.Srinivasa Murthy who is none other than their close relative.

8. In the agreement to sell dated 24.09.1994 defendant No.1 had agreed to give his share in the plaint schedule property and other lands in Sy.Nos.156/1 and 156/2 in favour



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of said Srinivasa Murthy for a valuable consideration of Rs.1,00,000/- and executed an agreement.

9. First defendant further contended that he received amount in a sum of Rs.80,000/- as on the date of said agreement dated 24.09.1994 and balance amount is Rs.20,000/- by way of a cheque. Therefore, it is the second defendant who is the owner of the property.

10. He also contended that G.Venkatarayappa who is the father of defendant No.1-K.V.Srinivasa Murthy has been in possession and enjoyment of the land possessed by the defendant No.1. There was a registered partition deed dated 07.09.1995 executed by first defendant relinquishing all his rights in favour of second defendant.

11. First defendant also contended that by virtue of the plaintiff's position as a power of attorney holder of Sarojamma, owing to her helplessness on account of her falling ill, plaintiff influenced her and got managed to secure all the original title deeds in respect of the suit property from Sarojamma and therefore sought for dismissal of the suit.



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12. Defendant No.2 filed separate written statement contending that cause of action to the suit is imaginary. He further contended that after the death of the father of first defendant, plaintiff instigated Sarojamma to deny the claim of the second defendant and his father in the lands possessed by Krishnappa and Venkatarayappa.

13. It is also contended that after the death of Sarojamma, *lis* between them stood compromised and first defendant executed an agreement to sell on 24.10.1994 in respect of the suit property. Later on, defendant No.1 executed a regular sale deed in his favour on 07.09.1995. Therefore, defendant No.2 maintained that he is the purchaser of the suit property and sought for dismissal of the suit.

14. Based on the rival contentions of the parties, learned Trial Judge raised necessary issues and additional issues and after recording the evidence of the parties, dismissed the suit of the plaintiff.



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15. Being aggrieved by the same, plaintiff filed an appeal in R.A. No.42/2015.

16. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material on record, allowed the appeal and decreed the suit of the plaintiff *inter alia* holding in paragraphs 18 to 23 as under:

"18. The next reasoning given by the lower court to answer issue No.1 in the negative is that the plaintiff has failed to prove that the defendant No.1 was aware of the execution of agreement dated 03.12.1993 in favour of the present plaintiff. The lower court has observed that the plaintiff has not proved that the defendant No.1 was aware of the execution of agreement. On the other hand it is the specific contention of the plaintiff that defendant No.1 is also a signatory to Ex.P.1. In Ex.P.1 there is signature of defendant No.1. Further from the comparison of the signature found in Ex.P.1 with that of Ex.P.29 and Ex.D.20 which is an admitted document the court can safely come to the conclusion that the plaintiff has proved the signature found in Ex.P.1 as that of the defendant No.1. Infact except a bare denial of all the plaint averments, the defendant No.1 has not specifically denied that he has not signed Ex.P.1. Infact he has not entered the witness box also. From this conduct of



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defendant No.1 the lower court should have drawn adverse inference against the defendant No.1 under Sec.114(g) of Indian Evidence Act. On the other hand the lower court has answered issue No.1 in the negative on the said ground also stating that the burden was on the plaintiff. This reasoning is also to be held erroneous and not based on the settled principle of law.

19. Further the lower court has vehemently relied upon the judgment in O.S.No.15/1995. As observed in the para 24 of the impugned judgment the plaint schedule properties in O.S.15/1995 were Sy.No.156/1 and Sy.No.156/2. The present plaint schedule property is Sy.No.155. The agreement in question in the said suit was dated 30.12.1994. The agreement in this case is dated 03.12.1993. Therefore the subject matter of the suit was different, the matter in issue was different and therefore the observations made in the judgment in O.S.15/1995 cannot be held to have any bearing on the adjudication of the matter in issue in the present case. Merely because in the said suit the said court had observed that an adverse inference has to be drawn against the scribe B. R. Gopal Rao, in this case the said observation cannot be considered to come to the conclusion that the present Ex.P.1 has not been proved. The impugned judgment and observations in impugned judgment solely based on the observations made in the judgment in is to be held not in accordance with law and calls for interference.



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20. The defendants have contended that taking undue advantage of the confidence reposed by Sarojamma with him, the plaintiff has managed to secure the original documents and promote the false claim. Infact the trial court has unnecessarily framed additional issue No.4 in this regard. The custody of original documents is one of the piece of evidences to prove the pleadings and that cannot be considered as a basis to frame an issue. An issue is to be framed based on pleadings which are material to decide the claim of the plaintiff. Each and every sentence urged in the plaint and denied in the written statement cannot be considered as a base for framing issues. The custody of original documents is one of the circumstances which may corroborate the case of the plaintiff regarding execution of agreement of sale. Therefore the burden shifts on the defendants to prove that it was an illegal custody. However, except a defence taken in the written statement no evidence has been adduced. It is the argument of the defendant and also the observation of the lower court that by taking undue advantage of general power of attorney executed by plaintiff, he has managed to promote his false claim. The proper person to speak about this is defendant No.1. But the defendant No.1 has not entered the witness box. Therefore the material evidence in this regard has been withheld by the defendants from which the court has to draw an adverse inference under Sec.114(g) of the Evidence Act not against the plaintiff, but against the defendant No.1. Therefore the lower court has not



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properly appreciated the oral and documentary evidence alongwith pleadings in the light of Sec.101 to 104 of the Evidence Act which has resulted in an erroneous decision.

21. The lower court has been carried away with the arguments of the defendants with regard to the proceedings in O.S.385/1989, O.S.281/1989 and O.S.15/1995. As regards O.S.15/1995 as already discussed above, the said judgment neither operates as resjudicata nor would have bearing upon the present case. As regards O.S.385/1989, it is seen that admittedly the said suit was filed by the father of present defendant No.2 against the mother of defendant No.1, the present defendant No.2, the and present defendant No.1. It is seen that the said suit was filed for the relief of declaration that the release deed dated 06.01.1971 is not binding upon the plaintiff and it is void and illegal. Further a relief of partition in all the plaint schedule properties which includes the present plaint schedule property has been filed. Further it is seen that as per Ex.P.40 the said suit has been got dismissed by the LRs of plaintiff as settled out of court on 19.10.1995, that is, subsequent to filing of this suit and after the death of K. H. Sarojamma."

22. As regards O.S.281/1989, it is seen that the said suit was filed by the present defendant No.2 against his father, the present defendant No.1, the mother of defendant No.1 and his sisters for partition and separate possession. As per Ex.P.46 the present defendant No.1



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and his mother have filed written statement contesting the matter on 09.02.1989. It is further seen that as per Ex.P.47 on 04.11.1995, that is, after the filing of the present suit the plaintiff, that is, the present defendant No.2 has got dismissed the suit stating that in view of the execution of registered sale deed dated 07.09.1995 he does not press the suit. Further as per Ex.P.45, it is seen that the present plaint schedule property was not only the property involved in the said suit, but three other properties were also included. But R.A.42/201523 deed dated 07.09.1995 which has been marked as Ex.D.4 relates to Sy.Nos.155, 156/1 and 156/2. The fourth item in plaint schedule in O.S.281/2009 is not the subject matter of Ex.D.4. Though the said document is named as partition deed, it is stated that the second party, that is, the present defendant No.1 has relinquished all his rights in favour of the first party, that is, the present defendant No.2 for a consideration of Rs.1,00,000/-. Therefore the trial court should have raised suspicion with regard to the above proceedings interse between the defendants No.1 and 2 in O.S.385/1989, O.S.281/1989 and Ex.D4. On the other hand it has doubted the claim of the plaintiff itself when he has discharged his initial burden of proving Ex.P.1 as discussed above.

23. From the conduct of the present defendants No.1 and 2 in the proceedings in O.S.385/1989 and O.S.281/1989 as discussed above it can be gathered that the defendants No.1 and 2 have colluded and as a



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result the document dated 07.09.1995 has come into existence. As stated above Ex.D.4 is styled as a partition deed. However in the recitals it has been stated that the present defendant No.1 has relinquished his rights over the properties by taking an amount of Rs.1,00,000/-. It is important to note that the subject matter of the said document is not only Sy.No.155 measuring one acre 14 guntas, but also Sy.No.156/1 measuring one acre 18 guntas and Sy.No.156/2 measuring 2 acres 24 guntas. All the above three properties have been given to the defendant No.2 for a consideration of Rs.1,00,000/-. But it is seen that even according to the judgment in O.S.15/1995 the agreement dated 30.12.1994 with respect to Sy.No.156/1 and 156/2 was for a consideration of Rs.1,20,000/-. Further in the said judgment issue No.1 regarding the execution of agreement has been answered in the affirmative. This itself creates doubt about the genuineness of Ex.D.4. From the above conduct of the defendants No.1 and 2 in the earlier proceedings as discussed above it becomes clear that it was not only the defendant No.1 who knew about the execution of Ex.P.1 and was a party to the said transaction, but the defendant No.2 also had the knowledge about the execution of Ex.P.1. Under Sec.19 of the Specific Relief Act specific performance of a contract may be enforced against either party and also against any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. In the



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case on hand the defendant No.2 cannot be considered as a transferee for value and also as a transferee who has paid his money in good faith. The defendant No.2 cannot also be considered as a transferee without notice of original contract. Therefore the defendant No.2 is bound by the decree passed in this case and is liable to execute sale deed as per the agreement of sale dated 03.12.1993. Hence from the above discussion it becomes very clear that the reasoning and the findings given by the lower court is contrary to the facts and circumstances of the case and the settled prepositions of law and it needs interference. Accordingly, I answer points No.1 to 3 in the Affirmative."

17. Being aggrieved by the decreeing of the suit and reversing the judgment of the Trial Court, it is the second defendant who has filed the present Second Appeal on the following grounds and substantial questions of law:

- *"The 1st Appellate Court committed a serious error of law in applying Section 14 of Hindu Succession Act 1956 holding that the suit schedule property is the absolute property of late Smt. KH Sarojamma. It is submitted that the suit schedule property was jointly purchased by Shri Krishnappa and his wife Smt. K H Sarojamma. The finding of the Lower Appellate Court at Para 17 is wholly wrong and opposed to the facts. The Sale Deed dated 11.07.1963 shows that the property was purchased by Shri. Krishnappa and his wife Smt. K H Sarojamma*



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which is marked as EXHIBIT-P2. The recitals of Exhibit P2 shows that it is purchased jointly by them. Therefore Section 14 of Hindu Succession Act is not applicable and the finding recorded being erroneous the judgment and decree impugned is liable to be set-aside.

- *The Lower Appellate Court committed a serious error of law in holding that the signature on Exhibit P1 and Exhibit P29 are by the same person and it is signed by the Defendant No.1. The said findings recorded is apparently and manifestly wrong because Exhibit P1 was in fact signed by 1st Defendant's mother viz. Smt. K H Sarojamma and not by 1st Defendant. The Lower Appellate Court holds that the signature on Exhibit P1 and Exhibit P29 is by Defendant No.1 and therefore the court below holds that the signature is genuine. The said finding being factually incorrect. Therefore the judgment and decree passed by the Lower Appellate Court is liable to be set-aside.*
- *Further the Lower Appellate Court holds that as the person who has signed Exhibit P1 has not entered the Witness Box and therefore the Learned Judge holds that adverse interference is to be drawn under Section 114(g) of the Indian Evidence Act against Defendant No.1 which patently erroneous and wrong. Therefore the judgment passed by the Lower Appellate Court is liable to be set-aside.*
- *The Lower Appellate Court hold that as the signature on Exhibit P1 is by Smt. K H Sarojamma, mother of 1st Defendant Shri Venkateshwara Prasad and on the date*



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of filing of the suit said Smt. KH Sarojamma was not alive and dead. The court below fails to take note of this fact and draws adverse against Defendant No.1 which vitiates the judgment of the court below. Therefore the findings recorded in Paragraph 18 of the judgment by the court below is legally untenable and therefore the judgment passed by the Lower Appellate Court is unsustainable and liable to be set-aside.

- *The Lower Appellate Court failed to consider the plaintiff had filed an application under Order 26 Rule 10 of CPC for referring the signature on Exhibit P1 and to compare it with the admitted signature of late Smt. K H Sarojamma. The said application was dismissed by the Trial Court and the order passed by the Trial Court has attained finality as the plaintiff did not challenge the said order. The learned Judge takes upon himself to compare the signature on Exhibit P1 and Exhibit P 29 and records a finding holding that it is by the same person and therefore proceeds to decree the suit. The said finding is not correct in view of concluded proceeding as per Exhibit D1. The Learned Judge failed to obtain the expert evidence and wrongly held that Exhibit P1 and Exhibit P 29 are executed by same person and therefore decreed the suit. The finding recorded by the learned Judge apart being perverse is factually unsustainable as the signature on Exhibit P1 and Exhibit P29 are totally different. The Lower Appellate Court missed this essential question and therefore the judgment passed by the Lower Appellate Court is liable to be set-aside.*



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- *The Lower Appellate Court committed a serious error of law in comparing the signature of Exhibit P1 and P29 and records an erroneous finding at Para 14 of the judgment. The Learned Judge committed a serious error of law in holding the signature on Exhibits P1 and P29 are similar and by the same person. The said finding apart from being opposed to the earlier concluded proceedings is totally wrong as signature is by different persons and such an exercise could not have been undertaken by the Learned Judge and he should have referred the signature to an expert, if he had any doubt about it under Section 73 of Indian Evidence Act. Hon'ble Supreme Court of India and the Hon'ble High Court of Karnataka have ruled in number of cases that the role of court to examine the genuineness of signatures is not proper and correct. The 1st Appellate Court without examining the settled principles of law examined and compared the signature on Exhibits P1 and P 29 which being opposed to law. The judgment and decree of appellate court is liable to be set-aside. The plaintiff earlier filed a suit based on the Exhibit P29 O.S No.15/1995 and same was dismissed by the Court of Senior Civil Judge, Chickballapur holding that the document at Exhibit P29 is a forged document. The said judgment of O.S No.15/1995 is produced and marked as **EXHIBIT-D1**. The 1st Appellate Court without considering the said judgment has reversed the findings of the Trial Court which is opposed to law. Therefore the judgment and decree passed by the court below is liable to be set-aside.*



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- *The 1st Appellate Court committed a serious error of law is not considering the Exhibit D3 Will executed by late Smt. K H Sarojamma dividing the properties into two shares, out of which one share is allotted to Sri Venkateshwara Prasad D1 and another share is allotted to Sri Srinivasamurthy D2. After death of Sarojamma, the said properties are being enjoyed by the respective sharer based on Exhibit D3 Will. After the death of Smt.Sarojamma, the revenue records are changed in favour of respective parties and revenue records stand in the name of the appellant herein from 1995. The plaintiff contending that under Exhibit P1 Smt. Sarojamma has handed over the possession. If possession is handed over under Section 17(1)(a) of Registration Act, Exhibit P1 cannot be considered till he pays duty and penalty. The Trial Court correctly holding that the possession of the land delivered under Exhibit P1 and the said document is compulsorily registrable and therefore the plaintiff is not entitled to relief of specific performance. If the document is not registered, Section 49 of the Registration Act prohibits to receive it in evidence and consider it. The 1st Appellate Court without reading Exhibit P1 and without considering Section 17(1)(a) of the Indian Registration Act has reversed the finding recorded by the Trial Court which is opposed to law. Therefore the judgment and decree passed by the court below is liable to be set-aside.*
- *The 1st Appellate Court committed a serious error of law in not scrutinizing and verifying the signature and the*



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size of the letters on all pages which clearly shows that there is interpolation and manipulation in the document and the same being a serious flaw which vitiates the very document. Therefore the judgment and decree passed by the Lower Appellate is liable to be set-aside.

- *The reasoning and the conclusion arrived at by the Lower Appellate Court para 18 of the Judgement is wholly wrong and a mere look at the signature on Ex. P-1 and Ex.P-29 clearly shows that it is not similar, but manifestly dissimilar and by different persons. The learned Judge could not have arrived at such finding as they are apparently different and distinct. The learned Judge assigns one other reason to hold that they are by the same person as Defendant No. 1 did not enter Witness Box and record his evidence. The learned Judge should have seen that in the written Statement of Defendant No. 1 has denied his signature and a mere look at the signature on Ex.P.-1 and Ex.P.-29 clearly shows they are dissimilar. The Learned Judge could not have undertaken the exercise to examine whether the signatures are similar and if had any doubt he should have referred it to the expert and obtained opinion. Further drawing adverse inference against Defendant No. 1 is also misconceived and wrong. Therefore the judgment and decree passed by the Lower Appellate is liable to be set-aside.*
- *The judgment passed by the Lower Appellate Court is opposed to Order 2 Rule 2 of CPC. At para 19 in the impugned judgment, the appellate court holds that*



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Exhibit D1 judgment in O.S No.15/1995 is in respect of different survey numbers. Therefore the said judgment is not relevant and applicable is a wrong finding. It is submitted that Exhibit P2 to P52 are the very documents produced in the earlier Suit in O.S No.52/1995 and the finding recorded are they are forged and created documents. The court below in O.S 15/1995 holds that the Exhibits P2 to P52 are forged and created documents and dismissed the suit. The said judgment is challenged in RFA No.1149/2005. Before this Hon'ble court which has dismissed the RFA No.1149/2005 on 09.11.2010. The Respondent No.2 herein challenged the judgment in RFA 1149/2005, before the Hon'ble Supreme Court of India in SLP Civil No.7814/2011. The Hon'ble Supreme Court of India by its order dated 04.07.2011 has dismissed the SLP. The lower appellate court without considering all the facts and without noticing that the very documents are not genuine and based on such finding have dismissed the suit for specific performance on same documents reversed the well reasoned judgment of the trial court which is opposed to law and therefore the judgment and decree passed by the Lower Appellate is liable to be set-aside.

- *The Lower Appellate Court committed a serious error of law recording a finding in para No.19 of the impugned judgment that the 2nd Respondent herein had earlier filed a suit in O.S.No.15/1995 for relief of specific performance against the appellant and respondent No.1 The Trial Court in the said case recorded a finding*



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against the plaintiff who is the plaintiff in the present case and Respondent No.2 in this Appeal. The Trial Court after full-fledged trial in O.S No.15/1995 recorded a finding that the plaintiff is in the habit of creating the documents and also signature on the agreement of sale which is forged by the plaintiff in the suit in O.S No.15/1995. In this case also the signature of late Smt.K H Sarojamma is different from the admitted signature of Sarojamma The difference in signature in Exhibit P1 Agreement of Sale and on Exhibit D3 Will executed by Smt. Sarojamma in favour of Appellant and the 1st Respondent herein are different. It is apparent to the naked eye that this vital aspect is not considered by the lower appellate court. Therefore the judgment and decree passed by the Lower Appellate is liable to be set aside.

- *The Lower Appellate Court committed a serious error of law recording a finding in Para 20 of the judgment that the original documents are in custody of the plaintiff therefore late Smt. K H Sarojamma executed the Agreement of Sale and shifted the burden of proof on the defendants to prove illegal custody of the documents in possession of the plaintiff. The Lower Appellate court holds that the defendant No.1 who is the son of Smt. KH Sarojamma has not entered the Witness Box and not spoken about the documents Exhibit P1 and on that ground the Lower Appellate Court has drawn adverse interference under Section 114(g) of Indian Evidence Act. The Trial Court after referring Sections 101 to 104*



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of Indian Evidence Act has recorded a finding which is wrongly reversed by the Lower Appellate Court without considering the scope and relevance of Sections 101 to 104 of Indian Evidence Act. Therefore the judgment passed by the Lower Appellate Court is liable to be set-aside.

- *The Lower Appellate Court committed a serious error of law reversing the well reasoned judgment of the Trial Court at Para 22 of the impugned judgment. The Lower Appellate Court has committed a serious error in wrongly holding that relation between Shri. Byrappa and Late Smt. K. M. Sarojamma was not cordial and therefore she has executed an agreement of sale in favour of the Plaintiff. The reasoning assign by the learned Judge to disbelieve the Ex.D.-4 Partition Deed enter into between the Appellant and Respondent No. 1 is patently wrong reasoning unsupportable in law. The learned Judge should have seen the relation between Appellant and Respondent No.1 and the nature of transaction between them. The Judgement and Decree of the Lower Appellate Court is based on totally irrelevant facts unconnected to the issues involved and circumstances of the case and therefore the judgment and decree passed by the Lower Appellate is liable to be set-aside.*
- *The First Appellate Court committed a serious error of law and fact in recording the finding at Para 23 of impugned Judgement. The Court below relied on irrelevant and unconnected circumstance to decide Ex.P.-4 ignoring the relation between Appellant and*



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Respondent No. 1. The reasoning recorded in Para 23 of impugned Judgement is patently erroneous and therefore the judgment and decree passed by the Lower Appellate is liable to be set-aside.

- *The logic and the reasoning of learned Judge in directing the Appellant to join in with Respondent No. 1 to execute the sale deed in favour of Respondent No. 2 is wholly misconceived and without any basis and authority and such a direction could not have been issued. Therefore the judgment and decree passed by the Lower Appellate is liable to be set-aside.*
- *The 1st Appellate court committed a serious error of law in recording a finding at Para 23 of the impugned judgment holding that that 1st Defendant executed a Release Deed under Exhibit D4 receiving Rs. 1.00 lakh. Exhibit P1 in O.S. No.15/1995 agreement dated 30.12.1994 shows a sum of Rs.1,20,000/- in respect of Sy. Nos. 156/1 & 156/2 and the wrong finding that the defendants 1 and 2 colluded and created Exhibit D4. The Lower Appellate Court not considered the judgment in O.S.No.15/1995 and alleged agreement dated 30.10.1994 is forged document. The said finding given by the Trial Court in O.S No.15/1995, same is confirmed by this Hon'ble in RFA No.1149/2005 and same is confirmed by the Hon'ble Supreme Court of India in Civil Appeal. Without considering the same, the Lower Appellate Court gave the wrong finding. The said finding is wrong and there was no pleading in the plaint regarding that. The 1st appellate court without plea give*



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the finding, which is erroneous. The relationship between 1 and 2 are the brothers. The said fact not considered the lower appellate court holding that the 2nd Defendant/appellant herein is not a bonafide purchaser under Section 19 of the Specific Relief Act. Therefore he bound to execute the registered sale deed in favour of plaintiff. The said finding is contrary to Sections 19 & 20 of the Specific Relief Act. Therefore, the judgment and decree passed by the Lower Appellate Court is liable to be set-aside.

- *The judgment and decree of the Lower Appellate Court is otherwise unjust contrary to law evidence on record in the facts and circumstances of the case. Therefore the judgment and decree of the Lower Appellate is liable to be set-aside.*
- *The Judgment and decree of the Lower Appellate Court is contrary to law, evidence on record. Therefore, the judgments and decrees passed by the Lower Appellate Court is liable to be set aside."*

SUBSTANTIAL QUESTIONS OF LAW.

1. *Whether in the facts and circumstances of the case is the Lower Appellate Court justified in ignoring Section 17(1)A of the Registration Act and reversing the well reasoned Judgement of the trial Court.*
2. *Whether in the facts and circumstances of the case is the 1st Appellate Court justified in holding that Section 14 of Hindu Succession Act 1956 is attracted and the suit schedule property was absolute property of Smt. K M*



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Sarojamma without considering the Exhibit P2 Registered Sale Deed in favour of both K.M. Sarojamma and her husband?

3. *Whether the facts and circumstances of the case, the 1st Appellate court has exceeded its jurisdiction reversing of the well-reasoned, judgment of the Trial Court in the case of specific performance under Section 20 of Specific Relief Act?*
4. *The facts and circumstances of the case, the 1st Appellate courts committed a serious error holding that the 1st defendant having not entered the witness box and denied the Exhibit P1, on that ground draw the adverse interference under Section 114(g) of Indian Evidence Act?"*

18. Sri Aditya Bhat, learned counsel for the appellant/defendant No.2 reiterating the grounds urged in the appeal memorandum would contend that plaintiff was in a dominating position on the will of Sarojamma and managed to get signature on the suit agreement. There was no consideration that has flown under Exhibit P-1/agreement to sell dated 03.12.1993. Therefore, no right, title or interest has been created in favour of the plaintiff.



19. He would also contend that signature of Sarojamma is in English language in Exhibit P-1, whereas Sarojamma used to sign in Kannada language.

20. He would further contend that the power of attorney that was executed by Sarojamma in favour of the plaintiff had been terminated in the year 1992 itself. Therefore, question of Sarojamma reposing confidence and entering into a contract of agreement to sell in respect of the suit property with the plaintiff would not arise at all as is contended by the first defendant in his written statement.

21. The Trial Court rightly appreciated these aspects of the matter and rightly dismissed the suit of the plaintiff. But, the First Appellate Court read more into the probative value of Exhibit P-1 and wrongly decreed the suit and therefore, sought for admitting the appeal on the aforesaid substantial questions of law.

22. Sri Aditya would lastly emphasize that appellant/second defendant is the *bona fide* purchaser of the property having paid a sum of Rs.1,00,000/- as consideration. Therefore the



interest of second defendant is to be taken note of and the hardship that would occur to him. In the event of granting specific enforcement the First Appellate Court ought to have ordered for refund of the earnest money instead of decreeing the suit in entirety and thus sought for admitting the appeal on the aforesaid of substantial questions of law.

23. Sri Aditya would also contend that proof of Exhibit P-1 is not properly placed before the Trial Court. As such, learned Trial Judge was justified in dismissing the suit of the plaintiff. Whereas, First Appellate Court proceeded on the premise that the suit agreement is admitted by the defendants and thus sought for admitting the appeal.

24. *Per contra*, Sri G.V.Shashikumar, learned counsel for the respondent No.2/plaintiff supports the impugned judgment of the First Appellate Court.

25. He would further contend that number of documents were placed on record to show that Sarojamma used to sign both in English language as well as Kannada language.



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26. Moreover first defendant was a witness to Exhibit P-1. Therefore, question of plaintiff exerting pressure or coercion and getting the document from Sarojamma, who is a gullible lady would not arise at all.

27. He would further contend that cancellation of the power of attorney executed by Sarojamma in favour of plaintiff is an altogether different aspect had no bearing whatsoever on the proof of Exhibit P-1 is concerned. Therefore, sought for dismissal of the appeal.

28. Sri Shashikumar would also contend that the proceedings that took place in O.S No.281/1989 and Regular Appeal No.47/1991, proceedings in O.S No.385/1989 and O.S No.15/1995 is not suppressed by the plaintiff as those necessary records were placed on record by the plaintiff and marked as exhibits.

29. He would invite the attention of the Court to Exhibit P-51 which is the written statement filed in O.S No.385/1989 which runs contrary to the stand taken by the defendant No.1 before the Trial Court.



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30. Therefore, second defendant being the beneficiary of Exhibit D-4 which is not a sale deed but is a deed of partition sought for dismissal of the appeal.

31. He would further contend that payment of Rs.24,000/- as advance sale consideration is depicted from the agreement Exhibit P-1 itself. Therefore, when major portion of the sale consideration was paid by the plaintiff, and first defendant being a signatory as a witness to Exhibit P-1, defendant No.1 was *estopped* from contending contra to the contents of Exhibit P-1. Thus, defendant No.2 cannot bank upon or improve upon the stand taken by defendant No.1 and thus sought for dismissal of the appeal.

32. He would further contend that one of the attesting witnesses viz., Sri D.T.Srinivasa is examined as PW-3 who has specifically deposed about the contents of the agreement as well and execution of the agreement by Sarojamma in his presence and payment of advance sale consideration of Rs.24,000/-. He has withstood the searching cross-



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examination on behalf of the defendants and thus, sought for dismissal of the appeal.

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

34. On such perusal of the material on record, insofar as Exhibit P-1 is concerned, though first defendant has taken a contention that the signature found in Exhibit P-1 is not that of his mother Sarojamma, no explanation whatsoever is forthcoming as to why his signature is found on Exhibit P-1 as a witness.

35. Pertinently, defendant No.1 did not choose to examine himself as a witness nor he was cited as a witness by the second defendant. What prevented the second defendant to examine the first defendant and get an explanation with regard to his signature found on Exhibit P-1 is a question that remains unanswered.



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36. To prove the suit agreement, plaintiff has not only examined himself but has also examined one of the attesting witnesses namely D.T.Srinivasa as PW-3.

37. It is not in dispute that Sarojamma was the owner of the property. During her lifetime, defendant No.1 did not possess any right, title or interest in respect of the suit property.

38. When Sarojamma has entered into an agreement vide Exhibit P-1 and when signature of Sarojamma is disputed by the defendants and non sending the signature for comparison to the handwriting expert, it should not lie in the mouth of the second defendant that signature found on Exhibit P-1 is not the signature of Sarojamma.

39. Pertinently, legal notice is said to have been issued by the defendant No.1 on 15.04.1995 which is said to have been served on plaintiff on 19.04.1995 is not placed on record. Sarojamma died on 29.06.1994 whereas the suit agreement is dated 03.12.1993.



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40. What prompted the first defendant to wait and keep silent about the suit agreement from 29.06.1994 till issuance of legal notice on 15.04.1995 is a question that remains unanswered.

41. Moreover, by death of Sarojamma, the power of attorney stood automatically cancelled and there was no necessity to further cancel the power of attorney.

42. Be that what it may. Cancellation of power of attorney by issuing notice on 15.04.1995 had no bearing in respect of suit agreement is concerned.

43. First defendant, no doubt, filed written statement denying the other plaint averments including the execution of the suit agreement. Pertinently signature of first defendant is found in Exhibit P-1 as a witness. It is under those circumstances, defendant No.1 was a necessary witness in adjudicating the proof of Exhibit P-1.

44. For the reasons best known to defendant No.2, he did not examine the defendant No. 1 as a witness. There is no reason whatsoever forthcoming for non-examination of defendant



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No.1. More so, when defendant No.2 has taken some interest in respect of the suit property in the guise of partition deed vide Exhibit D-4 which is not a sale deed and at the most, it can be considered as a relinquishment deed for taking sum of Rs.1,00,000/-.

45. To hold that the rights of defendant No.1 has been transferred vide Exhibit D-4 to defendant No.2, it is incumbent on the part of defendant No.2 to establish before the Court that it is the defendant No.1 who had the right over the suit property.

46. Defendant No.1 admittedly did not possess any right over the suit property and he could have at the most claimed as a legal heir of Sarojamma to relinquish that share in favour of defendant No.2 and also based on the Will dated 10.06.1994.

47. Any such right of Sarojamma which has been enjoyed by the first defendant either as a legal representative of Sarojamma or as a legate under the Will dated 10.06.1994 will be subject to the right that is negotiated in Exhibit P-1.



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48. Therefore, second defendant could not get any better right in Exhibit D-4 other than what defendant No.1 could have possessed. Assuming that defendant No.1 had every right by proving the Will which proof is not forthcoming and as a legal representative of Sarojamma, those rights were all subjected to the suit agreement vide Exhibit P-1.

49. If the Will executed by Sarojamma would have conveyed some right to the second defendant, there was no necessity of executing Exhibit D-4 at all. Anyway, the Will is also not proved by the defendant No.2 in accordance with law by complying Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act by examining the attesting witnesses.

50. In other words, assuming that the relinquishment deed under Exhibit D-4 conveyed the right, title and interest of defendant No.1 to defendant No.2 in respect of the property which has been left behind by Sarojamma, those rights were also subject to Exhibit P-1.



51. It is in this context that the probative value of Exhibit P-1 is to be considered by this Court. When this Court examines Exhibit P-1 and other necessary documents, suggestions were put to the plaintiff's witnesses that Sarojamma's signature is in English language and she never used to subscribe her signature in English language.

52. To overcome such a situation, letters written by Sarojamma at an undisputed point of time in the inland letters were placed on record wherein signature of Sarojamma is found in English language as well.

53. When PW-3 has specifically stated that he was present when Sarojamma signed Exhibit P-1 which is the agreement to sell in favour of the plaintiff, in the absence of contra evidence placed on record, the learned Judge in the First Appellate Court, re-appreciating the very same material evidence on record by exercising the power under Section 96 of the Code of Civil Procedure and decreeing the suit does not require any further consideration before this Court in the Second Appeal by



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admitting this Second Appeal on the aforesaid substantial questions of law.

54. Consequently, the following:

ORDER

- (i) Admission declined.
- (ii) Appeal ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 96