



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 2474 OF 2017 (SP)

BETWEEN:

SRI. JOGI SIDDIAIAH
S/O SIDDIAIAH,
AGED ABOUT 62 YEARS,
R/AT HANCHA VILLAGE,
KASABA HOBLI,
MYSORE TALUK, MYSORE DISTRICT
MYSORE - 570 002.

...APPELLANT

(BY SRI. S. RIPESH KUMAR, ADVOCATE)

AND:

1. SMT. DEVAMMA
SINCE DEAD BY JER LR'S

1(A). SMT. DODDATHAYAMMA
S/O LATE RAMEGOWDA
AGED ABOUT 65 YEARS
R/AT HANCHYA VILLAGE,
KASABA HOBLI, MYSURU TALUK,
MYSURU DISTRICT - 570 002.

1(B). SMT. SAKAMMA
D/O LATE RAMEGOWDA
AGED ABOUT 62 YEARS

1(C). SMT. CHIKKA THAYAMMA
D/O LATERAMEGOWDA
AGED ABOUT 59 YEARS
RES. NO. 1(b) AND (C) ARE

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Location:
HIGH
COURT OF
KARNATAKA



RESIDING AT KILARI VILLAGE
KEROGODU HOBLI, MANDYA TALUK
MANDYA DISTRICT - 571 446.

- 1(D). SMT. RANJINI
D/O LATE RAMEGOWDA
AGED ABOUT 28 YEARS
R/AT CHANDAGALU VILLAGE
KASABA HOBLI, SRIRANGAPATNA TALUK
MANDYA DISTRICT - 571 438.
2. SRI. H.R. MAHADEVAU
S/O LATE RAMEGOWDA,
AGED ABOUT 50 YEARS,
3. SRI. SIDDARAJU
S/O LATE RAMEGOWDA,
AGED ABOUT 48 YEARS,
4. SRI. RAMACHANDRA
S/O LATE RAMEGOWDA,
AGED ABOUT 50 YEARS,
RESPONDENTS NO.2 TO 4 ARE
R/AT HANCHA VILLAGE,
KASABA HOBLI, MYSURU TALUK,
MYSURU - 570 002.

...RESPONDENTS

(BY SRI. P. MAHESHA, ADVOCATE FOR R1(A TO D) AND R2 TO R4;

VIDE ORDER DATED 18.08.2023 R2 TO R4 ARE TREATED AS LR'S OF DECEASED R1)

THIS RSA IS FILED UNDER ORDER 42 R/W SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 12.08.2017 PASSED IN R.A.NO. 117/2017 ON THE FILE OF THE III ADDITIONAL DISTRICT JUDGE, MYSURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 18.03.2016 PASSED IN O.S.NO.168/2008 ON THE FILE OF THE II CIVIL JUDGE AND JMFC MYSURU.

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.Rupesh Kumar, learned counsel for the appellant and Sri.P.Mahesha, learned counsel for respondent Nos.1(a) to (d) and respondent Nos.2 to 4.

2. Though the matter is listed for admission, with the consent of the parties, matter is taken up for final disposal.

3. Unsuccessful plaintiff is the appellant seeking for specific enforcement of the agreement to sale in respect of the following immovable property (hereinafter referred to as suit property):

"Land bearing Sy.No.45/P35 measuring 1-00 acre, situated at Hanchya village, Kasaba Hobli, Mysuru Taluk, which is bounded on:

East – land of Maraiah

West – land of Dr. Yoganna

North – Land of Abdul Rehaman

South – Land of Gururaj"



4. Suit in O.S.No.168/2008 was filed by the appellant herein seeking for specific enforcement of contract of agreement to sell which came to be dismissed after due trial holding that even though suit agreement is proved, since defendants are not the exclusive owners of the suit property and there were other shares.

5. In other words, only portion of the right was agreed to be sold in favour of the plaintiff thus the contract was not capable of specific enforcement and hence, suit came to be dismissed.

6. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in RA No.117/2017.

7. Learned Judge in the First Appellate Court on securing the records and hearing the parties, revisited into the factual aspects of the matter and dismissed the appeal by considered judgment dated 12.08.2017.

8. Refund of earnest money was also not ordered though agreement was held to be proved on the ground that there was no specific pleading in that regard.



9. Being further aggrieved by the same, plaintiff has filed the present second appeal.

10. Learned counsel for the appellant reiterating the grounds urged in the appeal memorandum vehemently contended that at the time of entering into an agreement, plaintiff has taken note of the fact that defendants are the only owners of the suit property as the name of defendant No.1 was reflected in the revenue records and no other details were forthcoming.

11. It is also his case that defendants having entered into an agreement, cannot turn around and contend that they are not the true owners of the suit property. Thus conduct of the defendants ought not to have taken note of by the learned Trial Judge and learned Judge in the First Appellate Court in decreeing the suit of the plaintiff especially in the absence of counter claim laid by any other sharers to the suit property and thus sought for allowing the appeal.

12. Per contra, learned counsel for the respondent Nos.1(a) to (d) and respondent Nos.2 to 4, supports the impugned judgments.



13. He would further contend that part owner cannot contract for and on behalf of other co-owners and thus denial of the specific enforcement of agreement to sale is just and proper which requires no further interference as there is no point of law involved and on factual aspects by both the Courts have recorded a concurrent finding.

14. In reply, learned counsel for the appellant would contend that since the agreement is held to be proved, it is settled principles of law and requires no emphasis that atleast refund of earnest money is to be ordered even in the absence of any pleading to that effect.

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

16. On such perusal of the material on record, since the categorical finding has been recorded by the learned Trial Judge that the agreement to sale stands established by placing necessary oral and documentary evidence on record, payment of advance sale consideration of Rs.75,000/- also stands established.



17. Admittedly, defendants did not challenge the said finding in the appeal filed by the plaintiff.

18. Thus, even in the absence of pleading to the effect that the return of advance money, defendants cannot be permitted to have the benefit of unjust enrichment and therefore, refund of earnest money is to be ordered by decreeing the suit in part.

19. Accordingly, following:

ORDER

- i. Appeal is ***partly allowed***.
- ii. Suit is decreed in part.
- iii. While upholding the finding of the learned Trial Judge and learned Judge in the First Appellate Court as to denial of the specific enforcement of the suit agreement dated 23.12.2005 marked at Ex.P.1, the decree of the Trial Court as well as the First Appellate Court is modified by directing the defendants to return the advance sale



consideration of Rs.75,000/- at the rate of 6% p.a. till the date of repayment.

- iv. Time is granted for the defendants to return the advance sale consideration with interest at the rate of 6% p.a. till 15.07.2026 failing which the plaintiff can recover from the defendants in accordance with law.

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

KAV
List No.: 1 Sl No.: 90