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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.139 OF 2020 (SP)

BETWEEN:

SHIVARAMAIAH
S/O LENKAPPA
AGED ABOUT 54 YEARS
R/AT SIDAPURA VILLAGE,
THIPPASANDRA HOBLI,
MAGADI TALUK,
RAMANAGARA DISTRICT-562120.

...APPELLANT

(BY SRI SUNIL S. RAO FOR
SRI. PANCHAM R D, ADVOCATES)

AND:

1. SRI K RANGASWAMY
S/O KEMPANNA
AGED ABOUT 45 YEARS
R/AT KAPINIGOWDANAPALYA VILLAGE,
DODDASOMANAHALLI POST,
KALARI KAVAL DHAKALE,
KASABA HOBLI
MAGADI TALUK
RAMANAGARA DISTRICT-562120.
2. SMT. NEELAMMA
W/O SHIVARAMAIAH
AGED ABOUT 43 YEARS
3. SMT. MANGALA
D/O SHIVARAMAIAH
AGED ABOUT 27 YEARS

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4. SMT. PARVATHI
W/O SHIVARAMAIAH
AGED ABOUT 25 YEARS

5. SMT. PADMAVATHI
D/O SHIVARAMAIAH
AGED ABOUT 24 YEARS

RESPONDENT NOS.2 TO 5 ARE
R/AT ANDRA HALLI MAIN ROAD,
HEROHALLI PANCHAYATHI,
BESIDE SYNDICATE BANK LAYOUT,
OPPOSITE WATER TANK,
BENGALURU-560 091.

6. SRI SHIVARAMAIAH
S/O LATE JAVARAPPA
AGED ABOUT 61 YEARS
R/AT VINAYAKA NAGARA,
ANDRA HALLI MAIN ROAD,
HEROHALLI PANCHAYATHI,
BESIDE SYNDICATE BANK LAYOUT,
OPPOSITE WATER TANK,
BENGALURU-560091.

...RESPONDENTS

(BY SRI PREMNATH.T.N, ADVOCATE FOR R1;
R2 TO R6 ARE SERVED)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE AGAINST THE JUDGMENT AND DECREE DATED 21.09.2019 PASSED IN R.A No.12/2018 ON THE FILE OF THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 09.11.2017 PASSED IN O.S.No.64/2014 (OLD O.S.No.133/2007) ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, MAGADI.

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



CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri Sunil S.Rao, learned counsel for Sri Pancham R.D., learned counsel for the appellant/defendant No.5 and Sri Premnath T.N, learned counsel for respondent No.1/plaintiff.

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

3. Defendant No.5 in O.S No.64/2014 (old No.133/2007) is the appellant before this Court. He was impleaded in the suit as a party subsequent to filing of the suit.

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

3.1 A suit for specific enforcement of the agreement to sell dated 19.05.2006 was filed in O.S No.133/2007, on the file of Senior Civil Judge and JMFC, Magadi. Later on, it is numbered as O.S. No.64/2014.



3.2 In the suit, it is contented that defendant Nos.1 to 4 are the owners of the immovable property which is described hereunder in detail and hereinafter referred to as the 'suit property'.

"Land bearing Sy.No.151/6 measuring 020 guntas and land bearing Sy.No.151/7 measuring 030 guntas including Kharab land totally measuring 1 acre 010 guntas old Kalari Kaval village, Kasaba Hobli, Magadi Taluk, adjacent to each other having common boundary:

East by :Land of Kempaiah and Thirumalaiah,

West by :Land of Hanumanthaiah,

North by :Land of Hanumanthaiah,

South by :Garden land of Kempiregowda."

3.3 Plaintiff contended that, a contract of agreement to sell got executed by the defendant Nos.1 to 4 with the plaintiff. Said agreement dated 19.05.2006 is marked as Exhibit P-1 before the Trial Court. Plaintiff further pleaded that defendant No.1 is the mother and defendant Nos.2 to 4 are her children. The defendant No.1 is the absolute owner of the suit property.

3.4 It is pleaded by plaintiff that since defendant Nos.1 to 4 were in dire need of money for their legal necessities, they approached the plaintiff to sell the suit property for a valuable



consideration of Rs.1,75,000/-. Plaintiff accepted the offer and suit agreement came into existence.

3.5 At the time of execution of the agreement, amount in a sum of Rs.50,000/- was tendered as advance sale consideration by the plaintiff and agreed to pay the balance amount after the defendants obtain the sketch and necessary revenue records, to complete the sale transaction.

3.6 It is also contented by the plaintiff that the defendants agreed to put the plaintiff into possession of the suit property at the time of execution of the sale deed.

3.7 Plaintiff further contended that he was ready and willing to perform his portion of the contract and demanded the defendant Nos.1 to 4 to accept sum of Rs.1,25,000/- which is the balance sale consideration and to execute the sale deed. But, defendant Nos.1 to 4 went on postponing the execution of the sale deed on one pretext or the other which necessitated the plaintiff to issue legal notice on 11.09.2006. Said notice was not served on the defendants.



3.9 Therefore, plaintiff had to again issue one more notice on 04.11.2006 after ascertaining the correct address of the defendants. The second notice issued to the defendants was duly served and an untenable reply came to be issued by the defendant Nos.1 to 4 vide Exhibit D-4 wherein, defendant Nos.1 to 4 denied the contents of the notice and also denied the execution of the very suit agreement/Exhibit P-1 and contended that it is a concocted document.

3.10 Left with no alternative, plaintiff filed the suit for specific enforcement of agreement to sell.

5. Pursuant to suit summons defendant Nos.1 to 4 entered appearance and filed a detailed written statement denying the suit agreement.

6. They denied the contents of the plaint in *toto*. It is further contented in the written statement of defendant Nos.1 to 4 that, defendant No.1 is an illiterate and innocent housewife, having no knowledge of reading and writing. Taking advantage of her gullible nature Sri Venkatappa, who is the resident of Hosapalya Village, Magadi Taluk, being the Real



Estate broker, approached her to secure loans from the Society, obtained her signature on many blank papers which has been utilised to concoct the suit document and thus sought for dismissal of the suit.

7. Defendant No.5(present appellant) and defendant No.6 (husband of first defendant) were impleaded subsequently by the plaintiff.

8. Defendant No.5 filed written statement stating that first defendant is the owner of the suit property, but denied the remaining contents of the plaint including defendant Nos.1 to 4 executing the suit agreement. He also pleaded ignorance about the exchange of notices between plaintiff and defendants.

9. However, the plaint got amended after impleading of defendant No.5 wherein it has been contented that defendant Nos.1 to 4 in collusion with defendant No.5, filed suit in O.S No.362/2011 and got compromised.

10. In that regard, defendant No.5 denied that there is a collusion between defendant Nos.1 to 4 and defendant No.5.



11. On the contrary, defendant No.5 maintained that for the family necessity, defendant Nos.1 to 4 had already entered into an agreement to sell with defendant No.5 on 18.03.2005. The decree passed in O.S No.362/2011 was duly executed by filing Execution Case No.7/2012 and through Court Commissioner, sale deed got executed in favour of defendant No.5 and thus, defendant No.5 is in possession and enjoyment of the suit property. Therefore, suit of the plaintiff is to be dismissed.

12. Defendant No.6 filed separate written statement contending that he would adopt the written statement filed by defendant Nos.1 to 4. He contended that first defendant-Neelamma is none other than his wife and defendant Nos.2 to 4 are his daughters. He also maintained that the decree in favour of defendant No.5 is just and proper and sought for dismissal of the suit.

13. Learned Trial Judge, after raising necessary issues, recorded the evidence of the parties and by considered judgment dated 09.11.2017 decreed the suit of the plaintiff. Operative portion of the Trial Court judgment reads as under:



"The suit of the plaintiff is hereby decreed.

The plaintiff shall deposit the compensation amount of Rs.3 lakh within 2 months from this date.

The defendant No.1 to 6 are hereby directed to execute the sale deed in respect of the suit schedule properties in favour of plaintiff, within 2 months from this date by receiving balance amount and compensation. The plaintiff shall bear all the expenses of sale deed.

That if the defendants fails to execute the sale deed within 2 months, the plaintiff is at liberty to take legal action as per law and get sale deed through Court.

The decree passed in O.S.No.362/11 and sale deed executed in E.P.No.7/12 through the Court Commissioner is not binding on the rights of the plaintiff.

The parties to bear their own costs.

Draw decree accordingly."

14. Being aggrieved by the same, defendant Nos.1 to 4 filed an appeal in R.A No.11/2018. Defendant No.5 filed a separate appeal in R.A No.12/2018.



15. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties and on re-appreciation of the material on record, dismissed both the appeals by a common judgment dated 21.09.2019.

16. Being further aggrieved by the same, it is defendant No.5 who has filed the present Second Appeal on the following grounds:

- *The judgment and decree passed by the Courts below are illegal, against the facts and circumstances of the case and opposed to the established principles of law, and hence the same are liable to be set aside.*
- *The courts below have failed to appreciate that even though the plaintiff has examined himself as P.W-1, alleged witness as P.W-2 and 3, and the son of K.S. Shanthaiah who is the alleged scribe of Es.P1, the sale agreement dated 19.05.2006, their evidence has not corroborated with each other in proving the execution of the alleged sale agreement dated 19.05.2006. A careful reading of the entire evidence of the witnesses examined in support of the case of the plaintiff, goes to show that the veracity of their testimony is shaken and cannot be believed at all. On the other hand their evidence per se disproves the very case of the plaintiff regarding the execution of the document at Ex.P1. The Courts below should*



have been more vigilant in scrutinizing the alleged sale agreement dated 19.05.2006, the execution of which was seriously disputed by the defendants. The alleged sale agreement dated 19.05.2006, alleged to have been executed by the defendant no.1 to 4 and 6 does not bear their signature on its first page, as against the normal course of execution of the sale agreements. Further same does not bear the signatures at the place of insertion of the additional line between line 8 and 9 at para no.3 of the alleged sale agreement dated 19.05.2006. Therefore the Courts below have erred in not appreciating the entire oral and documentary evidence in a proper perspective and the same has resulted in miscarriage of justice.

- *The Courts below have failed to appreciate that the P.W.2 says Rs.3,500/- per Gunta was fixed by Shanthaiah, scribe on 19.05.2006 whereas P.W.3 says that said price was fixed on 17.05.2006 itself, and according to P.W3, the sale agreement was executed on 17.05.2006. Further Courts below have failed to notice that P.W2 and P.W3 in their chief examination states that Shanthaih has got the alleged sale agreement typed, but the cross examination of P.W2 goes to show that Shanthaiah has not got the alleged sale agreement typed.*
- *It is submitted that the P.W.2 in his cross examination states that Shanthaiah has fixed the price at Rs.3,500/- per Gunta (which is the inserted*



portion between the line 8 and 9 at para 3 in the alleged sale agreement) before him, plaintiff and the defendants. Thereafter he also admits that insertion between line 8 and 9 at para 3 in the alleged sale agreement was not made before him. Therefore if the sale agreement was already typed and the said insertion was already made before the plaintiff, defendants and Shanthaiah have met P.W-2, the say of the said witness that Shanthaiah has fixed the price of Rs.3.500/- per Gunta before him is false. Therefore the testimony of P.W-2 falsifies the execution of the sale agreement dated 19.05.2006.

- *If the entire deposition of the P.W-1 to P.W-3 is read together, they have failed to prove as to where, when and by whom the alleged sale agreement was typed and they would not say that defendant no.2 to 4 have been to Magadi along with defendant no.1 and 6. Further the cross examination of the P.W-3 goes to show that the no monetary transaction was taken place and the P.W-2 in his cross examination admits that he does not know what was written in the stamp paper. All these aspects were not at all considered by the Courts below.*
- *Both the Courts below have failed to hold that the sale agreement dated 19.05.2006, vide Ex.P-1 is a tampered, created and concocted document, which is the only conclusion that could have been drawn from the oral and documentary evidence on record.*



- *It is submitted that one of the issues framed by the Trial Court is regarding the readiness and willingness of the plaintiff to perform his part of the contract and issue no.1 to 4 including the aforesaid issue was considered together by the Trial Court, and the said issue was held to be affirmative without formulating any reasons to that effect. Therefore the judgment and decree of the Trial Court is liable to be set aside.*
- *The Trial Court has erroneously come to the conclusion that the contention of the defendants as per the reply notice dated 13.11.2006 is not acceptable as the defendants have only denied the contents of the notice in their reply notice dated 13.11.2006, without stating the creation of the agreement in collusion with Venkatappa in the reply notice and also that Venjkatappa has obtained their signature on so many blank papers. This conclusion of the Trial Court is wrong for the simple reason that when the notice is served on the defendants, based on the alleged sale agreement dated 19.05.2006 and without furnishing the copy of the same, the contents of the said agreement are not known to the defendants, when it was the specific case of the defendants that the alleged sale agreement was not executed by them. It is only after the filing of the suit along with the said documents, the defendants got to know the contents of the said created sale agreement and therefore they have written statement suitably. Had the defendants been*



furnished with the said copy of the sale agreement along with legal notice, they would have taken all such contentions which were taken in the written statement. Therefore the above opinion of the Trial Court is wrong and hence the judgment and decree of the Courts below requires interference by this Hon'ble Court.

- *The Courts below have failed to consider that the appellant is a bonafide purchaser of the suit schedule properties for a valuable consideration, and his sale agreement dated 18.03.2005 is prior to the alleged sale agreement dated 19.05.2006, the specific performance of which was sought by the plaintiff. The courts below should have held that the specific performance of the alleged contract was not possible in view of the property being put into the hands of the defendant no.5/appellant herein, by way of execution of the sale deed through the process of the Court in E.P.No.7/2012.*
- *The Trial Court has held that the judgment and decree in O.S.No.362/2011 and also the sale deed at Ex.D10 executed in E.P.No.7/2012 is not binding on the plaintiff, by simply holding that the defendant no.5/appellant herein has not got himself impleaded to the suit in O.S.No.64/2014(Old O.S.No.133/2007) and has filed the suit in O.S.No.362/2011, intentionally, by excluding the plaintiff, although the appellant has satisfactorily established that his*



application for impleading before the Trial Court was dismissed and thereafter having no other alternative he has filed the suit in O.S.No.362/2011. The First Appellate Court has also fallen in error on the same parlance in endorsing the view of the Trial Court. Therefore the judgment and decree of the Courts below ought to have been set aside on this score.

- *Viewed from any angle the judgment and decree passed by the Courts below are not sustainable and liable to be set aside.*
- *The appellant seeks the leave of this Hon'ble Court to urge any additional grounds during the course of the above appeal.*
- *The appellant submits that the appellant has not filed any other appeal, seeking the relief sought in the present Regular Second Appeal, except filing the above Regular Second Appeal."*

17. After hearing the parties, co-ordinate Bench of this Court admitted the appeal on the following substantial questions of law:

- 1) *Whether the Trial Court and the First Appellate Court were justified in decreeing the suit for specific performance without rendering a finding about the validity of the agreement of sale dated 18.03.2005 executed by defendant Nos.1 to 4 in favour of the defendant No.5?*



- 2) *Whether the Trial Court and the First Appellate Court committed an error in considering the agreement of sale dated 18.03.2005 in favour of defendant No.5 as a subsequent sale and therefore the sale deed dated 30.05.2013 in favour of the defendant No.5 did not bind the plaintiff?*
- 3) *Whether the Trial Court and the First Appellate Court had committed error in considering the sale in favour of the defendant No.5 as a pendent-lite purchaser?*
- 4) *Whether the decree passed in O.S. No.362/2011 was binding on the plaintiff in O.S. No.64/2014 as he was not a party to the said suit?*

18. Sri Sunil S. Rao, learned counsel with the permission of the Court addressed arguments on behalf of the counsel for appellant.

19. A synopsis is filed on behalf of the appellant along with citation on which the appellant wants to rely upon.

20. Sri Sunil S. Rao, would contend that the agreement dated 18.03.2005 entered into by defendant Nos.1 to 4 with defendant No.5 being earlier in time, sale deed executed through the process of Court in Execution Case No.7/2012 pursuant to the decree passed in O.S No.362/2011 would date



back to 18.03.2005 and as such, defendant Nos.1 to 4 did not possess any right, title or interest to enter into an agreement with the plaintiff on 19.05.2006 which is marked at Exhibit P-1. Therefore, decreeing of the suit by both the Courts has resulted in miscarriage of justice.

21. He would further contend that defendant Nos.1 to 4 having entered into an agreement with the fifth defendant on 18.03.2005, were parties in O.S No.362/2011. When their misdeeds got exposed in entering into one more agreement suppressing the agreement dated 18.03.2005 executed by them in favour of defendant No.5, had to compromise the dispute with the fifth defendant. As such, matter was referred to Lok Adalat by filing consent memo. Before the Lok Adalat, matter got compromised whereby defendant Nos.1 to 4 agreed to sell the suit property in favour of defendant No.5 as is prayed in O.S No.362/2011.

22. He would further contend that a decree before the Lok Adalat is not inferior in its applicability and a compromise entered into before the Lok Adalat and award passed before the Lok Adalath will partake the nature of a decree passed by a



competent Civil Court. Therefore it was capable of execution. When defendant Nos.1 to 4 failed to adhere to the award passed before the Lok Adalat, fifth defendant had to approach the jurisdictional Court seeking enforcement of the award passed before the Lok Adalat, in Execution Case No.7/2012.

23. Since defendant Nos.1 to 4 failed to appear before the executing Court and execute the decree, defendant No.5 got appointed a Court Commissioner. The Court Commissioner executed the award passed before the Lok Adalat by orders of the Court and sale deed was executed in favour of defendant No.5 and he was put into the possession of the property and thus defendant No.5 is the owner of the suit property. As such, decree granted by both the Courts is against the interest of defendant No.5 and as such, appeal needs to be allowed.

24. He would also emphasize that given the factual aspects as referred to *supra*, all the defence that is available to the defendant Nos.1 to 4 can be canvassed on behalf of defendant No.5 *dehors* the fact that defendant Nos.1 to 4 did not challenge the judgment passed by the First Appellate Court.



25. In this regard, he has placed reliance on the following judgment of the Hon'ble Apex Court:

(i) ***B.Vijaya Bharathi vs. P.Savitri and others***

reported in **(2018) 11 SCC 761.**

(ii) ***Ram Awadh (dead) by LRs and others vs.***

Achhaibar Dubey and another reported in
(2000)2 SCC 428.

26. He invited attention of this Court to paragraphs 12 to 16 of the judgment in the case of ***B.Vijaya Bharathi*** supra, wherein it is held as under:

"12. One crucial fact that stares us in the face is that on 13-3-1992 the first defendant ran away from the registering authority making it clear that she did not want to act in furtherance of the agreement in executing a general power of attorney in favour of the plaintiff's husband. The High Court was right in stating that no prudent person would stay quiet for a period of one year and eleven months after such an unequivocal repudiation of the agreement if they were really interested in going ahead with the sale transaction. The only inference, therefore, from this is that the plaintiff cannot possibly be said to be ready and willing throughout to perform their part of the agreement.



13. *However, Mr Rao has pressed into service a judgment of this Court in M.M.S. Investments v. V. Veerappan [M.M.S. Investments v. V. Veerappan, (2007) 9 SCC 660] . While stating the background facts, the learned Judges referred to a suit for specific performance which resulted in a decree passed by the trial court. After the decree was passed, the defendants through their power of attorney sold a large extent of properties, including the subject-matter of the suit, in favour of certain other persons, who happened to be the appellants before this Court. In that case, the High Court held [M.M.S. Investments v. V. Veerappan, 2000 SCC OnLine Mad 69 : (2000) 2 LW 15] that there would be no bar for the appellant to raise any issue on merits of the appeal on the facts of that case except the defence of readiness and willingness as provided under Section 16(c) of the Specific Relief Act.*

14. *This Court went on to distinguish a three-Judge Bench judgment in Ram Awadh v. Achhaibar Dubey [Ram Awadh v. Achhaibar Dubey, (2000) 2 SCC 428] and held as follows: (M.M.S. Investments case [M.M.S. Investments v. V. Veerappan, (2007) 9 SCC 660] , SCC p. 662, para 6)*

"6. Questioning the plea of readiness and willingness is a concept relatable to an agreement. After conveyance the question of readiness and willingness is really not relevant. Therefore, the provision of the



Specific Relief Act, 1963 (in short "the Act") is not applicable. It is to be noted that the decision in Ram Awadh case [Ram Awadh v. Achhaibar Dubey, (2000) 2 SCC 428] relates to a case where there was only an agreement. After the conveyance, the only question to be adjudicated is whether the purchaser was a bona fide purchaser for value without notice. In the present case the only issue that can be adjudicated is whether the appellants were bona fide purchasers for value without notice. The question whether the appellants were ready and willing is really of no consequence. In Ram Awadh case [Ram Awadh v. Achhaibar Dubey, (2000) 2 SCC 428] the question of the effect of a completed sale was not there. Therefore, that decision cannot have any application so far as the present case is concerned. Once there is a conveyance the concept would be different and the primary relief could be only cancellation."

15. *Ram Awadh [Ram Awadh v. Achhaibar Dubey, (2000) 2 SCC 428] is a judgment by three Judges of this Court overruling Jugraj Singh v. Labh Singh [Jugraj Singh v. Labh Singh, (1995) 2 SCC 31], in which it was held that the plea that the plaintiff is not ready and willing to perform the contract is personal only to the seller defendant. Subsequent purchasers cannot take this plea. This was stated to be an erroneous view of*



the law by the three-Judge Bench, and the judgment in Jugraj Singh [Jugraj Singh v. Labh Singh, (1995) 2 SCC 31] was set aside as follows: (Ram Awadh case [Ram Awadh v. Achhaibar Dubey, (2000) 2 SCC 428] , SCC p. 431, para 6)

"6. The obligation imposed by Section 16 is upon the court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jugraj Singh case [Jugraj Singh v. Labh Singh, (1995) 2 SCC 31] is erroneous."

16. *In the facts of M.M.S. Investments case [M.M.S. Investments v. V. Veerappan, (2007) 9 SCC 660] , after the trial court decreed the suit, the property was conveyed to the plaintiff. It is only thereafter that the appellants in that case purchased the property. In the*



facts of the present case, Defendants 2 and 3 purchased the property even before the suit for specific performance was filed. In the present case there is no conveyance in favour of the plaintiff after which Defendants 2 and 3 purchased the property. The ratio of M.M.S. Investments [M.M.S. Investments v. V. Veerappan, (2007) 9 SCC 660] would therefore be of no assistance to the appellant herein. On the other hand, the three-Judge Bench decision in Ram Awadh [Ram Awadh v. Achhaibar Dubey, (2000) 2 SCC 428] would apply on all fours."

27. Further, since all the defences that are available to the defendant Nos.1 to 4 could be urged by the appellant herein being the fifth defendant, he would contend that both the Courts did not choose to record any finding on the validity of the agreement to sell dated 18.03.2005 executed by defendant Nos.1 to 4 in favour of defendant No.5 and as such, decreeing the suit of the plaintiff for specific performance is bad in law.

28. He would also contend that First Appellate Court committed an error in considering the agreement to sell dated 18.03.2005 executed by defendant Nos.1 to 4 in favour of defendant No.5 as a subsequent sale. Therefore, the sale deed executed by the Court Commissioner on 30.05.2013 in



Execution Case No.7/2012 did not bind the plaintiff is incorrect as 'doctrine of relation back' is ignored by the First Appellate Court.

29. He further emphasizes that in the event, the sale executed on 30.05.2013 through the process of Court pursuant to the decree passed in O.S No.362/2011 is incorrect, then the appellant is to be considered as a *pendente lite* purchaser. Therefore, all available defences of defendant Nos.1 to 4 that plaintiff was not ready and willing to perform his portion of the contract needs to be re-appreciated before this Court.

30. Insofar as the fourth substantial question of law is concerned, even though plaintiff is not a party to the suit in O.S No.362/2011, since the rights that were considered in the said suit were pursuant to the agreement dated 18.03.2005 which is the prior agreement than the suit agreement, it binds the plaintiff and therefore, decree passed by both the Courts needs to be set aside.

31. *Per contra*, Sri Premnath, learned counsel for respondent No.1/plaintiff would support both the judgments.



32. He would further contend that in the case on hand, in the written statement filed by the defendant Nos.1 to 4, they deny the very agreement dated 19.05.2006/Exhibit P-1 itself. Therefore, they cannot plead any other defence and as such, appellant/defendant No.5 cannot also plead any defence that is available to a normal defendant who has accepted the agreement to sell.

33. Sri Premnath, would further contend that pertinently in the second notice, a reply is caused by defendant Nos.1 to 4 marked vide Exhibit D-13. There is no mention of Venkatappa playing fraud on defendant Nos.1 to 4 in concocting the sale agreement marked at Exhibit P-1.

34. He would further emphasize that payment of Rs.50,000/- under Exhibit P-1 is proved by the plaintiff not only by placing Exhibit P-1 on record, but also by examining the witnesses viz., Venkatappa, Narasimhaiah and Jagadeesh as P.W-2, P.W-3 and PW-4 respectively. Therefore, defendant Nos.1 to 4, in order to avoid the agreement to sell/Exhibit P-1, have taken an indirect method of creating one more agreement by ante-dating it as 18.03.2005 and obtaining the decree suppressing the pendency



of suit in O.S No.133/2007 renumbered as O.S.No.64/2014 in O.S No.362/2011 and without impleading the plaintiff as a party itself shows the cunning nature of defendant Nos.1 to 4 and *malafide* method that defendant Nos.1 to 4 and 5 have adopted in getting the sale in favour of defendant No.5 pursuant to the alleged agreement of 18.03.2005.

35. As such, viewed from any angle, defendant No.5 cannot be treated as a *bonafide* purchaser for value and even if he is treated as a *pendente lite* purchaser *simpliciter*, in view of the fact that defendant Nos.1 to 4 have denied the agreement/ Exhibit P-1, defendant No.5 cannot advance any other defence which were available to defendant Nos.1 to 4 and as such sought for dismissal of the appeal.

36. Having heard the arguments of both sides this Court perused the material on record meticulously, in the light of the substantial questions of law that were raised at the time of admitting the appeal.

37. In the case on hand, Exhibit P-1 is the agreement that is entered into by defendant Nos.1 to 4 with the plaintiff.



Issuance of notice before filing the suit is proved by placing copy of the notice and returned covers. Issuance of second notice by the plaintiff before filing the suit is established by placing the copy of the second notice and the postal acknowledgments.

38. According to plaintiff, he did not receive any reply. But, copy of the reply is marked by the defendants as Exhibit D-13.

39. Pertinently, in the Exhibit D-13, defendants Nos.1 to 4 have taken up the contention that Exhibit P-1 is not executed by them.

40. Pertinently, in the said reply, there is no mention as to Venkatappa having concocted the suit agreement in the guise of getting loan to defendant No.1 through Society and obtaining her signature on the blank paper.

41. Further, Exhibit D-5 is the copy of the plaint filed on the file of Civil Judge, Magadi in O.S No.362/2011. Admittedly, Plaintiff is not arraigned as a party in the said suit.



42. Pertinently, by then, defendant No.5 knew about pendency of suit in O.S No.133/2007, re-numbered as O.S.No.64/2014 filed by the plaintiff, having approached the Court with an application under Order I Rule 10 of the Code of Civil Procedure, which came to be dismissed.

43. Non impleading the plaintiff in O.S No.362/2011, i.e., four years after the suit came to be filed by the plaintiff in O.S.No.133/2007(re-numbered as O.S.No.64/2014), speaks volumes about the intention of the parties in suppressing the material fact before the Civil Judge, Magadi.

44. Admittedly, suit in O.S No.64/2014 (Old O.S.No.133/2007) is filed on the file of Senior Civil Judge, Magadi and it was being tried before the said Court. Valuation of the second suit is also important in this regard in filing the suit clandestinely before the Civil Judge Court.

45. Exhibit D-6 is the joint memo filed in O.S.No.362/2011 wherein the parties wanted the matter to be referred to Lok Adalat. In other words, if the material evidence were to be recorded by the parties, necessarily the pleadings and the



evidence that is placed before the Court of Senior Civil Judge, Magadi, in O.S No.133/2007 would have been made known to the Court.

46. Before the Lok Adalat, defendant Nos.1 to 4 and defendant No.5 filed an application under Order XXIII Rule 3 of the Code of Civil Procedure which is marked at Exhibit D-8. Under the provisions of Legal Services Authorities Act, no such compromise petition can be accepted before the Lok Adalat, as the members of the Lok Adalat are only conciliators and no judicial act can be performed by them. Thus, they could not have exercised any judicial power in entertaining the application under Order XXIII Rule 3 of the Code of Civil Procedure and accept the satisfaction as to the compromise between the parties.

47. Be that what it may. Before the Lok Adalat, application under Order XXIII Rule 3 of the Code of Civil Procedure is accepted and an award came to be passed, which is *per se* incorrect.



48. If there is a true compromise as is enunciated by the defendant Nos.1 to 4 and defendant No.5 in the Lok Adalat, there was no necessity for the defendant No.5 to file an execution petition before the Civil Judge Court to execute the award passed before the Lok Adalat.

49. Only to give a colour of Court decree and to get insulation from further Court proceedings, and to take shelter under the Court proceedings, a show of non-adherence to the terms of the award has taken place and defendant No.5 has approached the Executing Court to get the award executed.

50. Even in the execution proceedings, defendant Nos.1 to 4 remained as silent and mute spectators. Therefore, Executing Court appointed a Court Commissioner to execute the award passed by the Lok Adalat.

51. Court Commissioner, thereafter executed the sale deed in favour of defendant No.5 and put him into the possession of the suit property.

52. The entire exercise in filing the suit in OS No.362/2011 culminating in filing of the execution petition and getting the



sale deed executed through the process known to law is nothing but a clandestine method of denying the right to the plaintiff is the finding recorded by both the Courts, if not in so many happy words.

53. Material evidence on record would support the fact that defendants Nos.1 to 4 and defendant No.5 colluded with each other in short-circuiting the law. Method adopted by appellant (defendant No.5) and defendant Nos.1 to 4 and 6 not only resulted in short-circuiting law, but to deny the legitimate relief to the plaintiff by undertaking to file a fresh suit in O.S No.362/2011.

54. It is needless to emphasize that a decree passed against a person who is not a party, especially when the parties to the subsequent decree knew that plaintiff already had a subsisting right in the pending suit, would not bind the plaintiff of that suit in the subsequent decree.

55. Therefore, defendant No.5 cannot plead that he is a *bonafide* purchaser of the property for value. However, since he is a purchaser during pendency of the suit, he has to be



treated as a *pendente lite* purchaser. There cannot be any dispute that in a given set of circumstances, whatever defences that were available to defendant Nos.1 to 4 could be advanced by the defendant No.5 as well.

56. In this regard, the principles of law enunciated by the Hon'ble Apex Court in the case of **B.Vijaya Bharathi** supra, would be applicable and as such, defendant No.5 may canvass all points that are available to defendant Nos.1 to 4.

57. Alas!.., Defendant Nos.1 to 4 did not have any defence at all. Therefore, whether defendant No.5 can canvass defences which were available to defendant Nos.1 to 4 is a question that remains unanswered on behalf of the appellant/defendant No.5.

58. On the contrary, defendants Nos.1 to 4 having denied the suit agreement/Exhibit P-1, were debarred from taking any defence before the Court that are available to a normal prudent defendant in a suit for specific performance of a contract.

59. Defendant Nos.1 to 4 are the persons who knew very well that they have executed an agreement in favour of the plaintiff.



They took up the plea in the reply notice that they did not execute Exhibit P-1 at all. But, when the signatures in the agreement marked at Exhibit P-1 could not be digested by the defendant Nos.1 to 4, in the written statement as an afterthought they brought the theory of Venkatappa playing fraud on defendant Nos.1 to 4.

60. Venkatappa is not cited as a witness by the defendant Nos.1 to 4. On the contrary, Venkatappa is examined on behalf of the plaintiff. Cross-examination of Venkatappa did not yield any result whatsoever for the defendant Nos.1 to 4 to advance their case that Exhibit P-1 was a concocted document.

61. On the contrary, when defendant Nos.1 to 4 realized that they cannot avoid the decree of specific enforcement, clandestinely they have entered into another agreement by ante-dating the same and getting a decree through the process known to law as referred to supra.

62. Such a person who has meddled with the Court proceedings, not true to the Court proceedings and during pendency of the suit, takes short circuit method of filing one



more suit, suppressing the material fact of earlier suit, non impleading the plaintiff in the subsequent suit, is debarred from taking any defence whatsoever. A person who seeks equity must do equity.

63. In this regard, this Court gainfully places reliance on judgment in the case of **Major Ger. Darshan Singh (D) by LRs and another vs. Brij Bhushan Chaudhary (D) by LRs** passed in Civil Appeal No.9360/2013 dated 01.03.2024. Relevant portion of the said judgment is culled out hereunder for ready reference:

"9. Under Section 20 of the 1963 Act, the grant of a decree for specific performance is always discretionary. The exercise of discretion depends on several factors. One of the factors is the conduct of the plaintiff. The reason is that relief of a decree of specific performance is an equitable relief. A person who seeks equity must do equity."

64. Applying the above principles, it is crystal clear that defendants Nos.1 to 4 having been debarred from pleading equity, defendant No.5 stepping into the shoes of the defendant Nos.1 to 4 could not also plead equity as a *pendente lite* purchaser as well.



65. Rights of *pendente lite* purchaser and his impleadment into the suit, his role in the pending suit and what are the guiding principles to deal with rights of such *pendente lite* purchaser is no longer *res integra*.

66. In a recent pronouncement of the Hon'ble Apex Court in the case of ***H.Anjanappa and others vs. A.Prabhakar and others*** reported in **2025 SCC Online SC 183** at paragraph 58, it has been held as under:

"58. *From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge:*

- i. First, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order I Rule 10 CPC or under Order XXII Rule 10 CPC, as a general principle;*
- ii. Secondly, a transferee pendente lite is not entitled to come on record as a matter of right;*
- iii. Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the*



Court should, in all cases, be allowed to come on record as a party;

- iv. Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record;*
- v. Fifthly, where a transferee pendente lite does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;*
- vi. Sixthly, merely because such transferee pendente lite does not come on record, the concept of him (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;*
- vii. Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and,*
- viii. Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come record on his own or at the instance of either party to the suit."*



67. Keeping in view the aforesaid principles, when the material on record is analyzed, even though the fifth defendant can take the defence that is available to defendant Nos.1 to 4, as noticed supra, defendant Nos.1 to 4 had no defence whatsoever to oppose the suit as they are parties to agreement with plaintiff as well as defendant No.5. The clandestine nature in which the agreement that has been entered into by defendant Nos.1 to 4 with defendant No.5 as discussed supra would thus kill the case of defendant No.5 in all respects.

68. Insofar as the finding regarding the agreement dated 18.03.2005 entered into between defendant Nos.1 to 4 and defendant No.5 by both the Courts, that was not the subject matter before the Trial Court or before the First Appellate Court, as parties did not join any issue with regard to the said agreement.

69. Nevertheless, since the plaintiff is not included as a party in O.S No.362/2011 and the said suit being filed before the Court of Civil Judge, it is crystal clear that defendant Nos.1 to 5 did not want any finding to be recorded on the validity of agreement to sell dated 18.03.2005 said to have been executed



by defendant Nos.1 to 4 in favour of the fifth defendant in the suit on hand. They were sure that if any such enquiry had taken place in the present suit, they were in weak position.

70. Further, since by operation of law, a sale deed executed subsequently will relate back to the date of agreement on account of 'doctrine of relation back', in the normal circumstances if the agreement dated 18.03.2005 was held to be valid after contest by impleading the plaintiff as well, such defence was always available to defendant No.5.

71. But, in the case on hand, the conduct attributable to the parties in non impleading the plaintiff to the suit in O.S No.362/2011 and getting the decree through Lok Adalath award as referred to supra in detail, even though the legal position is in favour of the fifth defendant, same cannot endure to his benefit.

72. Sri Sunil S. Rao, lastly made a feeble attempt that already a sale deed is executed in favour of defendant No.5 and therefore, decree passed by the Trial Court as well as the First Appellate Court is incapable of execution.



73. Such an argument would not hold water in view of the fact that by action of the Court if something has happened which is against the spirit of a duly constituted Court's decree, by resorting to Section 144 of the Code of Civil Procedure, restitution is permissible. As such, the decree passed by the Trial Judge confirmed by the First Appellate Court is capable of execution.

74. From the above discussion, this Court is of the considered opinion that none of the substantial questions of law raised at the time of admission of the appeal *sans* merit.

75. As such, they are to be held against the appellant and accordingly they are answered.

76. In view of the foregoing discussion, following:

ORDER

- (i) Appeal ***dismissed***.
- (ii) No order as to costs.
- (iii) Consequently, the decree dated 09.11.2017 passed in O.S.No.64/2014 (Old O.S.No.133/2007) on the file of the Senior Civil Judge and



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JMFC, Magadi, confirmed in R.A.No.12/2018 dated 21.09.2019 on the file of the I Additional District and Sessions Judge, Ramanagara, is upheld and can be executed in accordance with law.

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 86