

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

REGULAR FIRST APPEAL NO.2682 OF 2024 (SP)

BETWEEN:

HABIB KHAN
S/O JALEEL KHAN
AGED ABOUT 62 YEARS
R/AT. GOPISETTI KOPPA EXTENSION
SHIVAMOGGA-577 205

...APPELLANT

(BY SRI. H.S. SANTHOSH, ADVOCATE)

AND:

1 . SRI. MOHAMMAD AHAMAD
S/O JAFAR MOHODDIN
AGED ABOUT 67 YEARS
NEAR MASZID, OLD MANDLI
SHIVAMOGGA-577 205

2 . SMT. MAHAJABEEN
W/O MOHAMMAD AHMAD
AGED ABOUT 54 YEARS
NEAR MASZID, OLD MANDLI
SHIVAMOGGA-577 205

3 . MOHAMMAD YUNUS
S/O MOHAMMAD AHMAD
AGED ABOUT 37 YEARS
NEAR MASZID, OLD MANDLI
SHIVAMOGGA-577 205

- 4 . MOHAMMAD ILYAS
S/O MOHAMMAD AHMAD
AGED ABOUT 35 YEARS
NEAR MASZID, OLD MANDLI
SHIVAMOGGA-577 205
- 5 . SMT. JAKIYA
S/O MOHAMMAD AHMAD
AGED ABOUT 32 YEARS
NEAR MASZID, OLD MANDLI
SHIVAMOGGA-577 205
- 6 . MOHAMMAD JAFAR MOHIDDIN
S/O MOHAMMAD AHMAD
AGED ABOUT 30 YEARS
NEAR MASZID, OLD MANDLI
SHIVAMOGGA-577 205
- 7 . MOHAMMAD ISSAQ
S/O MOHAMMAD AHMAD
AGED ABOUT 25 YEARS
NEAR MASZID, OLD MANDLI
SHIVAMOGGA-577 205
- 8 . MOHAMMA ISMAIL JABIULLA
S/O MOHAMMAD AHMAD
AGED ABOUT 23 YEARS
NEAR MASZID, OLD MANDLI
SHIVAMOGGA-577 205

...RESPONDENTS

(BY SRI. S.V. PRAKASH, ADVOCATE FOR R1 TO R8)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 01.10.2024 PASSED IN O.S.No.178/2019 ON THE FILE OF PRL. SENIOR CIVIL JUDGE AND CJM, SHIVAMOGGA, DISMISSING THE SUIT FOR SPECIFIC PERFORMANCE OF CONTRACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.02.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This appeal is preferred by the plaintiff challenging the Judgment and Decree dated 01.10.2024 passed in O.S.No.178/2019 on the file of the Principal Senior Civil Judge and CJM at Shivamogga, dismissing the suit. The suit was filed seeking specific performance of a Contract dated 07.04.2024 and to execute a Sale Deed in favour of the plaintiff by receiving balance consideration in respect of the suit schedule properties.

2. We have heard Shri. H.S. Santhosh, learned counsel appearing for the appellant and Shri. S.V. Prakash, learned counsel appearing for respondents No.1 to 8.

3. The plaint averments were as follows:-

The plaintiff entered into an Agreement of Sale dated 07.04.2014 with the defendants in respect of the suit schedule property for a sale consideration of Rs.37,18,000/-.

Under the said agreement, the defendants received Rs.9,00,000/- as advance and agreed to receive the balance amount of Rs.28,18,000/-, upon furnishing the records relating to the suit schedule property and to execute a registered Sale Deed within three months thereafter.

Defendants are the absolute owners of the suit schedule property. The suit schedule property was represented to be free from liabilities, loan or encumbrances. The plaintiff was ready and willing to perform his part of the contract and had made repeated demands to the defendants to receive the balance sale consideration and execute a registered Sale Deed dated 07.04.2014. On 27.12.2016, the plaintiff paid a further sum of Rs.6,00,000/- towards the balance sale consideration. However, the defendants have failed to deliver the original documents of title and have not come forward to execute the Sale Deed as agreed.

In spite of several requests and reminders, the defendants had not furnished the necessary revenue and survey documents nor complied with the terms of the

agreement. Consequently, the plaintiff issued a legal notice dated 18.06.2019 calling upon the defendants to perform their part of the contract. Despite the service of the notice, the defendants did not comply with the same. On these pleadings the relief of specific performance of the agreement dated 07.04.2014 was sought.

4. The defendants, on being served with notice, entered appearance and filed written statement contending as follows:-

The defendants contended that the plaintiff had instituted O.S.No.326/2015 before the I Additional Civil Judge, Shivamogga on the same Sale Agreement dated 07.04.2014. In the said suit, the defendants contended that the agreement was a created document in which the plaintiff had not acquired any manner of right or interest. Thereafter, the suit was dismissed for default as per Order dated 25.06.2018. Therefore, the question of filing another suit on the same set of documents before the trial Court is not permissible in law.

It was contended that the current suit was instituted after a lapse of three years from date of denial of the Agreement of Sale in O.S.No.326/2015. Therefore, the current suit is barred under Law of Limitation. Further, another alleged Sale Agreement dated 27.12.2016 is not tenable in the eye of law, because at that time O.S.No.326/2015 was pending for consideration before the Civil Court. It was also contended that the averments regarding Sale Agreement dated 23.12.2016 and payment of Rs.6,00,000/- is purely a personal transaction unrelated to suit transactions.

It is contended that the defendants have no intention to sell the suit schedule property and the property is not an independent property of the defendants. Further, the suits for partition in O.S.No.95/2011 and O.S.No.96/2011 were pending. The matter is also pending before this Court in RFA No.1720/2017 for adjudicating the rights of the defendants.

It is further contended that the transactions alleged by the plaintiff are purely commercial in nature. The trial Court has no jurisdiction to entertain the present suit under

Sections 2 and 9 of the Commercial Courts Act, 2015. It is further contended that the plaintiff had approached the defendants requesting them to clear certain documents before the Revenue Authority. When the defendants visited the Sub-Registrar's Office, they came to know about the Sale Agreement alleged to have come into existence. Therefore, it is contended that the said agreement is a forged one.

5. The trial Court framed the following issues for consideration:-

- "1. Whether the plaintiff proves defendants have executed on agreement of sale dated: 07-04-2014 and offered to sell suit schedule property for valid consideration of Rs.37,18,000/-?*
- 2. Whether the plaintiff prove as on the date of agreement he has paid Rs.9.00 lakhs on 07.04.2014 and Rs.6.00 lakh on 27.12.2016 to the defendants as part sale consideration?*
- 3. Whether the plaintiff proves he was and has been always ready and willing to perform his part of contract?*
- 4. Whether the defendants prove plaintiff has filed O.S.No.326/2015 based on agreement*

dated: 07-04-2014 and on account of dismissal of said suit for default, the present suit is barred by law of limitation?

5. *Whether the plaintiff is entitled for a decree of specific performance of contract?*
6. *What order or decree?"*

6. After considering the evidence of the plaintiff, who examined himself as PW.1 and got marked the documents as Exs.P1 to Ex.P10, and the defendant No.1 who had examined himself as DW.1 and marked the documents as Exs.D1 to D18, the trial Court answered Issues No.1 to 3 and 5 in the negative and Issue No.4 in the affirmative. The suit was accordingly dismissed.

7. The learned counsel appearing for the appellant submits that the parties had entered into an agreement for sale and an amount of Rs.9,00,000/- was paid as advance on 07.04.2014. Further, a sum of Rs.6,00,000/- was paid by Cheque on 27.12.2016. It is contended that the execution of the agreement having been proved, the trial Court erred in rejecting the contentions of the plaintiff and dismissing the suit. It is contended that if the payment of the second

Cheque on 27.12.2016 and the legal notice dated 18.06.2019 are taken into consideration, the suit filed on 09.09.2019 was well within time. This aspect was completely ignored by the trial Court.

8. It was the plaintiff's contention that though the defendants had obtained an amount of Rs.15,00,000/- towards the sale consideration, they had not made any arrangements for execution of the Sale Deed and obtaining the balance from the appellant.

9. The learned counsel appearing for the respondents/defendants on the other hand, contended that it is clear from a reading of Ex.P1 that the time provided for executing the Sale Deed in terms of the agreement was three months. It is submitted that the appellant admittedly did not tender the balance amount or require the execution of the Sale Deed within the period of three months from the date of Agreement, that is, 07.04.2014 and that the suit filed in the year 2019 was therefore hopelessly time-barred.

10. We have considered the contentions advanced. The only question that arises for consideration in this appeal is:-

"Whether the findings of the learned Single Judge require interference in the appeal?"

11. We notice that the Agreement dated 07.04.2014 is a registered Agreement for Sale of the suit schedule property. The agreement records that an amount of Rs.9,00,000/- has been paid as advance on 07.04.2014 and that the balance amount of Rs.28,18,000/- would be paid within three months after providing the documents related to the properties to the respondent. The Agreement between the parties was to provide the documents relating to the properties, receive balance consideration and to register the Sale Deed within a period of three months. Thereafter, the appellant filed O.S.No.326/2015 before the I Additional Civil Judge, Shivamogga. Ex.D6 is the order sheet, plaint and written statement in the said Original Suit. The said Original Suit was also filed on the basis of the very same document, that is, Ex.P1 dated 07.04.2014. It was contended in the

said suit that on 22.04.2015, the plaintiff was informed that the defendants are attempting to sell the suit properties. On the said cause of action, the earlier suit was laid for permanent injunction restraining the defendants, their heirs and representatives from breaching the Agreement of Sale dated 07.04.2014. The respondents herein entered appearance in the said suit and denied the execution of the Agreement. Thereafter, the suit was dismissed for default on 25.06.2018. It is further contended that a reply notice dated 03.07.2019 to the legal notice dated 18.06.2019 had been sent by the respondents specifically pointing out these facts.

12. The trial Court considered the contentions and found that the Agreement was one executed on 07.04.2014. The time provided for executing the Sale Deed was three months from date of the agreement. It was found that in the year 2015, the plaintiff had filed a suit against the defendants seeking permanent prohibitory injunction on the basis of the Agreement of Sale dated 07.04.2014. The defendants in the said suit had filed written statement on 29.07.2015, denying the agreement. The suit was thereafter

dismissed for default on 25.06.2018. Therefore, evidently the plaintiff had clear notice of the intention of the defendants not to honour the Sale Agreement dated 07.04.2014 when he filed the earlier suit and definitely on 29.07.2015, when the written statement was filed. The trial Court also noticed that the allegation in Ex.D6 - order sheet, plaint and written statement, is that the defendants were attempting to sell the property and the plaintiff had notice of the said fact on 22.04.2015 as pleaded in the earlier suit. If the said date of notice of the intention of the defendants not to honour the Agreement is taken into account, the suit ought to have been filed on 21.04.2018. However, the suit having been filed only on 09.09.2019, was hit by the Laws of Limitation.

13. Though, the plaintiff attempted to set up a case of a further payment having been made on 27.12.2016 towards the sale consideration, the trial Court has clearly held that no material whatsoever has been produced to show that any such payment has been made by way of

Cheque or otherwise on 27.12.2016 towards the sale consideration in respect of the Suit Schedule Property.

14. Further, we notice that the defendants had produced documentary proof in support of the contentions raised by them. The copies of plaint, order sheet and written statement in O.S.No.327/2015 in the Court of the I Additional Civil Judge, Shivamogga were produced and marked by the defendant. However, no material whatsoever, except the original agreement for sale and legal notice were produced by the plaintiff. The oral evidence of the parties have also been clearly considered by the trial Court. It is thereafter, that it has been concluded that the appellant admittedly had notice of the intention of the defendants not to honour the Agreement for Sale as early as on 22.04.2015. The suit was therefore dismissed as being barred by limitation.

15. After an earnest consideration of the materials on record and the judgment under appeal, we find that the reasoning of the trial Court is only to be sustained. The appeal fails and the same is accordingly ***dismissed.***

No order as to costs.

All pending interlocutory applications shall stand
disposed of.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

cp*