



CNR: KAHC010782942011

NC: 2026:KHC:55787
RSA No. 2675 of 2011

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 2675 OF 2011 (SP)

BETWEEN:

1. SHIVANANDAPPA
S/O CHANNABASAPPA GOWDA
AGED ABOUT 56 YEARS
OCC: AGRICULTURIST
R/O DHOONA VILLAGE, HOSANAGAR TALUK,
SHIVAMOGGA DISTRICT.

...APPELLANT

(BY SRI. PRUTHVI WODEYAR, ADVOCATE)

AND:

1. SMT. NAGAMMA
W/O MURIGAPPA
AGED MAJOR
R/O GILALGUNDI, NEAR ANANDAPURAM
SAGAR TALUK-577401
SHIVAMOGGA DISTRICT.
2. MURIGAPPA GOWDA
S/O LATE CHAYAPPAGOWDA
AGED ABOUT 55 YEARS
R/O DHOONA VILLAGE, HOSANAGARA TALUK,
SHIVAMOGGA DISTRICT.

...RESPONDENTS

(BY SRI. BIMBADHAR M. GOWDA, ADVOCATE FOR R1;
SRI. S.V. PRAKASH, ADVOCATE FOR R2)

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THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 4.8.2011 PASSED IN R.A.NO.95/2006 ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC., SAGAR, DISMISSING THE APPEAL AND CONFIRMING THE ORDER DATED 29.6.2006 PASSED ON IA NO.1 IN EX.NO.74/2001 ON THE FILE OF THE PRL. CIVIL JUDGE (JR.DN) SAGAR, DISMISSING THE APPLICATION FILED UNDER ORDER 21 RULE 58 OF CPC.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

This second appeal is filed by the agreement holder, who has obtained a decree for specific performance against the husband of the respondent/plaintiff, who was arrayed as defendant No.2 in the suit for specific performance.

2. The present appellant, having obtained the benefit of the decree for specific performance in O.S.No.348/1989, subsequently came to know that the wife of defendant No.2 had instituted a suit for maintenance and obtained a decree therein, pursuant to

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which she initiated execution proceedings in the year 2001. On gaining such knowledge, the appellant entered appearance in the execution proceedings and filed an application under Order XXI Rule 58 of the Code of Civil Procedure, 1908 (for short 'CPC'), seeking removal of the attachment over the suit schedule properties, so as to enable him to work out and enforce the decree for specific performance obtained in O.S.No.348/1989.

3. The Executing Court, upon adjudication of the appellant's claim under Order XXI Rule 58 of the CPC, rejected the said application. The said order came to be affirmed by the Appellate Court in R.A.No.95/2006. Both the Courts, upon consideration of the material on record, have concurrently recorded a finding that the respondent/plaintiff had obtained an interim order of injunction restraining defendant No.2 from alienating or otherwise disposing of the suit schedule properties. It is further noticed from the record that the suit for



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maintenance was instituted immediately after the present appellant entered into the second agreement dated 05.07.1984. The said suit ultimately came to be decreed on 16.02.1991. However, notwithstanding the decree having been passed in the year 1991, the respondent/plaintiff initiated execution proceedings only in the year 2001.

4. Aggrieved by the concurrent findings recorded by the Courts below, the present second appeal came to be admitted by this Court on 17.01.2017 on the following substantial questions of law:

"1) Whether both the courts below were justified in passing attachment order in respect of the suit properties during the existence of prior agreement of sale dtd: 22.3.1984, wherein possession was also handed over in favour of the appellant contrary to Sec.53 A of T.P. Act?

2) Whether both the courts below were justified in dismissing I.A.No.1 filed under Order 21, Rule 58 of CPC inspite of there being decree for

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specific performance in O.S.No.348/89, in respect of the very same suit schedule properties in favour of the appellant?"

Finding on substantial questions of law:

5. From the records, it emerges that the appellant had entered into two agreements with defendant Nos.1 and 2, the first being dated 22.03.1984 and the second dated 05.07.1984. No doubt, the right of respondent No.1 to claim maintenance arises from her marital relationship with defendant No.2. However, the material on record also discloses that, notwithstanding the decree for maintenance obtained by respondent No.1 on 16.02.1991, defendant No.2 has admittedly not paid any amount towards the maintenance decreed in her favour. It is in the backdrop of these undisputed circumstances that the orders passed by this Court on 09.07.2026 and 20.07.2026 assume significance. It would, therefore, be apposite for this Court to advert to the said orders, which are extracted hereunder:

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Order dated 09.07.2026

"In the early morning, the learned counsel came and made the submission that he will file vakalath for respondent No.1. But when the matter is called at the end of the Court proceedings, the learned counsel disappeared.

The respondent No.1 is present before the Court, who appears to be aged more than 75 years along with her brother.

List the matters on 20.07.2026."

Order dated 20.07.2026

"On behalf of respondent No.1, her brother Budyappa M., who was present on the earlier date of hearing along with respondent No.1, has collected the DD for an amount of Rs.4,35,000/- and Rs.65,000/- and the same is issued in the name of respondent No.1.

xxxxx"

6. The earlier Demand Draft, which had been received by the brother of the respondent/plaintiff, was

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returned on account of an error in mentioning the correct name of the respondent/plaintiff. A fresh Demand Draft has now been obtained and the same is handed over to the learned counsel appearing for the respondent/plaintiff.

7. In compliance with the order passed by this Court, the present appellant has handed over a Demand Draft for a sum of Rs.5,00,000/- drawn on the State Bank of India to the learned counsel appearing for the respondent/plaintiff. Having regard to the substantial payment so made, the question that now falls for consideration is whether, in the peculiar facts and circumstances of the case, the respondent/plaintiff, who has admittedly been deprived of the maintenance awarded to her despite the decree dated 16.02.1991 passed in O.S.No.165/1984 and who is stated to be aged about 75 years, can be adequately protected by directing further payment as a condition for enabling the appellant to work out the decree for specific performance. This Court is of



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the view that, having regard to the long lapse of time, the non-payment of the decreed maintenance by defendant No.2 and the substantial payment of Rs.5,00,000/- now made by the appellant, the equities can be balanced by directing the appellant to make a further deposit towards the maintenance arrears. The Demand Draft for Rs.5,00,000/- has been handed over today to the learned counsel for the respondent/plaintiff.

8. The records further disclose that respondent/plaintiff was awarded maintenance at the rate of Rs.250/- per month under the judgment and decree dated 16.02.1991. It is not in dispute that respondent/plaintiff has not sought enhancement of the maintenance amount for nearly two decades. The amount payable at the rate of Rs.250/- per month, computed over the relevant period, would work out to approximately Rs.1,25,000/-. The present appellant has, however, voluntarily paid a sum of Rs.5,00,000/- towards

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maintenance. Having regard to the age of respondent/plaintiff and the fact that she has been deprived of the benefit of the decree for maintenance for a considerable period, this Court is of the opinion that the equities would stand adequately balanced if the appellant is further directed to deposit a sum of Rs.2,00,000/- in Ex.No.74/2001. Subject to such deposit being made within a period of eight weeks from the date of receipt of a copy of this order, the appellant would be entitled to work out and enforce the decree for specific performance.

9. In the above factual backdrop, it is also significant that the agreements to sell relied upon by the appellant, executed by the father-in-law and husband of the respondent/plaintiff, are anterior to the institution of the suit for maintenance. The appellant's rights under the agreements thus arose much prior to the decree obtained by the respondent/plaintiff. At the same time, the respondent/plaintiff, despite obtaining a decree for



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maintenance as far back as on 16.02.1991, has not been able to realise the amount decreed in her favour. The equities, therefore, cannot be considered in isolation. The subsequent payment of Rs.5,00,000/- by the appellant, coupled with the further direction to deposit Rs.2,00,000/- in the pending execution proceedings, adequately safeguards the interest of the respondent/plaintiff while permitting the appellant to work out the decree for specific performance. Accordingly, the substantial question of law is answered in the negative and in favour of the appellant, subject to the appellant depositing a further sum of Rs.2,00,000/- in Ex.No.74/2001 within eight weeks from the date of receipt of a copy of this order.

10. In the considered opinion of this Court, this subsequent conduct of the appellant is relevant while moulding the relief in a second appeal arising out of proceedings under Order XXI Rule 58 CPC. The Court is not called upon merely to determine the competing claims

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in the abstract. It is required to give effect to the appellant's established contractual rights without permitting the respondent/plaintiff, who has remained without the benefit of her maintenance decree for nearly three decades, to suffer further prejudice. The payment of Rs.5,00,000/- substantially advances the latter object. The appellant has, therefore, demonstrated his bona fides by voluntarily securing a substantial amount in favour of the respondent/plaintiff, despite the fact that the maintenance decree was against defendant No.2.

11. Having regard to the foregoing circumstances, this Court is of the view that the attachment cannot be permitted to operate indefinitely so as to defeat the appellant's pre-existing rights under the agreements of sale and the decree for specific performance. At the same time, the respondent/plaintiff's claim under the maintenance decree deserves further protection. It is for this reason that, in addition to the sum of Rs.5,00,000/-

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already paid, the appellant is directed to deposit a further sum of Rs.2,00,000/- in Ex.No.74/2001 within eight weeks. Such a condition adequately balances the equities between the parties and ensures that the respondent/plaintiff derives a meaningful benefit from the decree which has remained unsatisfied since 1991.

12. Accordingly, the first substantial question of law, as to whether the Courts below were justified in sustaining the attachment notwithstanding the appellant's prior agreement of sale dated 22.03.1984 coupled with delivery of possession, is answered in the negative and in favour of the appellant, subject to the appellant complying with the condition of further deposit of Rs.2,00,000/- within the stipulated period.

13. The second substantial question of law, as to whether the Courts below were justified in dismissing I.A.No.1 filed under Order XXI Rule 58 CPC notwithstanding the decree for specific performance



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obtained by the appellant in O.S.No.348/1989 in respect of the very same properties, is also answered in the negative and in favour of the appellant. The appellant's prior contractual rights, the subsequent decree for specific performance, and the substantial payment of Rs.5,00,000/- made by him towards the long-outstanding maintenance claim of the respondent/plaintiff, together warrant interference with the concurrent orders of the Courts below.

14. The relief granted herein is thus not at the cost of the respondent/plaintiff's legitimate claim. On the contrary, the payment already made by the appellant and the further deposit directed herein secure a substantial monetary benefit to a decree-holder who, despite obtaining a decree for maintenance in the year 1991, has admittedly received nothing thereunder. The equities can, therefore, be appropriately balanced by permitting the

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appellant to enforce his decree for specific performance upon compliance with the condition imposed by this Court.

15. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The appeal is ***allowed***.

(ii) The judgment and decree dated 04.08.2011 passed in R.A.No.95/2006 by the learned Senior Civil Judge and JMFC, Sagar, confirming the order dated 29.06.2006 passed on I.A.No.1 in Ex.No.74/2001 by the learned Principal Civil Judge (Jr.Dn.), Sagar, are hereby set aside.

(iii) Consequently, I.A.No.1 filed by the appellant under Order XXI Rule 58 of the Code of Civil Procedure in Ex.No.74/2001 is allowed. The attachment over the suit schedule properties is hereby raised. The appellant shall be entitled to enforce the decree for specific performance granted in O.S.No.348/1989,

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subject to the appellant depositing a further sum of Rs.2,00,000/- in Ex.No.74/2001 within a period of eight weeks from the date of receipt of a copy of this order.

(iv) The amount of Rs.5,00,000/- already paid by the appellant by way of Demand Draft to the respondent/plaintiff shall be treated as payment towards the maintenance dues payable to her.

(v) On deposit of the further sum of Rs.2,00,000/- within the stipulated period, the appellant shall be at liberty to proceed with the enforcement of the decree for specific performance in accordance with law.

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(SACHIN SHANKAR MAGADUM)
JUDGE

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