NC: 2025:KHC:12386
RSA No. 568 of 2016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 568 OF 2016 (SP)

BETWEEN:

1. SRI. BOREGOWDA
   S/O HONGERE GOWDA
   AGED ABOUT 70 YEARS
   R/AT MADANE VILLAGE
   CHENNARAYAPATNA
   HASSAN DISTRICT
   BY GPA HOLDER
   M.B. MANJEGOWDA

...APPELLANT

(BY SRI. M.R. RAJAGOPAL, SENIOR COUNSEL FOR
SRI. DESHRAJ, ADVOCATE)

AND:

Digitally signed by SUNITHA K S
Location: HIGH COURT OF KARNATAKA

SRI. SHIVANANJU
SINCE DEAD BY LRS

1. SMT. KAMALAMMA
   AGED ABOUT 48 YEARS
   W/O LATE SHIVANANJU

2. SMT. HEMA
   AGED ABOUT 32 YEARS
   D/O LATE SHIVANANJU

3. SMT. MANJULA
   AGED ABOUT 29 YEARS
   D/O LATE SHIVANANJU

4. SRI. SRIKANTASWAMY
AGED ABOUT 26 YEARS
S/O LATE SHIVANANJU

NANJEGOWDA @ POTHEGOWDA
SINCE DEAD BY LEGAL REPRESENTATIVES

5. SMT. NANJAMMA
AGED ABOUT 65 YEARS
W/O LATE NANJEGOWDA @ POTHEGOWDA

6. SMT. HUTCHAMA
AGED ABOUT 49 YEARS
D/O LATE NANJEGOWDA @ POTHEGOWDA

7. RAVICHANDRA
AGED ABOUT 47 YEARS
S/O LATE NANJEGOWDA @ POTHEGOWDA

8. NANJAPPA
AGED ABOUT 45 YEARS
S/O LATE NANJEGOWDA @ POTHEGOWDA

9. SMT. LAKSHMI
AGED ABOUT 39 YEARS
D/O LATE NANJEGOWDA @ POTHEGOWDA

10. MANJUNATH
AGED ABOUT 41 YEARS
D/O LATE NANJEGOWDA @ POTHEGOWDA

ALL ARE R/AT
KONGARA NANJAIAHNA HUNDI
KODKOLA VILLAGE, JAYAPURA HOBLI
MYSURU-573 001.

…RESPONDENTS

(BY SRI. ABUBACKER SHAFI, ADVOCATE)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 19.12.2015 PASSED IN R.A NO.376/2012 ON THE FILE OF THE II ADDL. DISTRICT JUDGE, MYSURU, CONFIRMING THE JUDGMENT AND DECREE DATED 02.07.2012 PASSED IN O.S NO.238/2006 ON THE FILE OF THE PRINCIPAL JUDGE, COURT OF SMALL CAUSES AND SENIOR CIVIL JUDGE, MYSORE.

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

CORAM: HON'BLE MR JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

This Regular Second Appeal is filed by the appellant challenging the judgment and decree dated 19.12.2015 passed in R.A.No.376/2012 by the learned II Additional District Judge, Mysuru reversing the judgment and decree dated 02.07.2012 passed in O.S.No.238/2006 by the learned Principal Judge, Small Causes and Senior Civil Judge, Mysuru.

2. For convenience, the parties are referred to based on their ranking before the trial Court. The appellant was the plaintiff and the respondents were the legal representatives of deceased defendant No.1 and defendant No.2.

3. Brief facts, leading rise to the filing of this appeal are as follows:

The plaintiff filed a suit against defendants for specific performance of a contract. It is the case of the plaintiff that the defendants are the owners of the suit schedule property and they agreed to sell the suit schedule property for a consideration of Rs.5,09,250/- i.e., Rs.2,10,000/- per acre. Registered sale agreement was executed by the defendants on 05.08.2005 in favour of plaintiff. Out of total sale consideration amount, an amount of Rs.1,50,000/- was paid to defendant No.1 through a post-dated cheque bearing No.866712 drawn on Syndicate Bank dated 10.08.2005. The said cheque was encashed by defendant No.1. The balance consideration amount of Rs.3,59,250/- was to be paid within three months from the date of execution of a sale agreement.

4. In pursuance of the sale agreement, the defendants handed over the documents of title of the suit schedule property to the plaintiff. Defendants No.1 and 2

did not come forward to execute a registered sale deed as they agreed, inspite of the plaintiff requesting them to execute a registered sale deed. The defendants went on postponing the registration on one pretext or the other. The plaintiff was/is ready and willing to perform his part of contract. The plaintiff issued a legal notice on 26.10.2005 calling upon the defendants to execute registered sale deed by performing their part of contract. The defendant received the said legal notice. The defendants did not reply to the legal notice. Hence, a cause of action arose for the plaintiff to file a suit for specific performance of contract. Accordingly, prays to decree the suit.

5. The defendants filed a written statement denying the averments made in the plaint and contended that the defendants did not agree to sell the suit schedule properties for a sum of Rs.2,10,000/- per acre and denied that the defendants received Rs.1,50,000/- through postdated cheque. It is contended that the plaintiff approached the defendants requesting them to mortgage

suit property for Rs.1,50,000/- for 3 years and accordingly, defendants agreed to execute mortgage deed. It is contended that defendants have entered into a mortgage deed and never entered into an agreement of sale with the plaintiff and on the date of registration, i.e., on 05.08.2005, the plaintiff had taken the defendants to a hotel, offered food and also liquor and after lunch taken them to the Sub Registrar's office, stating that the mortgage deed will be executed on the same day, promised to pay balance consideration amount and offered to give a postdated cheque. It is contended that the deed was misrepresented as mortgage deed and the signature of defendant No.1 was obtained.

6. The case of the defendants is that the mortgage deed was for three years. The plaintiff agreed to pay a sum of Rs.1,50,000/- for three years, and the said amount did not carry any interest. It is also contended that having come to know the aforesaid transaction, the family members of the defendants filed a suit for partition and

separate possession in O.S.No.765/2005 on the file of Principal Civil Judge (Sr.Dn.) Mysuru. Hence, prays to dismiss the suit.

7. The trial Court, based on the pleading of the parties, framed the following issues:

ISSUES

1) *Whether plaintiff proves that the defendants have agreed to sell the suit property to the plaintiff for consideration of Rs.5,09,250/- by executing an agreement of sale dated 05.08.2005 and received Rs.1,50,000/- as an earnest amount through post dated cheque?*
2) *Whether plaintiff proves that he was/is ready and willing to perform his part of contract?*
3) *Whether defendants prove that the plaintiff has got executed an agreement of sale dated:05.08.2005 by fraud and misrepresenting that the said document is mortgage deed?*
4) *Whether plaintiff is entitled for specific performance of contract as sought for?*
5) *Whether plaintiff is entitled for possession of suit property?*
6) *Whether plaintiff is entitled for the reliefs sought for?*
7) *What Order or decree?*

8. The plaintiff, to substantiate his case, examined the power of attorney holder as PW-1, examined two

witnesses as PWs-2 and 3 and marked 15 documents as Ex.P.1 to Ex.P.15. In rebuttal defendant No.1(d) was examined as DW-1, examined one witness as DW-2 and marked three documents as Exs.D.1 to D.3.

9. The trial Court after recording the evidence, hearing on both sides and on assessing verbal and documentary evidence, answered issues No.1, 2, 4, 5 and 6 in the affirmative, issue No.3 in the negative and issue No.7 as per the final order. The suit of the plaintiff was decreed with cost vide judgment dated 02.07.2012. The defendants were directed to execute a registered sale deed duly conveying the suit schedule property in favour of the plaintiff in terms of the agreement of sale dated 05.08.2005 after receiving the balance consideration amount within three months from the date of the judgment. If the defendants fail to do so, the plaintiff is at liberty to get it done through the agency of the Court. Further, the defendants are directed to deliver physical possession of the suit schedule property to the plaintiff.

The legal representatives of the defendants, aggrieved by the judgment and decree passed in O.S.No.238/2006, preferred an appeal in R.A.No.376/2012 on the file of learned II Additional District Judge, Mysuru.

10. The first appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

POINTS

1) *Whether the trial Court was justified in holding that the transaction under Ex.P.6 was the sale transaction?*
2) *Whether the trial Court was justified in granting the relief of specific performance to the plaintiff?*
3) *Whether the judgment and decree of the trial Court calls for interference by this Court?*
4) *What order?*

11. The first appellate Court, on reassessing the verbal and documentary evidence, answered points No.1 and 2 in the negative. Point No.3 in the affirmative and point No.4 as per the final order. The appeal was allowed with cost vide judgment dated 19.12.2015. The judgment and decree passed by the trial Court in O.S.No.238/2006

was set aside. Consequently, the suit of the plaintiff was dismissed. The plaintiff, aggrieved by the judgment and decree passed in R.A.No.376/2012, filed this Regular Second Appeal.

12. Heard Sri. M.R. Rajagopal, learned Senior Counsel for the plaintiff and Sri. Abubacker Shafi, learned counsel for the legal representatives of the defendants.

13. Learned Senior Counsel for the plaintiff submits that the plaintiff and defendants have produced the documents and lead evidence, but the first appellate Court has not correctly appreciated the evidence on record. He submits that the first appellate Court, being the final fact-finding Court is required to re-appreciate the entire evidence and answer each issues framed by the trial Court. He submits that the defendants have not taken defence in the written statement regarding the hardship, but the first appellate Court, without pleading has recorded its finding on the point of hardship. He also submits that the defendants family members filed a suit in

O.S.No.765/2005 for the relief of partition and separate possession.

14. Before the service of summons on the defendants, the parties have entered into a compromise, and compromise decree was drawn in the Lok Adalath. He submits that the judgment and compromise decree passed in O.S.No.765/2005 is not binding on the plaintiff. Further, the first appellate Court has committed an error in recording the finding that the plaintiff did not state what is the extent of shares of defendants No.1 and 2 in the suit schedule property. He also submits that the first appellate Court has not alternatively considered the pleadings of the parties. Hence, the judgment and decree passed by the first appellate Court does not comply with Order 41 Rule 31 of Code of Civil Procedure, 1908 (for short CPC). Therefore, he submits that the matter requires reconsideration by the first appellate Court and that the first appellate Court has not correctly framed the points for consideration. Hence, on these grounds, he prays to allow

the appeal and remit the matter to the first appellate Court with a direction to dispose of the appeal in accordance with Order 41 Rule 31 of CPC.

15. *Per contra*, the learned counsel for the legal representatives of the defendants submits that the first appellate Court has reappreciated the entire evidence on record and rightly reversed the judgment and decree passed by the trial Court and consequently dismissed the plaintiff's suit. He submits that the plaintiff has failed to establish the execution of the sale agreement alleged to have been executed by Shivananju and also received the payment of part consideration amount. The first appellate Court has rightly passed the impugned judgment. Hence, on these grounds, he prays to dismiss the appeal.

16. This Court admitted the appeal to consider the following substantial questions of law:

> *1) Whether the lower appellate Court is justified in reversing the judgment and decree of the trial Court by ignoring the registered agreement dated 05.08.2005?*

2) *Whether the lower appellate Court is justified in reversing the judgment and decree of the trial Court holding that mere thumb impression on Ex.P6(a) to (d) does not amount to agreement when the defendants have not produced any material documents to disprove Ex.P6 which is a registered document?*

3) *Whether the lower appellate Court is justified in reversing the judgment and decree of the trial Court in the absence of any oral and material documents to prove contrary to Ex.P6?*

Re-Substantial questions of law:

17. Substantial Questions of Law Nos.1 and 3 are interconnected. Hence, they are taken together for common discussion to avoid the repetition of facts.

18. The plaintiff examined the power of attorney holder as PW-1. He reiterated the plaint averments in the examination-in-chief. He deposed that the defendants agreed to sell the suit schedule property for consideration of Rs.5,09,250/-. The plaintiff had paid the part consideration amount through a postdated cheque bearing No.866712 drawn on Syndicate Bank, J.P.Nagara, Mysuru, dated 10.08.2005 for Rs.1,50,000/- as an advance amount. It is agreed that the balance sale consideration

amount to be paid within three months from the date of the execution of the registered sale agreement and to execute a registered sale deed. The plaintiff requested the defendants to accept the balance consideration amount and execute a registered sale deed. But the defendants went on postponing on one pretext or the other. The plaintiff got issued a legal notice calling upon the defendants to receive the balance consideration amount and execute a registered sale deed. The defendants did not reply to the legal notice.

19. The plaintiff, to prove his case, produced documents Ex.P.1 is an office copy of the legal notice dated 28.10.2005 calling upon the defendants to receive the balance consideration amount and execute a registered sale deed. Ex.P.2 and P.3 are the postal receipts. Exs.P.4 and P.5 are the postal acknowledgements which discloses that Ex.P.1 legal notice was duly served on the defendants. Ex.P.6 is the original sale agreement alleged to have been executed by Shivananju and

Nanjegowda in favour of the plaintiff agreeing to sell the suit schedule property for a consideration of Rs.5,09,250/- and the plaintiff paid a sum of Rs.1,50,000/- as an advance sale consideration amount, through a postdated cheque. It was agreed that the balance consideration amount to be paid within three months from the date of execution of the sale agreement. Ex.P.7 is the general power of attorney wherein the plaintiff has authorized his son to depose on behalf of the plaintiff. Exs.P.8 and P.9 are the Bank account extracts. Ex.P.10 is encumbrance certificate. Ex.P.11 is the mutation register (Ex.D.1). Ex.P.12 is the RTC extract (Ex.D.2). Ex.P.13 is the certified copy of the plaint in O.S.No.765/2005, wherein family members of the defendants filed a suit for partition and separate possession against the defendants and the plaintiff herein. The subject matter of the present suit schedule property is the subject matter in O.S.765/2005. Ex.P.14 is the certified copy of the order sheet in O.S.No.765/2005. Ex.P.15 is the certified copy of the compromise petition filed in O.S.No.765/2005.

Ex.P.14, which is the order sheet in O.S.No.765/2005, wherein, the trial Court issued summons to the defendants in the said suit before the service of notice on defendant No. 4 i.e., the plaintiff therein and the other defendants filed a compromise petition and the suit was disposed of, in terms of compromise petition filed by the plaintiff and defendants No.1 and 2 therein.

20. During the course of cross-examination it is suggested that the transaction between the plaintiff and Shivananju is a loan transaction and not a sale transaction and that the Shivananju executed a mortgage deed, the plaintiff played fraud on Shivananju and got executed sale agreement marked as Ex.P.6. PW-1 denied the said suggestion.

21. The plaintiff to prove Ex.P.6, examined the scribe as PW-3 who deposed that he drafted the sale agreement marked as Ex.P.6 and his signature was marked as Ex.P.6(a) and he deposes that after drafting

the sale agreement ,PW-3 has read over and explained the contents of Ex.P.6 to the parties. The parties, after having understood the contents of Ex.P.6 have affixed their signatures on Ex.P.6. Further, the plaintiff also examined the attesting witness to Ex.P.6 as PW-2. He has also deposed on the same lines as PW-1.

22. Conversely, defendant No.1(d) was examined as DW-1. He reiterated the written statement averments in the examination-in-chief and to prove his defence, produced the documents Ex.D.1 is the M.R. extract, (Ex.P.11) Ex.D.2 is the RTC (Ex.P.12) Ex.D.3 are the medical bills and reports.

23. During the cross-examination it was suggested to DW-1 that Shivananju had agreed to sell the suit schedule property for a consideration of Rs.5,09,250/- and accordingly, the plaintiff paid an advance amount of Rs.1,50,000/- through a postdated cheque dated 10.08.2005 and it was agreed that the balance consideration amount to be paid within three years from

the date of execution of sale agreement. DW-1 denied the said suggestion. He admits that Ex.P.6 bears the signature of defendants. Further, the defendant also examined one witness, DW-2, who has deposed that the transaction between the plaintiff and defendant No.1 is a loan transaction and not a sale transaction.

24. The trial Court, considering the material on record, the evidence placed on record by the parties, held that the plaintiff has proved the execution of sale agreement dated 05.08.2005 by the defendants and further, the defendants have received a sum of Rs.1,50,000/- as an advance sale consideration amount through a postdated cheque dated 10.08.2005. Further held that the plaintiff, to demonstrate that he was/is always ready and willing to perform his part of the contract issued a legal notice marked as Ex.P.1. The legal notice was duly served on the defendants. Despite service of a notice, the defendants did not reply to the legal notice. The trial Court decreed the suit and directed the

defendants to receive the balance consideration amount and execute a registered sale deed. The legal representatives of the defendants aggrieved by the judgment and decree passed in O.S.No.238/2006 has preferred an appeal in R.A.No.376/2012.

25. The first appellate Court reversed the judgment and decree passed by the trial Court in O.S.No.238/2006 on two grounds:

(1) The hardship

(2) The plaintiff has not pleaded in the plaint the extent of the share of defendants No.1 and 2 in the suit schedule property.

26. The first appellate Court being a final fact-finding Court, is required to reappreciate the entire evidence placed on record. The judgment of the first appellate Court shall be in writing and shall state the point for determination, the decision thereon, the reasons for the decision and where the decree appealed from is reversed or varied the relief for which the appellant is

entitled. From the perusal of the judgment of the appellate Court, the appellate Court has not framed the points for determination properly and further, though the plaintiffs and the defendants produced the several documents, the appellate Court has not discussed the documents produced by the parties except Ex.P.6.

27. Further the defendants have not taken a defence regarding the hardship in the written statement. The first appellate Court failed to consider the well established principles of law that any amount of evidence without pleading is of no convenience. Further, the defendants had taken the defence that the suit schedule property is the joint family property of the defendants and their family members. The first appellate Court has not discussed anything about the defence raised by the defendants regarding the fact that it is not a sale transaction, but it is a mortgage transaction. The first appellate Court has not applied its mind while passing the impugned judgment. The judgment and decree passed by

the first appellate Court does not comply with Order 41 Rule 31 of CPC. The matter requires reconsideration by the first appellate Court.

28. The appellate Court, without assigning any reasons has reversed the judgment passed by the trial Court O.S.No.238/2006. The first appellant Court has not re-appreciated the necessary issues framed by the trial Court. The judgment and decree passed by the first appellate Court is arbitrary and erroneous and the same is liable to be set aside. The appeal requires reconsideration by the first appellate Court. In view of the above discussion, I answer the substantial questions of law No.1 and 3 in the negative. As observed above, the matter requires reconsideration by the first appellate Court.

In view of the above discussion, I do not seem it proper to consider the substantial question of law No.2, and it does not arise for consideration. In view of the above discussion, I proceed to pass the following:

ORDER

(i) The appeal is allowed.

(ii) The judgment and decree passed in R.A.No.376/2012 dated 19.12.2015 by the II Additional District Judge, Mysuru is set aside.

(iii) The appeal is restored to its original position. The first appellate Court is directed to pass the judgment in accordance with law.

(iv) The first Appellate Court shall dispose of the appeal independently without being influenced by any observation made in this judgment.

(v) The parties are directed to appear before the first appellate Court on 09.06.2025 without awaiting any further notice.

The office is directed to transmit the records to the first appellate Court.

All the contentions of the parties are kept open.

No order as to the costs.

Sd/-
(ASHOK S.KINAGI)
JUDGE

BVK; List No.: 1 Sl No.: 3