NC: 2025:KHC:53677
RSA No. 1950 of 2025

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO.1950 OF 2025 (SP)

BETWEEN:

1. S.L.KRISHNEGOWDA
S/O LATE LINGEGOWDA,
AGED ABOUT 50 YEARS,
R/O 6TH CROSS, HKV NAGAR,
MADDUR TOWN,
MANDYA DISTRICT,
KARNATAKA - 571428

2. YASHASWINI K L
D/O S L KRISHNEGOWDA,
AGED ABOUT 23 YEARS,
R/O 6TH CROSS, HKV NAGAR,
MADDUR TOWN,
MANDYA DISTRICT,
KARNATAKA – 571428

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Location: HIGH COURT OF KARNATAKA

3. LEKHANAGOWDA K L
D/O S L KRISHNEGOWDA,
AGED ABOUT 20 YEARS,
R/O 6TH CROSS, HKV NAGAR,
MADDUR TOWN,
MANDYA DISTRICT,
KARNATAKA – 571428

4. DEVANANDAGOWDA K L
S/O S L KRISHNEGOWDA,
AGED ABOUT 18 YEARS,

R/O 6TH CROSS, HKV NAGAR,
MADDUR TOWN,
MANDYA DISTRICT,
KARNATAKA – 571428

…APPELLANTS

(BY SRI. K.R.NAGARAJA, ADVOCATE)

AND:

1. G.H.VASANTH
W/O LATE HUCHAMASTHI GOWADA,
AGED ABOUT 49 YEARS,
R/AT GEJJALAGERE VILLAGE,
KASABA HOBLI,
MADDUR TALUK,
MANDYA DISTRICT,
KARNATAKA – 571428

2. Y H ABHISHEKGOWDA
S/O LATE HUCHAMASTHI GOWA,
AGED ABOUT 31 YEARS,
R/AT GEJJALAGERE VILLAGE,
KASABA HOBLI,
MADDUR TALUK,
MANDYA DISTRICT,
KARNATAKA – 571428

3. SACHINGOWDA Y H
S/O LATE HUCHAMASTHI GOWA,
AGED ABOUT 30 YEARS,
R/AT GEJJALAGERE VILLAGE,
KASABA HOBLI,
MADDUR TALUK,
MANDYA DISTRICT,
KARNATAKA – 571428

…RESPONDENTS

THIS RSA IS FILED UNDER SEC.100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 08.10.2025 PASSED IN R.A.NO.53/2023 ON THE FILE OF THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, MANDYA AND ETC.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL JUDGMENT

This second appeal is filed against the concurrent finding of the Trial Court as well as the First Appellate Court.

2. This matter is listed for admission. Heard the learned counsel appearing for the appellants.

3. The factual matrix of the case of the plaintiff before the Trial Court while seeking the relief of specific performance is that defendants have entered into the sale agreement on 10.01.2019 with the plaintiff and the plaintiff paid the earnest money of Rs.6,50,000/- as against Rs.7,25,000/- and time was fixed for 11 months for completion of the sale agreement. But the defendants did not come forward to execute the sale deed. Hence, the plaintiff had issued the notice. When the defendants

did not come forward to execute the sale deed after issuance of notice, filed the suit for specific performance. The specific pleading of he plaintiff that he was always ready and willing to perform his part of contract. The defendants took the specific defence in the written statement that the agreement is only for security towards the discharge of loan of Rs.5,00,000/- advanced from the plaintiff and not the sale transaction.

4. The Trial Court having considered the pleadings of the parties, framed the Issues and allowed the parties to lead their evidence. During the pendency of the suit, the original plaintiff is expired and his legal heirs are brought on record. In order to prove the case of the plaintiff, plaintiff No.1(a) examined as PW1 and got marked the documents at Ex.P1 to P7. On the other hand, the defendants examined defendant No.1 as DW1 however, they have not chosen to produce any document. The Trial Court having considered both oral and documentary evidence placed on record, in paragraph 10, taken note of that defendants have not disputed their signatures on Ex.P1 agreement of sale. Ex.P1 is a registered agreement of sale. It has got initial presumptive value under

the provisions of Registration Act and Evidence Act. The Trial Court relied upon the judgment reported in **AIR 2006 SC 3608** in the case of **PREM SINGH AND OTHERS vs BIRBAL AND OTHERS** wherein the Apex Court held that there is a presumption that a registered document is validly executed. The Trial Court also taken note of that when the terms and conditions of the agreement reduced to document in writing cannot be sought to be proved by any other evidence than document itself. Considering all these materials, the Trial Court held that there is absolutely whisper in the agreement that present transaction is money transaction or the document is executed for security. In order to prove the same also not examined any witnesses. The defendants though conducted a detailed cross examination of PW1, nothing is elicited in the cross examination of PW1. Defendant No.1 got himself examined as DW1 and except oral interested testimony, no documentary evidence supporting the version of the defendants is produced before the Court. Defendants have not examined the attesting witnesses on their behalf to come to a conclusion that it was only a loan transaction. Thus, the Trial Court not accepted the contention of the defendants and answered Issue

No. 1 as affirmative and Issue No. 3 is negative. Issue No. 2 is also with regard to the ready and willingness is concerned. The Trial Court taken note of the agreement dated 10.01.2019 and there was a recital in the agreement that time is fixed for a period of 11 months and immediately after the said period, the plaintiff filed the suit and almost maximum amount was paid i.e., Rs.6,50,000/- as against Rs.7,25,000/- and henc,e answered Issue No. 2 as affirmative and decreed the suit. Being aggrieved by the judgment of the Trial Court, an appeal was preferred before the First Appellate Court in R.A.No. 53/2023.

5. The First Appellate Court also having considered the grounds urged in the appeal memo, formulated the point that whether the Trial Court committed an error in holding that Ex.P1 is an agreement of sale executed by the defendants in favour of original plaintiff though, it is the contention of the defendants that they have executed the said agreement in order to overcome the urgent financial needs as nominal document. The First Appellate Court taking into note of both oral and documentary evidence placed on record comes to the

conclusion that the defence which was taken by the defendants is not proved and sale agreement is a registered document. A suggestion was made to PW1 that an amount of Rs.5,00,000/- was taken for the education purpose with the interest of 1% per month and the same was categorically denied and the same is extracted in paragraph 12 of the judgment of the First Appellate Court. Another suggestion was made that the said document is only for security and PW1 denied the said suggestion and deposed that the payment of Rs.3,50,000/- was made by way of cheque and Rs.3,00,000/- was made by way of cash. It is not the case of the defendants that they have received only an amount of Rs.3,50,000/- and same is also not proved. The said fact is taken note of by the First Appellate Court. DW1's cross-examination also discussed in paragraph 14 and observation is made that his wife also made signature on the document of Ex.P1. But he claims that it was only for a security for loan received by him. In order to substantiate the same, defendant has not placed any materials before the Court and the same also considered by the First Appellate Court. The First Appellate Court considering Ex.P1 coupled with the evidence of PW1 and DW1 comes to the conclusion that no

material is placed before the Court to show that it is only a security document. Hence, confirmed the judgment of the Trial Court.

6. Being aggrieved by the concurrent finding of both the Courts, the present second appeal is filed before this Court.

7. The learned counsel appearing for the appellants would vehemently contend that both the Courts have committed an error on record and also would contend that when the property was already pledged in favour of the bank and the loan was taken from SBI on 25.06.2008 to the tune of Rs.10,00,000/- and proceedings was already initiated by the SBI under SARFAESI Act, all these things were not taken note of by both the Courts. The counsel would vehemently contend that the provisions of Sections 91, 92 of the Evidence Act have no application to Ex.P1 as the defendants have probabilized their version. The counsel also vehemently contend that both the Courts are not justified in decreeing the suit for specific performance when the bank transaction was made in respect of the very same property earlier and also not given any proper finding with regard to the ready and willingness to perform his

duty to get the sale deed and also not complied with Section 16(c) of the Specific Relief Act and also both the Courts have not discussed with regard to Sections 20, 21, 22 and 23 of the Specific Relief Act. Hence, this Court has to admit the appeal and frame the substantial question of law.

8. Having heard the learned counsel for the appellants and also on perusal of the material on record, it discloses that the specific pleading was made that there was a registered agreement of sale. Out of the sale consideration of Rs.7,25,000/-, Rs.6,50,000/- was paid and payment is also made by way of cheque as well as by way of cash. The said fact is not disputed. Only it is contended by the defendants that an amount of Rs.5,00,000/- was received and not Rs.6,50,000/-. But in order to substantiate the same, nothing is placed on record. Though defence was taken that the agreement was only a security document, in order to prove the same also, nothing is placed on record. In the cross examination of PW1 to the effect that it was only a security transaction, nothing is elicited and the same has been considered by both the Trial Court as well as First Appellate Court.

9. Apart from that, with regard to the ready and willingness is concerned, the agreement is dated 10.01.2019 and document of sale agreement clearly discloses that 11 months time is fixed and immediately after the 11 months, notice was issued and approached the Court seeking the relief of specific performance. When already 90% payment was made by the plaintiff in terms of the agreement, the very contention of the appellants that the plaintiff was not ready and willing to perform his part of contract cannot be accepted. The other contention of the counsel for the appellants that when the SARFAESI proceedings was initiated by the bank, ought not to have granted the relief. But in order to substantiate the same, appellants/defendants have not placed any material before the Trial Court with regard to the SARFAESI proceedings is concerned. The appellants have not produced any documentary evidence before the Trial Court except the self-serving statement of DW1. When such being the case, I do not find any ground to admit the appeal and to frame substantial question of law invoking Section 100 of CPC.

10. In view of the discussions made above, I pass the following:

ORDER

The second appeal is dismissed.

In view of dismissal of the main appeal, I.A. if any, does not survive for consideration and the same stands dismissed.

Sd/-
(H.P.SANDESH)
JUDGE

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