

ORDER :

Interim Application No. 2794 of 2026

1. This application is for bringing on record the names of heirs and legal representatives of the sole appellant. Learned counsel for the appellant submits that the reasons for the delay and the steps taken to file the application are explained in paragraphs 4 to 6 of the application.

2. I have heard the learned counsel for the applicants on the merits of the second appeal. The appellant is the original defendant no. 2. The suit for specific performance filed by respondent no. 1 (original plaintiff) is decreed by granting specific performance of the agreement executed by respondent no. 1 (original defendant no. 1) in respect of his one-third share in favour of the plaintiff. The plaintiff is the widow of defendant no. 1's brother. The plaintiff, through her husband, has a one-third share in the suit property. Defendant no. 1 has one-third share, and another brother has one-third share in the property.

3. It is the plaintiff's case that defendant no.1 had executed an agreement for sale dated 16th July 1985 in respect of his one-third share. Hence, the suit was filed for

specific performance of the contract. After the agreement for sale in favour of the plaintiff, a sale deed was executed in favour of defendant no. 2, transferring one-third share of defendant no. 1 and the second brother's one-third share. Hence, defendant no. 2 claims to be the owner of two-thirds undivided share in respect of the suit property.

4. The trial court declared that the sale deed executed by defendant no. 1 in favour of defendant no. 2 is void to the extent of plaintiff's one-third share and is not binding upon her. The prayer for specific performance was accepted, and the defendants were directed to execute the sale deed in respect of defendant no. 1's one-third share pursuant to the agreement dated 16th July 1985. The appellant challenged this decree by filing a first appeal, which was dismissed. Hence, this second appeal.

5. Learned counsel for the applicant submits that both the courts have failed to record any specific findings on the readiness and willingness of the plaintiff to seek the discretionary relief of specific performance. He submits that immediately after the suit was filed, defendant no. 1 filed a written statement and admitted the claim in the suit. He

submits that a compromise pursis at Exhibit 51 was filed in the suit between the plaintiff and defendant no. 1. He therefore submits that only to defeat the rights in favour of defendant no. 2, the plaintiff's claim was accepted and admitted by defendant no. 1. The sale deed in favour of defendant no. 2 was prior to the date of filing of the suit. Hence, in such facts and circumstances, it was necessary for both courts to record specific findings on the readiness and willingness of the plaintiff to seek specific performance of the contract.

6. Learned counsel for the applicants, therefore, submits that the second appeal raises a substantial question of law on the point that in the absence of genuine readiness and willingness on the part of the plaintiff and specific findings that she was ready and willing to perform her contract, the plaintiff would not be entitled to any discretionary relief of specific performance of the suit agreement. Hence, according to the learned counsel for the applicants, the second appeal would require consideration.

7. Learned counsel for respondent no. 1 (original plaintiff) points out that the first appellate court has recorded

elaborate findings on the readiness and willingness of the plaintiff. He submits that the consideration amount paid by the plaintiff clearly establishes her readiness and willingness. The plaintiff had issued a public notice in a daily newspaper about the rights created in her favour pursuant to the suit agreement. Defendant no. 2, though aware of the agreement, has entered into a registered sale deed in respect of defendant no. 1's one-third share along with the one-third share of the second brother. He therefore submits that the readiness and willingness on the part of the plaintiff regarding payment of the balance consideration amount is clearly established by the plaintiff's evidence. Hence, according to the learned counsel for respondent no. 1, the second appeal would not require any consideration in view of the findings of fact recorded by both the courts.

8. I have perused both the judgments. There is no dispute that defendant no. 2 claimed to have purchased one-third share of defendant no. 1 in respect of which an agreement for sale was already executed on 16th July 1985. So far as the terms and conditions of the contract between plaintiff and defendant No. 1 are concerned, there is no dispute on the

correctness of the terms and conditions of the contract. The payments regarding the consideration amount are also not in dispute, as defendant no. 1 has admitted the suit claim. Thus, the validity and genuineness of the suit agreement stand proved.

9. The court concurrently accepts the public notice issued by the plaintiff, which shows that defendant no. 2 had full knowledge of the suit agreement in favour of the plaintiff and had entered into a contract and a sale document with defendant no. 1 and the third brother during the subsistence of the suit agreement. The admission during cross-examination is referred to by the first appellate court to record the finding that defendant no. 2, with full knowledge of the suit agreement, had executed the sale deed.

10. The issue regarding readiness and willingness is thus considered by the first appellate court with reference to the terms and conditions of the contract admitted by defendant no. 1. Hence, in view of the findings of facts recorded by the first appellate court, which is the last fact-finding court, the impugned judgment and decree would not require any interference in the second appeal.

11. The issue of readiness and willingness is decided by the first appellate court by examining the oral and documentary evidence on record. Hence, the findings of fact on the readiness and willingness recorded by the first appellate court cannot be interfered with in the second appeal. The second appeal does not raise any substantial question of law.

12. Considering the reasons stated in the application, the delay in filing the interim application is condoned, and the application is allowed in terms of the prayer clause (b) and (c). Amendment shall be carried out within four weeks from the date of uploading this order on the website.

13. For the reasons recorded above, the second appeal is dismissed.

14. In view of the dismissal of the second appeal, other pending civil applications, if any, are disposed of as infructuous.

[GAURI GODSE, J.]