HC-KAR

NC: 2026:KHC:60330
RSA No. 601 of 2017

CNR: KAHC010265292017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO.601 OF 2017 (SP)

BETWEEN:

SMT. LAKSHMIDEVAMMA
W/O LATE G.M. HANUMANTHA RAYAPPA,
AGED ABOUT 63 YEARS
R/AT GOWDI HALLI,
BELLAVI HOBLI,
TUMKUR TALUK
NOW RESIDING AT:
DOOR NO.22/3
BEHIND GANAPATHI TEMPLE
3RD CROSS, MADIVALA
BANGLAORE – 560 068
BY HER SPA HOLDER
SRI. K. RANGASWAMAIAH
S/O KARE RANGAIAH
MAJOR,
R/AT KURUVAKOTE, C.N.DURGA HOBLI,
KORATAGERE TALUK.

…APPELLANT

(BY SRI. VASANTHA A.K., ADVOCATE)

Digitally signed by VANDANA S
Location: High Court of Karnataka

AND:

1. SHIVANNA,
(SINCE DEAD BY LRs)

1(a). SMT. MADEVAMMA
W/O LATE SHIVANNA,
AGED ABOUT 60 YEARS

1(b). SRI. RANGARAJU,
S/O LATE SHIVANNA,
AGED ABOUT 45 YEARS,

1(c). SRI DHAYANAND
S/O LATE SHIVANNA,
AGED ABOUT 38 YEARS,

1(d). SRI MANJUNATH,
S/O LATE SHIVANNA,
AGED ABOUT 35 YEARS,

ALL ARE R/AT GOWDI HALLI,
BELLAVI HOBLI,
TUMKUR TALUK
TUMKUR DISTRICT

…RESPONDENTS

(BY SRI. V.B. SIDDARAMAIAH, ADV. FOR R1 (A TO D))

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 16.12.2016 PASSED IN R.A.NO.239/2016 ON THE FILE OF THE VI ADDL. DIST. AND SESSIONS JUDGE, TUMAKURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 05.01.2013 PASSED IN O.S.NO.432/2002 ON THE FILE OF THE I ADDL. CIVIL JUDGE AND JMFC-II, TUMKUR.

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

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

The appellant was plaintiff in O.S.No.432/2002 filed by her against the respondent – defendant for specific performance of an alleged Sale Agreement dated 13.01.1982 alleged to have been executed by respondent – defendant in favour of her husband

Hanumantharayappa, in relation to the suit schedule property and for other reliefs.

2. The said suit having been contested by the respondent – defendant, the Trial Court proceeded to dismiss the suit vide impugned judgment and decree dated 05.03.2013, which was challenged by the appellant – plaintiff in R.A.No.239/2016 before the First Appellate Court, which proceeded to dismiss the appeal filed by the appellant – plaintiff thereby confirming the judgment and decree of the Trial Court. Aggrieved by the impugned judgment and decree passed by the Trial Court and the First Appellate Court, the plaintiff is before this Court by way of the present appeal.

3. Heard learned counsel for the appellant and learned counsel for the respondents and perused the material on record.

4. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the appellant invited my attention to the material on record in order to point out that both the Courts committed an error

in coming to the conclusion that the appellant – plaintiff had not proved the due execution of the Sale Agreement dated 13.01.1982 in favour of her husband Hanumantharayappa for total sale consideration of Rs.3,000/-. It is also submitted that both the Courts erred in holding that the appellant and her husband were never ready or willing to perform their part of the contract and that the appellant was not entitled to the relief of specific performance in the suit, which had not been filed within the period of limitation. It was submitted that the appellant had adduced legal and acceptable evidence to prove her contentions and failure on the part of both the Courts to appreciate this has resulted in erroneous conclusion. It was therefore submitted that the impugned judgment and decree passed by the Trial Court and the First Appellate Court deserve to be set aside and the suit of the plaintiff be decreed in her favour as sought for in the suit.

5. Per contra, learned counsel for the respondents would support the impugned judgment and decree passed by the Trial Court and the First Appellate Court and submits that there is no merit in the appeal and the same deserves to be dismissed.

6. A perusal of the material on record will indicate that the appellant – plaintiff instituted the aforesaid suit specifically contending that the suit schedule property originally belonging to the defendant was agreed to be sold by him in favour of the appellant's husband – Hanumantharayappa vide unregistered Sale Agreement dated 13.01.1982 in pursuance of which, the said appellant's husband paid the entire sale consideration to the defendant, who handed possession of the suit schedule property in favour of the appellant's husband in part performance of the contract. It was submitted that at the time of execution of the Sale Agreement dated 13.01.1982, since The Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 was in force, the defendant agreed that he would execute the registered Sale Deed in favour of the appellant – plaintiff after repeal of the said enactment, which came to be repealed only on 02.02.1991 subsequent to which, the plaintiff's husband as well as the plaintiff repeatedly called upon the respondent to perform his part of the contract and execute a registered Sale Deed in favour of the plaintiff and since the defendant did not comply with the repeated

requests and demands made by the plaintiff and her husband, she instituted the aforesaid suit for specific performance of the sale agreement and for other reliefs.

7. The respondent-defendant filed his written statement and contested the suit disputing and denying the various allegations and claims made by the plaintiff. The execution, legality, validity and genuineness of the alleged sale agreement was specifically denied and disputed by the defendant, who also denied that he had received the entire sale consideration of Rs.3,000/- from the plaintiff and that he had delivered possession of the suit schedule property in favour of the plaintiff's husband. It was submitted that the suit schedule property was a joint family property and the defendant's children have undivided share in the suit schedule property and as such, the suit was not maintainable and was liable to be dismissed. It was also submitted that apart from the fact that the suit was barred by delay and latches coupled with the fact that the appellant – plaintiff was never ready and willing to perform his part of the contract, the suit was also barred

for non-joinder of necessary parties and hopelessly barred by limitation, as a result of which, the suit was liable to be dismissed.

8. On the basis of the aforesaid pleadings, the Trial Court framed the following issues:

> *"(1) Whether the plaintiff proves that the defendant has executed an Agreement on 13.01.1982 to sell the suit schedule property in favour of her husband G.M.Hanumantharayappa for a sale consideration of Rs.3000/-?*
>
> *(2) Whether the plaintiff proves that her husband and herself have been ready and willing to perform their part of contract as per law?*
>
> *(3) Whether the plaintiff is entitled to relief of specific performance of the contract?*
>
> *(4) What Order or Decree?*
>
> *Additional Issue:*
>
> *(1) Whether the suit of the plaintiff is within the period of limitation?"*

9. The plaintiff examined her power of attorney holder as PW1 and one witness as PW2 and documentary evidence at Ex.P1 to P11 were marked on her behalf while defendant examined

himself as DW1 and documentary evidence at Ex.D1 to D11 were marked on his behalf.

10. After hearing the parties, the Trial Court answered all the issues against the appellant – plaintiff and proceeded to dismiss the suit by holding as under:

> *"8. **ADDITIONAL ISSUE NO.1:** Before discussing the other issues, this issue is taken up for consideration at first, because the finding on other issues is dependent on this Issue. The Plaintiff has filed this suit seeking the relief of specific performance. It is the case of the plaintiff that defendant having agreed to sell the suit schedule property for sale consideration of Rs.3,000/- has executed the Agreement of sale Ex.P.2 in favour of the husband of the plaintiff, and has received entire sale consideration and has parted with the possession of the suit schedule property. The alleged agreement of sale Ex.P.2 is dtd: 13-01-1982. The plaintiff has stated that on the day of execution of Ex.P.2 as Fragmentation Act was existing the defendant had agreed to execute the regular sale deed after the repeal of the same.*
>
> *9. The learned counsel for defendant vehemently argued that the Fragmentation Act has been repealed in the year 1991 and the suit filed in the year 2002, is hopelessly barred by limitation. On this point, the learned counsel for plaintiff argued that after the defendant filed suit O.S No.781/2001, the plaintiff came to know about the refusal of performance*

of contract and so, the suit filed in the year 2002 is within the period of limitation. The learned counsel for defendant while arguing that the suit is barred by limitation, has relied upon the Judgment reported in ***2011(3) KCCR 2345*** *in the case of* ***Smt. Parvathamma and others V/s. Smt.Uma and others****. I have gone through this Judgment. In this Judgment, the Hon'ble High Court has held that* ***"in a specific performance of the Agreement of Sale, if the date fixed for the performance was after the repeal of Fragmentation Act, the Agreement itself is invalid and the suit filed after lapse of 3 years of the repealment of Fragmentation Act in the year 1991, is barred by limitation."*** *In this case, though the Fragmentation Act has been repealed in the year 1991, the plaintiff has filed this suit in the year-2002 and in the light of the above cited Judgment, this suit being filed after the lapse of 11 years of the repealing of the Fragmentation Act is barred by limitation.*

10. The learned Counsel for plaintiff while arguing that suit is within the period of limitation has relied upon the ruling reported in ***ILR 2001 KAR 3870 in the case of H.M. Krishna Reddy V/s. H.C. Narayana Reddy.*** *At this juncture, it is relevant to refer to a subsequent Judgment of the Hon'ble High Court of Karnataka reported in* ***2012(4) KLJ 653*** *in the case of* ***T.Muniyappa V/s. H.Eshwar Sa and others****. The facts of this Judgment is similar to the facts of the case on hand. Further as this Judgment is a subsequent Judgment of the Hon'ble High Court of Karnataka, as per law of precedent, this Judgment is relied upon for considering the*

case on hand. In this Judgment. the Hon'ble High Court while considering the Agreement of Sale of the year 1985, when the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act 1966 was in force, has held that "the suit for specific performance filed after 14 years is hopelessly barred by time. ***"In this Judgment, the Hon'ble High Court has held that "the Agreement entered into during the subsistence of Fragmentation Act was unenforceable in law and so, no decree could be granted on the said Agreement."*** *Further the Hon'ble High Court has held that* ***"the suit filed after 14 years of the repealing of the Act dated 03/12/1990, is hopelessly barred by time".*** *In this case, the Agreement of Sale is dated 13/01/1982. The Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 has been repealed in the year 1990 i.e on 03/12/1990. Hence, the suit filed in the year 2002 having filed after lapse of 12 years of the repealing of the Act, is held to be hopelessly barred by time in the light of the above cited Judgment of the Hon'ble High Court of Karnataka. In view of all the above discussion, the suit of the plaintiff is barred by limitation. Hence, Additional Issue No.1 is answered in the negative.*

11. ***ISSUE No.1:*** *The plaintiff has filed this suit seeking specific performance of contract alleging that the defendant has executed an Agreement of Sale Deed dated 13/01/1982 in favour of her husband G.M. Hanumnatharayappa in respect of the suit schedule property for a sale consideration of Rs.3000/=. The plaintiff in support of her case has*

examined her power of attorney as Pw-1 and an attesting witness of Ex.P.2 as Pw-2 and has got marked the documents Ex.P.1 to 11. The defendant has denied the execution of Ex.P.2 and has stated that the suit schedule property was the property belonging to his family and the property is standing in the name of his brother. The defendant in support of his defence has examined himself as Dw-1 and has got marked the documents Ex.D.1 to 11.

12. The learned Counsel for plaintiff by referring to the evidence of Pw-1 and 2 and documentary evidence on record argued that the plaintiff has proved the execution of Ex.P.2 and prayed for decreeing the suit. The learned Counsel for defendant argued that defendant has never executed Ex.P.2 and more over the suit schedule property was not in the name of the defendant and hence the agreement is not valid and hence the learned Counsel prayed for dismissing the suit. Further the learned Counsel for defendant by relying upon the Judgment reported in ***AIR 2008 SC 1541-in the case of Thiruvengada Pillai V/s. Navaneethammal & Anr*** *argued that the defendant has specifically denied the execution of Ex.P.2 and so it is the burden on the plaintiff to prove the execution of Ex.P.2 and the plaintiff has failed to prove the same and hence the suit is liable to be dismissed.*

13. The plaintiff, who has stated about the alleged Agreement has not come forward to lead her evidence, but she has examined her brother as her Power of Attorney Holder as PW.I before the court. PW.I has filed his chief

examination affidavit by reiterating the plaint averments. In entire chief examination affidavit, PW.I has not stated as to how he acquired the knowledge about the Agreement of Sale. On going through the entire evidence of PW.1, it is forthcoming that there is no evidence as regards the personal knowledge of PW.1 about the alleged contract entered into between defendant and deceased G.M.Hanumantharayappa.

In the Judgment reported in AIR 2005 SUPREME COURT 439 "Janki Vashdeo Bhojwani v. Indusind Bank Ltd."- The Hon'ble Apex Court has held - Order, 3 Rr. 1 and 2 empowers the holder of power of attorney to 'act' on behalf of the principal. The word 'acts' employed in Q.3. Rr. 1 and 2. confines only in respect of 'acts' done by the power of attorney holder in exercise of power granted by the instrument. The term 'acts' would not include deposing in place and instead of the principal. If the power of attorney holder has rendered some 'acts' in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

In view of this principle of law laid down by the Hon'ble Apex court, the evidence of Pw-1 is not considerable, as he has not done any act in pursuance of power of attorney and as he has no personal knowledge about the alleged contract Ex.P.2. Hence, the evidence of

PW.1 is not relevant for considering the proof for execution of Ex.P.2. Further PW.I is not a witness to Ex.P.2. Hence, on that aspect also, his evidence is not considerable for the proof of Ex.P.2.

14. PW.2 P.H.Gangaiah has filed his chief examination affidavit by supporting the case of the plaintiff. During cross-examination, PW.2 has stated that he do not know the boundaries of the suit schedule property and 1 he do not know the survey number of the schedule property. Further PW.2 has stated that the bond for executing Ex.P.2 was brought from the bank. In the year 1992, the bonds were not issued through banks. Further on perusal of Ex.P.2, it is forthcoming that, the bond on which it has been executed has not been purchased from the bank. Hence, this shows that PW.2 without having any knowledge about the alleged Agreement Ex.P.2, has filed his chief examination affidavit by supporting the case of the plaintiff. Hence, the evidence of PW.2 is also not helpful for the plaintiff in proving the execution of Ex.P.2.

15. The learned counsel for plaintiff vehemently argued that in pursuance of the Agreement, deceased G.M.Hanumantharayappa was in possession of the suit schedule property and after his death, the plaintiff is in possession of the property. The learned counsel for plaintiff has made reference to the Ex.P.3, which is an affidavit sworn by the defendant before Principal Civil Judge and Chief Judicial Magistrate, Tumkur. I have perused Ex.P.3. In Ex.P.3, the defendant has stated that he has executed an

Agreement of Sale by receiving the consideration of Rs.3000/- and has delivered the possession of suit schedule property in favour of G.M.Hanumantharayappa. Further in the suit filed by the defendant in O.S No.781/2001, this document has been considered. On perusal of Ex.P.10, which is the certified copy of Judgment passed in O.S No.781/2001, it is forthcoming that the Hon'ble II Addl.Civil Judge (Jr.Dr.) Court Tumkur, has held that the plaintiff is in possession of the suit schedule property. Further the said Judgment has been confirmed by the Hon'ble Fast Track Court in R.A No.266/2009. Merely because the plaintiff is in possession of the suit schedule property, this itself will not entitle the plaintiff in getting the discretionary of specific performance of contract. The plaintiff has to prove the execution of Ex.P.2 by both oral and documentary evidence. In the absence of such material evidence for proving Ex.P.2, the plaintiff is not entitled to claim the relief of specific performance basing on the alleged Agreement of Sale Ex.P.2. As already discussed above, the plaintiff has not stepped into the witness box for proving Ex.P.2. The evidence of PWs.1 and 2 are not striking as genuine for the proof of Ex.P.2. Hence, the plaintiff has failed to prove the execution of Agreement dated 13/01/1982.

16. The Defendant has stated that the suit schedule property is in the name of his brother. To substantiate this fact, the defendant has got marked 11 RTC extracts of the suit schedule property as Ex.D.1 to 11. Ex.D.1 to D.11 are the RTC extracts of the Suit schedule property from the year

2001-2002 to 2011-2012. In these RTC extracts in column No.9, the name of Rangaawamaiah has been shown as owner and possessor and the name of defendant is mentioned in column No.12, which is meant for mentioning the name of cultivator. Further the plaintiff has not produced any document to show that, as on the date of execution of alleged agreement of sale, the suit schedule property was standing in the name of defendant. It is settled principle of law that no person who is having a better title can pass the title to some other person. Hence when as per the RTC extracts, the defendant is only the cultivator, he is not legally authorized to enter into any contract with any person in respect of the said property of which he is not the owner and possessor. On this aspect Ex.P.2 is not a valid contract.

17. In the Judgment referred supra reported in ***2012(4) KLJ 653*** *in the case of* ***T.Muniyappa, V/s. H.Eshwar Sa and others****, the Hon'ble High Court of Karnataka has held that -* ***"the Agreement entered into during the subsistence of Fragmentation Act was unenforceable in law and so, no decree could be granted on the said Agreement."*** *In view of this principle of law laid down by the Hon'ble High Court of Karnataka, Ex.P.2 being during the subsistence of Fragmentation Act is held to be unenforceable in law. In view of all the above discussion, the plaintiff has failed to prove the execution of Ex.P.2. Hence, Issue No.1 is answered in The negative.*

18. ***ISSUE No.2:*** *In view of the finding on Issue No.1, as the plaintiff contract was has failed to prove the alleged*

Agreement of Sale Ex.P.2, there arises no question of discussing about readiness and willingness on the part of the plaintiff. Further in this case, in Ex.P.2, the recitals say that the privity of between the defendant and the deceased G.M. Hanumantharayappa. There is no recital in Ex.P.2 as to extending the privity of contract to the plaintiff, who is the wife of G.M. Hanumantharayappa. Further in the entire plaint averments, the plaintiff has not stated as to how the contract between her husband and defendant extends to her. In the absence of such recitals in the contract for extending the contract to herself, the plaintiff cannot rely upon the contract of her husband for claiming the relief of specific performance. Hence, the plea of plaintiff saying that she is ready and willing to perform her part of contract is contrary to the principles of law of contract.

19. In this case the plaintiff has produced the death extract of G.M. Hanumantharayappa and it is marked as Ex.P.9 and the same speaks that deceased Hanumantharayappa has died on 26-08-2001. Further the plaintiff has produced the geneology and it is marked as Ex.P.8. Ex.P.8 speaks that deceased Hanumantharayappa has died living behind his wife i.e. the plaintiff and one son and two daughters. When as per Ex.P.8, deceased 1 Hanumantharayappa has died living behind four legal representatives, then why the plaintiff alone has filed this suit has not been pleaded. Further as siready discussed above, there is no single recital in Ex.P.2, as to the extending of privity of contract in favour of the plaintiff. Hence in the

contract between the plaintiff and deceased absence of such Hanumantharayappa for extension of privity of contract in favour of the plaintiff, the plea of readiness and willingness will not aid the plaintiff in claiming the relief of specific performance. Hence, Issue No.2 is answered in the negative.

*20. **ISSUE No.3:** For the aforesaid reasons and findings on Issues No.1 and 2 and Additional Issue No.1, as the suit of the plaintiff is barred by limitation and as the plaintiff has failed to prove the execution of Ex.P.2 and as there is no privity of contract between the plaintiff and defendant, the plaintiff is not entitled for the relief of specific performance of contract. Hence, Issue No.3 is answered in the negative.*

*21. **ISSUE No. 4:** For the aforesaid reasons and findings on Issue No.1 to 3 and Additional Issue No. 1, I proceed to pass the following:*

ORDER

Suit of the plaintiff filed against the defendant seeking the relief of specific performance of contract is hereby dismissed.

Under the circumstances of the case, the parties shall bear their own costs.

Draw Decree accordingly."

11. As can be seen from the findings recorded by the Trial Court referred to supra, the Trial Court came to the conclusion that

PW1 who was merely a Power Attorney Holder of the plaintiff did not have any personal knowledge as regards execution of the alleged Sale Agreement by the defendant in favour of the plaintiff's husband nor did he have any personal knowledge as regards the alleged sale transaction said to have been entered into between the defendant and the plaintiff’s husband including payment of sale consideration of Rs.3,000/- by the plaintiff's husband in favour of the defendant. The Trial Court also took note of the fact that PW1 was neither a signatory nor a witness to the alleged Sale Agreement and his evidence was not sufficient to substantiate the claim of the plaintiff that the defendant had executed a Sale Agreement in favour of her husband. The Trial Court also drew adverse inference against the plaintiff for not stepping into the witness box nor adducing evidence on her own and came to the conclusion that the various discrepancies, admissions, inconsistencies and contradictions in the evidence of PW2, the alleged fourth witness to the Sale Agreement was sufficient to hold that the appellant – plaintiff had not proved due execution of the Sale Agreement by the defendant in favour of the plaintiff's husband.

12. A perusal of the impugned judgment and decree of the Trial Court will also indicate that the Trial Court took cognizance of the undisputed fact that the plaintiff's husband-Hanumantharayappa had not taken any steps from the date of the agreement till his demise on 26.08.2001 for the purpose of seeking enforcement of the alleged Sale Agreement; so also, the aforesaid Act of 1956 having been repealed as long back as on 02.02.1991 almost more than 10 years prior to the demise of Hanumantharayappa on 26.08.2001, there was complete and total inaction on the part of the said Hanumantharayappa to take necessary steps to seek enforcement of the Sale Agreement for more than 10 years from the date of repeal of the said Act of 1956 till his demise, which was sufficient to come to the conclusion that the said Hanumantharayappa was not ready and willing to perform his part of the contract. The Trial Court also took note of the fact that the first part of Article 54 of the Limitation Act was applicable and the cause of action and the right of the plaintiff's husband to sue for specific performance arose when the said Act of 1956 got repealed on 02.02.1991 and the suit filed not even by the plaintiff's

husband but by the plaintiff after the demise of her husband in the year 2002 was hopelessly barred by limitation. Under these circumstances, the Trial Court proceeded to dismiss the suit filed by the appellant – plaintiff, who challenged the same before the First Appellate Court in the aforesaid R.A.No.239/2016, in which the First Appellate Court framed the following points for consideration and answered the same against the appellant – plaintiff by holding as under:

> *"(1) Whether the trial Court has erred in answering issues No.1 to 3 and additional issue No.1 as in the Negative?*
>
> *(2) Whether the trial Court has erred in properly appreciating the evidence placed before it and that therefore the impugned judgment and decree of the trial Court warrants interference by this Court?*
>
> *(3) What order or decree?"*
>
> *"12. **POINTS No.1 & 2 :** These two points are interlinked with each other and hence, these points are taken up together for common discussion to avoid repetition of facts. On careful perusal of the pleadings, evidence and arguments urged by both sides, it is clear that there exists no dispute in between the parties to the suit that the defendant is the absolute owner of the suit schedule property as on 13.01.1982 as well as on the date of filing this suit. The total*

extent and boundaries of the suit schedule property as mentioned in the plain schedule are also not disputed by the defendant. The defendant has also not specifically disputed the fact of filing of suit by him in O.S 781/2002 for grant of permanent injunction in respect of the suit schedule property against the plaintiff before the Court of II Adl. Civil Judge, Tumakuru. It is not in dispute that the said suit of the defendant filed for grant of permanent injunction came to be dismissed after its contest.

13. In view of the facts and circumstances of this suit as well as the facts and circumstances of the aforesaid case laws, I have carefully re-appreciated the evidence placed before the trial Court for both sides in support of their respective contentions. I also carefully gone through the view of the trial Court for dismissing the plaintiff's suit. The trial Court by relying on the several judgments of the Hon'ble High Court of Karnataka reported in 204 (3) KCCR 2345 ILR KAR 7870, 2012 (4) KLJ 653 has opined that suit, of the plaintiff having filed after 12 years of repealing of the Fragmentation Act, is hopelessly barred by time. Therefore, it has answered the additional issue as in the negative. The trial Court by relying the judgment of the Hon'ble Apex Court in AIR 2005 SC 439 Janaki Vashdeo Bhojwani V/s Indusind Ban Ltd., has opined that the P.W-1 cannot depose the evidence for the acts done by the plaintiff. The trial Court has further held that during the subsistence of Fragmentation Act, the agreement enter in to between the parties of this suit is un enforceable in law. Therefore, it has opined that the

plaintiff's has fail to prove execution of Ex.P-2 document. The trial Court has also held that the plaintiff fails to prove her readiness and willingness in performing part of the contract. Therefore, the trial Court has answered the issues No. 1 to 3 as in the negative and has dismissed the suit of the plaintiff.

14. P.W-1 is a power of attorney holder of the plaintiff of this suit. In the affidavit evidence filed by him before the trial Court, he had specifically reiterated all most all the fact as averred in the plaint once again before this Court. P.W-2 by way of filing affidavit evidence has deposed before this Court that on the said date, the defendant had executed the Ex.P-2 sale agreement in favour of the plaintiff's husband for consideration of Rs 3,000/-. He also has specifically deposed that the defendant had received Rs 3,000/- from the husband of the plaintiff and that the defendant had delivered possession and enjoyment of the suit schedule property to the plaintiff's husband on the said date itself. P.W-2 has specifically identified his signature as well as the signatures of the other witnesses on the Ex.P-2 document. During the course of his oral evidence by way of filing affidavit evidence, the defendant has specifically reiterated all most all the pleadings as averred by him in his written statement. He has specifically denied that he executed the Ex.P2 sale agreement as alleged in favour of the plaintiff's husband on the said date. He also has specifically denied that he had received Rs 3,000/- from the plaintiff's husband on the said date in the presence of P.W-2 and others. He also has

specifically denied that he delivered possession and enjoyment of the suit schedule property to the plaintiff's husband on the said date of alleged agreement. I have carefully perused the order sheet of the trial Court, the P.W-1 has obtained permission of this Court to represent the plaintiff as provided under order 3 rule 2 CPC.

15. In view of the aforesaid oral evidence of P.W-1 & 2 as well as D.W-1, I have carefully perused the contents of the documents marked at Ex.P-1 to 11 as well as the Ex.D-1 to 11 placed before the trial Court. Ex.P-1 the special power of attorney dated 18.08.2003 discloses that plaintiff has executed the said document in favour of P.W-1 who is her brother (1) to engage or appoint any legal practitioner to conduct the said case before the trial Court (2) to sign, verify and file a written statement. (3) to make un-present to the Court an application in connection with any proceedings in the suit (4) to produce or summon or receive back documentary evidence. (5) to make and file compromise or a confession of judgment and to refer the case to arbitration. (6) to deposit and withdraw any money for the purpose of any proceeding. (7) to file an application for execution of a decree or order passed in the said suit and to sign and to verify such application. (8) To receive any money due to the plaintiff under such decree or order and to certify payment to the Court (9) to apply for inspection and inspect documents or records (10) to obtain a copies of documents and papers and for the conduct of the said case. The said power of attorney do not disclose that the plaintiff has authorized the

P.W-1 to depose evidence in the said suit for her behalf on merits of the said suit. Ex.P-2 disputed sale agreement discloses that on 13.01.1982 the defendant of this suit had executed the said document in favour of the plaintiff's husband G.M.Hanumantharayappa in respect of sale of the suit schedule property for a consideration of Rs 3,000/-. The said document further discloses that the defendant had received Rs 3,000/- from the plaintiff's husband towards entire sale consideration amount. The said document also further discloses that the defendant had delivered possession and enjoyment of suit schedule property in favour of the plaintiff's husband on the said date itself. Ex.P-2 further disclose that the defendant had agreed to execute the sale deed only after repeal of Fragmentation Act. Ex.P-3 affidavit discloses that the defendant of this said suit had sworn before the Chief Judicial Magistrate , Tumakuru stating that he had executed sale agreement marked at Ex.P-2 in favour of the plaintiff's husband and received Rs 3,000/-. The said agreement also has further discloses that the defendant had further sworn that he delivered possession and enjoyment of the suit schedule property to the plaintiff's husband on the said date itself. Ex.P-4 discloses that the defendant had filed the application before the Deputy Tahasildar, Nada Kacheri, Bellavi Hobli, Tumakuru in respect of change of katha and pahani in respect of the suit schedule property in his name. the said document further discloses that in view of the suit, the application of the defendant dismissed. Ex.P-5 Copy of mahazar prepared before the Deputy Tahasildar, Nada

Kacheri, Bellavi Hobli, Tumakuru, on 18.12.2011 discloses that the plaintiff's husband's brother Chikkanna has been in possession and enjoyment of the suit schedule property for plaintiff's husband. Ex.P-6 RTC of the suit schedule property for the year 2000-01 discloses that one Rangashamaiah of Gowdihalli Village was the khabjedar of the suit schedule property for the said year and that it was his ancestral property. The said document further discloses that the defendant was in possession and enjoyment of the suit schedule property as on the said year. Ex.P-7 discloses that the said one Chikkanna had paid revenue of the suit schedule property to the Government on 10.04.2001. Ex.P-8 G-Tree of the plaintiff's family. Ex.P-9 death certificate discloses that the plaintiff's husband G.M.Hanumantharayappa died on 26.08.2001 at Manipal Heart Foundation, Bangalore-17. Ex.P-10 Copy of the judgment passed in O.S 781/01 discloses that the defendant's suit filed for permanent injunction against the plaintiff came to be dismissed on 16.03.2006. Contents of Ex.P-8 to 11 are not disputed by the defendant. Ex.P-11 is the copy of the decree drawn in O.S 781/01. Ex.D-1 to D-11 RTC of the suit schedule property for the year 2001-02 to 2011-12 are all discloses that one Rangashamaiah was the khabjedar of the suit schedule property on ancestral basis and that the defendant are in possession and enjoyment of the suit schedule property as on the said years respectively.

16. In view of specific denial of the defendant, in his evidence that recorded during the course of his chief-

examination as well as in his cross-examination and also in his pleadings, that he had executed the Ex.P-2 sale agreement in favour of the plaintiff's husband in respect of the suit schedule property, the burden was on the plaintiff to prove that the defendant had executed the agreement marked at Ex.P-2 as held by the Hon'ble Apex Court in a case reported in AIR 2008 SC 1541 Thiruvengada Pillai's case at para 17, ". In this case, the plaintiff asserts that the defendant had executed the sale agreement in favour of her husband. Therefore, as per section 101 of evidence Act also, the burden of proof is lies on the plaintiff to prove that the defendant had executed the agreement. To prove her case, she relied the evidence of P.W's 1 & 2. P.W-1 is the PA holder of plaintiff and brother of the plaintiff. P.W-2 according to the plaintiff is an attesting witness to Ex.P-2 document.

17. As per order 3 rule 1 CPC " Any appearance application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where other wise expressly provided by any law for the time being in force, be made or done by the party in person or by his recognized agent or by a pleader (appearing, applying or acting as the case may be) on his behalf provided that any such appearance shall if the Court so directs , be made by the party in person. As per order 3 Rule 2 CPC the recognized agents of the parties by whom such appearances, applications and acts may be made or done are (a) persons holding powers of attorney authorizing them to make and do such appearances, applications and

acts on behalf of such parties. (b) persons carrying on trade or business for and in the names of parties, not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done in matters concerned with trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts. Ex.P-1 as stated supra discloses that the plaintiff authorized the P.W-1 to make and do such appearances application and acts on her behalf only. Ex.P-1 do not discloses that the plaintiff has authorized the P.W-1 to depose evidence in the suit on her behalf. In fact, order 3 Rule 1 & 2 of CPC also not provided authority to the parties to the suit to authorize their recognized agents to depose evidence on behalf of such parties to the suit about the acts done by them or have personal knowledge over facts. The Hon'ble Apex Court in a case law reported in AIR 2005 SC 439 Janki Vasudeo Bhojwani's case also has specifically held the "The word 'acts' employed in order 3 Rules 1 & 2 confines only in respect of the acts done by the power of attorney holder in exercise of power granted by the instrument. The term 'act' should not include deposing in place and instead of the principal. If the power of attorney holder has rendered some 'acts' in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal

knowledge and in respect of which the principal is entitled to be cross-examined.

18. I have carefully perused the evidence of P.W-1 that recorded during the course of his chief as well as in the cross-examination. No where he deposed before the trial Court that he ad rendered some acts in pursuance of the said power of attorney. He also had not deposed before the trial Court that he had personal knowledge over the execution of Ex.P-2 document by the defendant in favour of the plaintiff's husband. He also has not deposed that the defendant had executed the Ex.P-2 sale agreement in his presence in favour of the plaintiff's husband in respect of the suit schedule property. P.W-1 also had not deposed before the trial Court that the plaintiff had instructed him about the facts of the suit and to depose the same before the trial Court. He also had not made his signature to the Ex.P-2 document. His evidence recorded during the course of his cross-examination discloses that he had no knowledge that how the defendant acquired the suit schedule property. Therefore, it is clear that the P.W-1 has not rendered any acts in pursuance of the Ex.P-1 power of attorney except deposing his evidence before this Court. His evidence also clearly discloses that the P.W-1 has no personal knowledge over the execution of the Ex.P-2 sale agreement in favour of the plaintiff's husband. Therefore, it is clear that the evidence of P.W-1 is not supported the case of the plaintiff that the defendant had executed the Ex.P-2 sale agreement in favour of the plaintiff's husband on 13.01.1982 in respect of the suit

schedule property. It is true that the plaintiff's husband G.M.Hanumantharayappa died on 26.08.2001. Plaintiff pleaded that she alone is the LR of her husband. But G-Tree marked at Ex.P-8 discloses that the plaintiff's husband had two daughters and one son. In the plaint also it was not pleaded that the plaintiff had personal knowledge over the execution of Ex.P-2 sale agreement. To know whether the Ex.P-2 was executed as alleged, the evidence of plaintiff or other LR's of plaintiff's husband is required and that the said evidence required to be tested by the defendant by cross-examining them about the said facts. Ex.P-8 was prepared on 11.10.2001. As on that date, the plaintiff was aged 42 years. In the Ex.P-1, it was not stated that why the plaintiff had executed the said power of attorney to the P.W-1. No evidence also produced to show that the plaintiff was/is unable to present before the trial Court to depose her evidence. Therefore, evidence of P.W-1 cannot be accepted in support of the case of the plaintiff.

19. According to the plaintiff, the P.W-2 is an attesting witness to the Ex.P-2 sale agreement. P.W-2 as stated supra also deposed that he had attested the Ex.P-2 on that date and that he identified his signature on Ex.P-2 as Ex.P-2 (a). I carefully examined the signatures of P.W-2 on his deposition sheet and the signature marked as Ex.P-2 (a) on Ex.P-2 document. His signature on his deposition sheet on Ex.P-2 document are not similar in nature. During the course of his cross-examination he deposed that he did not seen the suit schedule property and that he did not know who are in

possession of the suit schedule property. Where as in his chief-examination he had deposed that the plaintiff and her husband have been enjoying the suit schedule property till the date of his deposition from the date of execution of Ex.P-2 document. Therefore, evidence of P.W-2 also is not clear about the execution of the Ex.P-2 document in favour of the plaintiff's husband. Therefore, evidence of P.W-2 also in not reliable in nature. According to the plaintiff, the brothers of the defendant i.e. G.K.Rangashamaiah, Ganganna and Jayanna are also attesting witnesses to the said document marked at Ex.P-2. But the plaintiff or her PA holder had not tried to get examine them in support of her case. They are also the material witnesses to the plaintiff's case. In view of non-examination of the said brothers of the defendant, adverse interference is to be drawn against the plaintiff.

20. About plaintiff's contention that the defendant had delivered possession and enjoyment of the suit schedule property to her husband on 13.01.1982, the plaintiff has relied Ex.P-3 to 5 documents. No doubt Ex.P-3 discloses that the person named as Shivanna S/o Sannakariappa, aged 30 years, Resident of Gowdihalli Village, had sworn before the CJM, Tumakuru on 13.01.1982 stating that he had delivered possession of suit schedule property to the plaintiff's husband and executed the sale agreement on 13.01.1982 itself. But the defendant has specifically denied contents of Ex.P-3. Therefore, to prove contents of Ex.P-3 documents, plaintiff ought to examine Sri. K.Kumar, Advocate who identified the said Shivanna before the CJM, Tumakuru on

13.01.1982 to prove her case that the defendant was executed the Ex.P-3 document before the CJM, Tumakuru on 13.01.1982. But the plaintiff had not examined the said Sri.K.Kumar, Advocate. Therefore, it is doubtful that the defendant was executed the Ex.P-3 document before CJM, Tumakuru in favour of the plaintiff's husband on 13.01.1982. In Ex.P-5, it was shown that Chikkanna, the younger brother of the plaintiff's husband has been in possession of the suit schedule property for plaintiff's husband. The said Chikkanna not been examined before the trial Court to prove the said fact that he has been in cultivation of the suit schedule property for plaintiff's husband. In fact in the plaint, it was not specifically pleaded that the said Chikkanna has been in cultivation/possession of the suit schedule property for plaintiff or her husband. RTC's maked at Ex.P-6 as well as Ex.D-1 to 11 also not discloses that the said Chkkanna, or plaintiff's husband or the plaintiffs have been in possession of the suit schedule property after 13.01.1982. In fact, in column No.12(2) of the said RTC, it was shown that the defendant has been in possession and enjoyment of the suit schedule property from the years 2000 to 2011-12. In Ex.P-10, the Court of II Adl. Civil Judge & JMFC, Tumakuru had not opined that the plaintiff of this suit has been in possession of the suit schedule property as on the date of filing the said suit. In the said suit it was held that the defendant of this suit was not in lawful possession and enjoyment of the suit schedule property as on the date of filing the said suit. In the said suit, the Court was opined that the plaintiff is to work out her remedy in a suit filed for

specific performance of contract. Therefore, it is clear that the trial Court has rightly held that the evidence of P.W's 1 & 2 is not liable to be accepted. The trial Court also has rightly held that the plaintiff has failed to prove the execution of the agreement dated 13.01.1982.

21. Regarding contention of the plaintiff that the provisions of Fragmentation Act is not applicable to the suit schedule property since it was not "Fragment". In Ex.P-2 it was shown that the Fragmentation Act was applied to the suit schedule property as on 13.01.1982 and that the defendant agreed to execute the sale deed only after repeal of the said Act. From a reading of page 65 of the case law reported in AIR 2011 KARNATAKA 58 Smt. Parvathamma's case 'Fragment' means a holding of land of less extent than the appropriate standard area specified in column (3) of the schedule to the Act in respect the class of land specified in the corresponding entry in column (2) of the schedule, which reads as follows:

Sl. No.	*Class of lands*	*Area*
1	*A Class*	*One -half acre*
2	*B Class*	*Three-fourth acre*
3	*C Class*	*One and one-forth acre*
4	*D Class*	*Two and Seven-tenth acre*

Properties, excluding a house property and a vacant site, are described as dry lands and would hence be "D Class" lands for the purpose of the Act. Therefore, it is clear that D class land measures less than two and seven-tenth acres would fall under the definition of a word "Fragment" for the purposes of the Act. Suit schedule property is less than 2

acres and seven-tenth acres and that is not a house property or vacant site. Therefore, definitely suit schedule property be comes under the 'D' class land and fall under the definition of word 'Fragment' for the purposes of the said Act. Therefore, the contract marked at Ex.P-2 is void-ab-mitio and cannot be enforced at all in view of the said Act.

22. About readiness and willingness, in the plaint at para 5, it was pleaded that the plaintiff is always ready and willing to perform his part of contract. The said fact also specifically deposed in the evidence of P.W-1 in his affidavit at para-5. But as stated supra, the P.W-1 is not a competent person to say about the execution of Ex.P-2. Therefore, he also is not competent person to say about readiness and willingness. No notice issued to the defendant expressing the plaintiff's or husbands readiness and willingness to perform their part of contract. Suit filed in the year 2002. Disputed agreement executed in the year 1982. Fragmentation Act was repealed on 05.02.1991. No evidence placed before the Court to show that when exactly they requested the defendant to execute the sale deed by stating the specific date, time and place to execute the sale deed. Therefore, trial Court has rightly held that the plaintiff fails to prove her ready and willingness to perform her part of the said contract.

23. The article 54 of Limitation Act applies to the suits for specific performance Act. The learned counsel for the plaintiff contends that no exact time limit is fixed for performance of the contract. Therefore, limitation of 3 years

starts from the date of refusal of the performance. At para 6 it was stated that the course of action for the suit arose on 13.01.1982 the date of filing of the suit in O.S 781/2001 and subsequently at Gowdihalli Village. Ex.P-10 discloses that the suit in O.S 781/2001 filed on 30.10.2001. As stated supra, in Ex.P-2 about the date of performance of contract it was shown as under:

ಪೆಡ್ಯೂಲ್ ಸ್ವತ್ತು ತುಂಡುಭೂಮಿ ಆಗಿದ್ದು ಅವಕಾಶವಿಲ್ಲವಾದ್ದರಿಂದ ಮುಂದೆ ಕಾನೂನು ಬಂದು ರಿಜಿಸ್ಟ್ರಿಗೆ ಅವಕಾಶ ಬಂದಾಗ ನ್ಯಾಯವಾದ ಕ್ರಯ ಪತ್ರ ಬರೆದು ರಿಜಿಸ್ಟ್ರಿ ಮಾಡಿಸಿಕೊಡುತ್ತೇವೆ.

As stated supra, the Fragmentation Act was repealed on 05.02.1991. Therefore, limitation starts from 05.02.1991 suit filed after 3 years from 05.02.1991. As stated supra it was stated that cause of action arose on 13.01.1982. The plaintiff has not produced any evidence to show that the defendant was refused to perform his part of contract as on the date of filing the suit filed by him in O.S 781/01. Therefore, it is clear that the suit of the plaintiff is hopelessly barred by law of limitation. Therefore, the trial Court has rightly answered the additional issue No.1 as in the negative. It is clear that the Ex.P-2 is unenforceable document in view of the fact that the suit schedule property was a 'Fragment ' as on 13.01.1982. it is also clear that the plaintiff fails to prove the execution of the Ex.P-2 document. She also fails to show that she or her husband or ever ready and willing to perform their part of contract. In view of the fact at Ex.P-2 void-ab-miltio document as on 13.01.1982 , it cannot be specifically enforced in view of sec 14(b) of Specific Relief

Act. Though the defendant specifically admitted that he is the absolute owner of the suit schedule property as on 13.01.1982, but no documents placed to show his title over the suit schedule property as on 13.01.1982. Ex.P-6 or Ex.D-1 to 11 also not discloses that the defendant was the owner of the suit schedule property as on the date of filing this suit. Therefore, it is clear that the defendant had not acquired valid marketable title over the suit schedule property as on 13.01.1982 or as on the date of filing the suit. Therefore, it is also clear that the trial Court has rightly rejected to grant the relief of specific performance of the said contract. Therefore, it is clear that the trial Court has rightly answered issues No.1 to 3 as in the negative. Hence, no grounds to interfere with the properly reasoned impugned judgment and decree of the trial Court. Hence, no grounds to appreciate the arguments of the learned counsel appeared for the plaintiff that the trial Court was erred in dismissing the plaintiff's suit. Therefore, this appeal is devoid of merits and that therefore it deserves to be dismissed. Therefore I answer the aforesaid points No. 1 to 2 as in the Negative.

24. ***POINT NO.4:*** *In view of my answer to point No.1 to 2, I proceed to pass the following:*

ORDER

This appeal, filed by the plaintiff, is hereby dismissed. The impugned judgment and decree of the trial Court is here by confirmed.

In the circumstances of the case parties to this appeal shall bear their own costs.

Draw up decree accordingly,"

13. Upon re-consideration, re-evaluation and re-appreciation of the entire material on the record, I am of the view that the First Appellate Court has rightly confirmed the findings of the Trial Court and came to the conclusion that the alleged Sale Agreement had not been proved in accordance with law; that the plaintiff and her husband were never ready and willing to perform their part of the contract and that the suit was barred by limitation; the enormous / huge inaction / delay / latches on the part of the plaintiff and her husband and thereafter, the plaintiff in not seeking any specific performance for more than 20 years from the date of the Sale Agreement and in any event, more than 10 years after the said Act of 1956 was repealed on 02.02.1991 lead to an unmistakable conclusion that the plaintiff and her husband were not ready and willing to perform their part of the contract; that the suit was barred by limitation and the long, enormous, huge, unexplained, inordinate delay and latches on the part of the plaintiff's husband and the plaintiff in failing to seek specific

performance was sufficient to reject the claim of the plaintiff, who would not be entitled to the discretionary and equitable relief of specific performance.

14. The aforesaid findings of facts recorded by both the Courts cannot be said to be perverse or capricious nor can the same be said to be contrary to the material on the record so as to give rise to any question of law much less substantial question of law warranting interference by this Court in the present appeal. Accordingly, I do not find any merit in the appeal and the same is hereby ***dismissed***.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SV
List No.: 1 Sl No.: 23