HC-KAR

NC: 2026:KHC:60409
RSA No. 1787 of 2017

CNR: KAHC010401192017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2026

BEFORE

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

REGULAR SECOND APPEAL NO. 1787 OF 2017 (INJ)

BETWEEN:

AHMED SAB
S/O. KAREEN SAB,
SINCE DEAD BY LRS,

RASOOL SAB
S/O. LATE. AHMED SAB,
AGED ABOUT 58 YEARS
R/AT NEECHE MOHALLA
DONABAGHATA VILLAGE
BHADRAVATHI TALUK
SHIVAMOGGA DISTRICT – 577 301.

…APPELLANTS

(BY SRI. NISAR SAB, ADVOCATE)

AND:

1. MOHAMMED ALI
S/O. KARIM SAB,
AGED ABOUT 77 YEARS.

2. MOHAMMED SAB
S/O KALANDAR SAB
SINCE DEAD REP BY HIS LRS.

2(A) ZIAULLA
S/O LATE MOHAMMED SAB
AGED AOBUT 43 YEARS.

2(B) KALEEN
S/O LATE MOHAMMED SAB
AGED ABOUT 40 YEARS.

2(C) MUHEEF
S/O LATE MOHAMMED SAB
AGED ABOUT 37 YEARS.

Digitally signed by VANDANA S
Location: High Court of Karnataka

ALL ARE RESIDING AT
NEECHE MOHALLA
BONABAGHATA VILLAGE
BHADRAVATHI TALUK
SHIVAMOGGA DISTRICT – 577 301.

3. AYUB SAB
S/O LATE AHMED SAB
AGED ABOUT 50 YEARS

4. JABBAR SAB
S/O LATE AHMED SAB
AGED ABOUT 45 YEARS.

5. AZGAR SAB
S/O LATE AHMED SAB
AGED ABOUT 43 YEARS.

6. ZAHEER SAB
S/O LATE AHMED SAB
AGED ABOUT 38 YEARS.

R-2 TO R-6 ARE
R/AT NEECHE MOHALLA
DONABAGHATTA VILLAGE
BHDRAVATHI TALUK
SHIMOGGA DISTRICT – 577 301.

…RESPONDENTS

(BY SRI. S V PRAKASH, ADVOCATE FOR R-1
SRI. GANESHA.R, ADVOCATE FOR R-2(A TO C)
R-3 TO R-5 SERVED
VIDE ORDER DATED: 13.10.2022 NOTICE TO R-6 IS D/W)

THIS RSA IS FILED UNDER SEC.100 OF CPC., 1908, AGAINST THE JUDGMENT AND DECREE DATED 01.04.2017 PASSED IN RA NO.39/2013 ON THE FILE OF THE PRL.SENIOR CIVIL JUDGE AND JMFC., AT BHADRAVATHI ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 22.01.2013 PASSED IN OS NO.11/2006 ON THE FILE OF THE I ADDL.CIVIL JUDGE AND JMFC., AT BHADRAVATHI.

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

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

ORAL JUDGMENT

The appellant was the plaintiff in O.S. No. 11/2006 instituted by him against the respondents defendants for specific performance directing the defendant no. 1 to re-convey the suit schedule property in favour of the plaintiff as per the undertaking or ***Vagdana Patra*** dated 29.03.1988 said to have been executed by him in favour of the plaintiff. According to the plaintiffs, the first defendant who is his brother and with the confidence and assurance of 1st defendant, plaintiffs got executed a nominal sale deed in respect of the suit schedule property on 29.03.1988 purporting to sell the suit schedule property in favour of the defendant no. 1 for a sale consideration of Rs.30,000/-. It is also contended that the said document was a sham and nominal document and was never intended to be acted upon by the parties as a result of which the first defendant executed a contemporaneous ***Vagdana Patra*** (Re-conveyance deed) also dated 29.03.1988 in favour of the appellant-plaintiff

agreeing to re-convey the suit schedule property back in favour of the appellants-plaintiffs.

2. It is further contended that the appellants-plaintiffs have always been ready and willing to perform their part of the contract and since the respondents-defendants did not comply with the request and demands made by the plaintiffs to re-convey the suit schedule property back in favour of the plaintiffs, they issued a legal notice dated 18.07.2005 to which the respondents-defendants did not issue any reply as a result of which the appellants-plaintiff instituted the aforesaid suit for mandatory injunction directing the respondents-defendants to re-convey the suit schedule property back to the plaintiffs in terms of the ***Vagdana Patra*** dated 29.03.1988 and for other reliefs.

3. The respondent no. 1-defendant no. 1 filed his written statement and contested the suit inter alia disputing and denying the various allegations and claim made by the plaintiffs. It was contended that the sale deed

dated 14.03.1988 executed by the plaintiffs in favour of the defendant no. 1 was an out and out sale deed and was neither a sham nor nominal document as contented by the plaintiffs. Further the defendant no. 1 denied the execution of the alleged ***Vagdana patra*** dated 29.03.1988 said to have been executed by defendant no. 1 in favour of the plaintiff. It was also contended that the suit of the plaintiffs was barred by limitation as well as delay and latches and also that the suit seeking mandatory injunction was not maintainable in law or on facts and that the same is liable to be dismissed.

4. Based on the pleadings of the parties, the trial Court framed the following issues:

> *1. Whether the plaintiff proves that he is entitled for the re-conveyance of the suit property as pleaded by him?*
> *2. Whether the plaintiff proves that the defendants have tried to alienate the suit property or to create mortgage over the same?*
> *3. What Order or Decree the parties entitled?*

5. The original plaintiff examined himself as PW1 and his legal representative Rasool Saab was examined as PW2

and two more witnesses as PW3 and PW4 and documentary evidence at P1 to P13 were marked while the defendant no. 1 examined himself as DW1 but did not produce any documentary evidence on his behalf.

6. After hearing the parties, the trial Court answered issues 1 and 2 in favour of the appellants-plaintiffs and consequently decreed the suit in their favour by passing the judgment and decree dated 22.01.2013 which was challenged by the respondent no. 1- Defendant no. 1 in R.A. No. 39/2013 which was allowed by the first appellate Court vide impugned judgment and decree dated 01.04.2017 by holding as hereunder:

> *"15. After going through the records and after hearing the arguments, the following points arise for my consideration:*
>
> *1) Whether interference of this Court is required in the judgment and decree passed by the learned trial Judge?*
>
> *2) What order?*
>
> *16. My answer to the above point No.1 is in the affirmative for the following:*
>
> *R E A S O N S*
>
> *17. Point No.1: - Plaintiff has instituted the suit against defendants for mandatory injunction to direct the defendant No.1 to*

reconvey the suit schedule property to the plaintiff as per Vagdhana Pathra and also for the relief of permanent injunction.

18. Admittedly plaintiff and defendant No.1 are brothers. Admittedly there was execution of sale deed between plaintiff and defendant No.1 with respect to the suit schedule property. That is plaintiff had sold suit schedule property to defendant No.1 for a sum of Rs.30,000/- under the said registered sale deed.

19. According to the plaintiff, he wished to purchase agricultural land at Navile Basavapura village. As such defendant No.1 promised plaintiff to find out a suitable land for plaintiff and in case plaintiff did not find any suitable land, defendant No.1 would reconvey suit property to plaintiff. In this regard a Vagdhana Pathra was executed. But defendant No.1 denied execution of Vagdhana Pathra and termed the said document as created and manipulated one.

20. Plaintiff to prove due execution of Vagdhana Pathra got examined himself as PW-1 by filing an affidavit in lieu of his examination-in-chief. But PW-1 died during the pendency of the suit and he could not be tendered for cross-examination. Hence evidence of PW-1 by way of chief-examination cannot be considered.

21. After bringing legal heirs of the deceased plaintiff on record, one of the sons of the deceased plaintiff was examined as PW-1. The said witness filed affidavit and also produced Ex.P.1 to Ex.P.6. Ex.P.2 and EX.P.3 are certified copy of sale deed and Vagdhana Pathra respectively. As per the evidence of PW-1 –Rasool Sab, 15 days after the execution of sale deed defendant No.1 executed Vagdhana Pathra. Mohammed Sab and Mehaboob Miya are witnesses to the Vagdhana Pathra.

22. Plaintiff got examined two witnesses – PW-2 and PW-4. As per the evidence of PW-2, he was present at the time of execution of Vagdhana Pathra and he knows contents of the said document. According to the PW-2, in case defendant No.1 is not happy with the property, he shall reconvey the same to the plaintiff.

23. According to the plaintiff, the defendant No.1 subsequently attempted to sell the suit property to the defendant No.2. To prove the said aspect, plaintiff got examined witness Sri K.Thimmappa as PW-4. As per the evidence of PW-4, one Mohammed Sab has transported sugarcane to the MPM Sugar Factory. Evidence of the PW-4 shows that as per Ex.P.7 to EX.P.13, Mohammed Sab s/o Mohammed Ali for the last one year (as on the date of the evidence) was cultivating 1¼ acres in Sy.No.46/14 of Biliki village and transported sugarcane to the MPM Sugar Factory.

24. According to the DW-1/defendant, Vagdhana Pathra dated 28.3.1988 is concocted and created document for the purpose of the suit. But during the course of cross-examination DW-1 has admitted the execution of the Vagdhana Pathra. DW-1 has also admitted his signature in the Vagdhana Pathra. Admittedly defendant No.1 had promised his brother – the plaintiff to reconvey the property to the plaintiff in case defendant sells the said property. Though the DW-1 denied the execution of Vagdhana Pathra in written statement and in his affidavit he has admitted the same in his cross-examination. Therefore evidence of the DW-1 is sufficient to hold the due execution of Vagdhana Pathra.

25. DW-1 has also deposed that he is liable for the condition enumerated in the Vagdhana Pathra. But he has denied that he had sold the suit property. DW-1 has also deposed that he would not sell the suit schedule property. A perusal of the evidence of DW-1 goes to show that he got executed the Vagdhana Pathra in favour of his elder brother – plaintiff and he had not sold the property to anyone.

26. Plaintiff has sought for the relief of permanent injunction to restrain defendant No.1 from selling the property to anyone. Plaintiff has apprehended that defendant No.1 will sell the property to defendant No.2. However DW-1 has deposed that he would not sell the property to anyone. But plaintiff has examined PW-4 who has produced Ex.P.7 to Ex.P.10 – agreement letter, permission letter, surrender slip and bill which establish delivery of possession of suit

property to defendant No.2. As such, evidence of the DW-1 that he would not sell the property to any one cannot be believed.

27. Be that as it may, DW-1 has admitted the execution of Vagdhana Pathra. But the question is whether the Vagdhana Pathra can be enforced or not, because the said document is written on a stamp paper of the value of Rs.5/-. The value of the property shown in the said document is Rs.73,000/-. As such, the document is insufficiently stamped and it is also an unregistered document. The document which is insufficiently stamped cannot be considered for any purpose. However in the case on hand, the relief is claimed on the basis of the said Vagdhana Pathra. As aforesaid, when the document is insufficiently stamped it cannot be considered for any purpose.

28. Further the Vagdhana Pathra was executed on 29.6.1988. The suit was instituted on 6.1.2006, after a lapse of nearly 18 years. Therefore the suit is barred by limitation. Because the suit is not instituted within the period of limitation of 3 years from the date of the execution of the said document. Hence the conclusion arrived at by the learned trial Judge is not just and proper. Therefore interference of this Court is required in the judgment and decree passed by the trial Court. Accordingly I answer point No.1 in the affirmative.

29. Point No.2: - In view of my findings on the above points, I proceed to pass the following:

O R D E R

Appeal filed by defendant no.1 / appellant by challenging judgment and decree dated 22.1.2013 passed in O.S.No.11/2006 by the I Additional Civil Judge & JMFC., Bhadravathi is allowed.

Judgment and decree passed O.S.No.11/2006 is set aside.

Suit of the plaintiff is dismissed.

Draw Decree Accordingly.

Office is directed to send a copy of this judgment along with LCR to the trial court.

7. A perusal of the impugned judgment and decree passed by the first appellate Court will indicate that the appeal of the respondent no.1 was allowed and the suit of the appellants-plaintiffs was dismissed by the first appellate Court by holding as under:

I) That the suit filed on 06.01.2006 seeking enforcement of alleged ***Vagadana Patra*** dated 29.03.1888 after a long lapse of 18 years was barred by limitation and as such the plaintiff was not entitled to a decree as sought for by him.

II) The suit for mandatory injunction without seeking appropriate relief of specific performance of the alleged ***Vagdana Patra*** was also not maintainable and the same was barred under Section 41(h) of the Specific Relief Act and was liable to be dismissed on this ground also.

III) Even assuming that the suit was not barred by limitation, the unreasonably long and inordinate delay and latches of 18 years in instituting the suit on 06.01.2006 seeking enforcement of an alleged ***Vagdana Patra*** dated 29.03.1988 was beyond reasonable time and the delay and latches on the part of the appellant as well as inaction on its part in instituting the suit after a long lapse of 18 years would disentitle him from seeking the discretionary and equitable relief of mandatory injunction as sought for by him in the suit.

IV) That the suit seeking enforcement of ***Vagdana Patra*** / Re-conveyance deed was also not maintainable in view of the well settled position of law that insofar as claim for enforcement of a re-conveyance deed was concerned, time was always the essence of the contract and the long lapse of 18 years would disentitle the plaintiffs from seeking enforcement of a deed of re-conveyance described as ***Vagdana Patra*** by the plaintiff.

V) That the appellant-plaintiff had not placed any material to show that he was in possession and enjoyment of the suit schedule property. On the other hand, the recitals in the sale deed dated 14.03.1988, revenue records, mutation register extract, RTC extract etc. would indicate that the plaintiff had delivered and put the respondent no. 1 in lawful and peaceful possession and enjoyment of the suit schedule property pursuant to the registered sale deed dated 14.03.1988 executed by them in favour of the defendant no. 1 and there was absolutely no material to show, much less any recital in the re-conveyance deed to establish that the appellants were in possession and enjoyment of the suit schedule property.

8. The aforesaid findings of fact recorded by the first appellate Court resulted in the first appellate Court setting aside the judgment and decree of the trial Court and dismissing the suit filed by the appellants plaintiffs.

9. In view of the aforesaid facts and circumstances, I am of the considered opinion that there does not arise any question of law, much less substantial question of law that arises for consideration in the present appeal which is devoid of merit and the same is hereby dismissed at the stage of admission itself.

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

BVV
List No.: 1 Sl No.: 6