HC-KAR

NC: 2026:KHC:62966
RFA No. 1473 of 2016

CNR: KAHC010402732016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

REGULAR FIRST APPEAL NO. 1473 OF 2016 (SP)

BETWEEN:

1. SMT J S KAMALA
   WIFE OF LATE M.C.KRISHENE GOWDA
   SINCE DEAD BY LRS ALREADY ON RECORD
   AS APPELLANT NO.2 AND 3.

2. SRI.K.KIRAN KUMAR
   S/O LATE M.C.KRISHENE GOWDA
   AGED ABOUT 33 YEARS

3. MRS.K.RESHMA
   D/O LATE M.C.KRISHENE GOWDA
   AGED ABOUT 30 YEARS
   ALL ARE R/AT #944, 8TH C MAIN
   3RD STAGE, 3RD BLOCK
   BASAVESWARANAGAR
   BENGALURU-560 079.

...APPELLANTS

(BY SRI. K VIJAYA KUMAR., ADVOCATE)

AND:

SRI R VENUGOPAL
S/O SRI L.RARTHNACHARI
AGED ABOUT 65 YEARS
R/AT NO.354, 10TH A MAIN ROAD
MANJUNATHNAGAR
WEST OF CHORD ROAD, 3RD STAGE
BENGALURU-560 010

...RESPONDENT

(BY SRI. THAMMAIAH B G., ADVOCATE FOR FOR C/R)

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HAREKOPPA THIMMANNA GOWDA

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER XLI RULE 1 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 22.07.2016 PASSED IN OS NO. 1631/2008 ON THE FILE OF THE XI ADDL. CITY CIVIL JUDGE, BANGALORE CITY. DISMISSING THE SUIT FOR SPECIFIC PERFORMANCE.

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

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL JUDGMENT

This appeal is filed by the plaintiffs under Section 96 of the Code of Civil Procedure, 1908 (for short, 'CPC'), challenging the judgment and decree dated 22.07.2016 passed by the XI Additional City Civil Judge, Bengaluru City (for short, 'Trial Court'), in O.S. No.1631/2008, whereby the suit filed by the plaintiffs for specific performance of the contract was dismissed with costs, holding that the plaintiffs are entitled only to a refund of the advance sale consideration of Rs.3,00,000/- along with interest at the rate of 6% per annum.

2. For the sake of convenience, the parties are referred to as per their rankings before the Trial Court.

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3. The brief facts of the case are that the defendant is the owner of property bearing No.107, formed out of Sy. No.4 of Saneguravanahalli Village, Yeshwanthapura Hobli, Bengaluru North Taluk, now Bangalore Development Authority No.354, 3rd Stage, 1st Block, West of Chord Road, Bangalore, measuring 35 feet on the northern side and 26 feet on the southern side from east to west, and 26 feet from north to south (for short, 'suit schedule property').

4. The defendant executed an agreement of sale dated 08.04.2005 in favour of Sri M.C. Krishene Gowda, the husband of plaintiff No.1 and father of plaintiff Nos.2 and 3, agreeing to sell the suit schedule property for a total sale consideration of Rs.13,50,000/- and received a sum of Rs.3,00,000/- towards advance sale consideration. The said Krishene Gowda died on 04.04.2006. Thereafter, the plaintiffs, being the legal representatives of the deceased Krishene Gowda, issued a legal notice dated

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01.02.2008 to the defendant, calling upon him to execute the registered sale deed in their favour. Since the defendant failed to execute the sale deed, the plaintiffs instituted the suit seeking specific performance of the agreement of sale.

5. Upon service of summons, the defendant appeared through counsel and filed his written statement, admitting the execution of the agreement of sale dated 08.04.2005 in favour of Sri M.C. Krishene Gowda in respect of the suit schedule property for a total sale consideration of Rs.13,50,000/- and receipt of Rs.3,00,000/- towards advance sale consideration. However, the defendant contended that the plaintiffs were neither ready nor willing to perform their part of the contract and, therefore, were not entitled to the relief of specific performance. Accordingly, he sought dismissal of the suit.

6. On the basis of the pleadings of the parties, the Trial Court framed the following issues:

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"1. Whether the plaintiffs prove that they have always been ready and willing to perform their part of contract?

2. Whether the defendant proves that the time was the essence of contract and the plaintiffs have committed default in performance of the contract?

3. Whether the defendant proves that the agreement of sale dated 08.04.2005 has been cancelled since the plaintiffs expressed their inability to pay the balance consideration amount?

4. Whether the plaintiffs are entitled for the relief of specific performance of contract?

5. What decree or order?"

7. To substantiate their case, plaintiff No.3 got examined herself as PW.1 and got marked nine documents as Exs.P.1 to P.9. The defendant examined himself as DW.1 and also examined Sri Govinde Gowda as DW.2 and got marked ten documents as Exs.D.1 to D.10.

8. Upon appreciation of the oral and documentary evidence on record, the Trial Court answered issue Nos.1 and 4 in the negative and dismissed the suit for specific

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performance, holding that the plaintiffs are entitled only to a refund of the advance sale consideration of Rs. 3,00,000/- with interest at the rate of 6% per annum. Being aggrieved by the judgment and decree of the Trial Court, the plaintiffs have preferred the present appeal.

9. Learned counsel appearing for the plaintiffs has raised the following contentions:

(i) Firstly, it is contended that, in terms of the agreement of sale, the obligation to obtain all necessary documents from the Bangalore Development Authority (for short, 'BDA') and execute the registered sale deed was upon the defendant. Even in the written statement, the defendant has admitted that the obligation to secure the necessary documents from the BDA was upon him. However, contrary to the pleadings and the terms of the agreement of sale, the Trial Court has recorded a finding that it was the obligation of the plaintiffs' father to secure

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the original documents from the BDA. Such a finding is contrary to the material available on record.

(ii) Secondly, it is contended that merely because the plaintiffs' father was a real estate agent, the Trial Court could not have presumed that the obligation to secure the original records from the BDA was upon him. Such a finding is contrary to the terms of the agreement of sale and the evidence on record. Though the plaintiffs were always ready and willing to perform their part of the contract, the Trial Court erred in dismissing the suit for specific performance. Accordingly, learned counsel sought to allow the appeal and decree the suit for specific performance of the agreement of sale.

10. Per contra, learned counsel appearing for the defendant has raised the following contentions:

(i) Firstly, it is contended that admittedly, Sri Krishene Gowda, the predecessor-in-interest of the plaintiffs, was a real estate agent. He had assured the

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defendant that he would secure the original records from the BDA and thereafter get the sale deed registered. However, without securing the original records from the BDA, the plaintiffs instituted the suit for specific performance. Since the plaintiffs failed to perform their part of the contract, the Trial Court was justified in dismissing the suit for specific performance.

(ii) Secondly, it is contended that DW.1, in his evidence, has categorically stated that Sri Krishene Gowda had assured the defendant that he would secure the original records from the BDA. It was on the basis of such assurance that the defendant entered into the agreement of sale. However, even during his lifetime, Sri Krishne Gowda did not secure the original records from the BDA. Even after his death, his legal representatives made no efforts to obtain the said records. Therefore, the plaintiffs having failed to discharge their contractual obligations and having failed to establish their readiness and willingness to

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perform their part of the contract, the Trial Court was justified in dismissing the suit.

(iii) Thirdly, it is contended that Sri Krishene Gowda died on 04.04.2006, whereas the plaintiffs instituted the suit nearly two years after his death, without offering any satisfactory explanation for the delay. Therefore, learned counsel sought dismissal of the appeal.

11. Heard the learned counsel appearing for the parties and perused the impugned judgment and decree as well as the original records.

12. It is not in dispute that the defendant is the owner of the suit schedule property. It is also not in dispute that the defendant executed a registered agreement of sale dated 08.04.2005 in favour of Sri M.C. Krishene Gowda, agreeing to sell the suit schedule property for a total sale consideration of Rs.13,50,000/-, out of which a sum of Rs.3,00,000/- was received towards advance sale consideration.

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13. A perusal of the agreement of sale clearly indicates that the defendant had undertaken to secure the original records from the BDA, including the reconveyance deed, khata and other relevant documents, and thereafter execute the registered sale deed upon receipt of the balance sale consideration of Rs.10,50,000/-.

14. The relevant portion of the agreement of sale is extracted hereinbelow:

> *" ಈ ರೀತಿ ಷೆಡ್ಯೂಲು ಸ್ವತ್ತಿನ ಕ್ರಮಬದ್ಧ ವರ್ಗಾವಣೆಗಾಗಿ ಮಾಡಿಸಿ ಪಡೆಯಬೇಕಾಗಿರುವ ಎಲ್ಲಾ ದಾಖಲಾತಿಗಳನ್ನು ನಾನು ಮಾಡಿಸಿ ಪಡೆದು ನಿಮಗೆ ತಿಳಿಸಿದ ನಂತರ ನಾನು ನಿಮಗೆ ತಿಳಿಸಿ ಈ ಷೆಡ್ಯೂಲು ಸ್ವತ್ತಿನ ಬಾಬ್ತು ಕ್ರಮವಾದ ಕ್ರಯಪತ್ರವನ್ನು ನಿಮ್ಮ ಹೆಸರಿಗಾಗಲೀ ಅಥವಾ ನೀವು ಅಪೇಕ್ಷೆಪಡುವವರ ಹೆಸರಿಗಾಗಲೀ ಬರೆಸಿ ಮೇಲ್ಕಂಡಂತೆ ಬಾಕಿಯಾಗುವ ಕ್ರಯದ ಮೊಬಲಗು ರೂ.10,50,000.00(ಹತ್ತು ಲಕ್ಷದ ಐವತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳು ಮಾತ್ರ) ಗಳನ್ನು ಪೂರಾ ನಿಮ್ಮಿಂದ ನಾನು ಪಡೆದುಕೊಂಡು ಕ್ರಯಪತ್ರವನ್ನು ಸಂಬಂಧಪಟ್ಟ ಸಬ್ ರಿಜಿಸ್ಟ್ರಾರ್‌ರವರ ಕಛೇರಿಯಲ್ಲಿ ರಿಜಿಸ್ಟ್ರು ಮಾಡಿಸಿಕೊಟ್ಟು ಷೆಡ್ಯೂಲು ಪೂರಾ ಸ್ವತ್ತನ್ನು ಇದಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟ ಎಲ್ಲಾ ಅಸಲು ದಾಖಲಾತಿಗಳ ಸಮೇತ ನಿಮ್ಮ ಅಥವಾ ನೀವು ಅಪೇಕ್ಷೆ ಪಡುವವರ ಸ್ವಾಧೀನಕ್ಕೆ ಬಿಟ್ಟುಕೊಟ್ಟು ಈ ಕ್ರಯದ ವ್ಯವಹಾರವನ್ನು ಪೂರ್ಣಗೊಳಿಸಿಕೊಡುತ್ತೇನೆ."*

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15. Even in the written statement filed by the defendant in para No.5 he has admitted the same. Para No.5 is extracted below:

> *"5. The averment made in para No.6 of the plaint that under the Agreement to Sell dated 08.04.2005, remaining amount of sale consideration of Rs,10,50,000/- required to be paid to the defendant at the time of registration of the sale deed and the defendant was required to furnish the documents of title as agreed and as per the agreement to sell dated 08.04.2005, are admitted by this defendant as true and correct."*

16. For the first time, in his examination-in-chief, DW.1 has contended that it was the obligation of the plaintiffs' father, Sri Krishene Gowda, to obtain the original documents from the BDA. However, in his cross-examination, DW.1 has categorically admitted that the Agreement does not mention that the obligation to obtain the necessary documents from the BDA, including the possession certificate, reconveyance deed, khata certificate, tax-paid receipts and other documents required

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for registration of the sale deed, was upon the plaintiffs and that it was only an oral agreement without any documentary evidence.

17. The relevant portion of the cross-examination of DW.1 is extracted hereinbelow:

> *"…… It is true in Ex.P2 it is not mentioned that plaintiff had agreed to obtain documents from BDA,. There was no documentary evidence to show that plaintiff himself agreed to obtain necessary documents from BDA. According to witness it is only oral agreement."*

18. In view of the specific pleadings, the admissions made by DW.1 in his cross-examination and the terms of the agreement of sale at Ex.P.2, it is evident that the contractual obligation to obtain the necessary documents from the BDA was upon the defendant. However, the Trial Court, contrary to the material available on record and the evidence adduced by the parties, has proceeded on the assumption that, since Sri Krishene Gowda was a real

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estate agent, the obligation to secure the necessary documents from the BDA was upon him. Such a finding is contrary to the terms of the agreement of sale, the pleadings and the admissions made by the defendant in his evidence.

19. The Trial Court, primarily on the basis of the aforesaid finding, has concluded that the plaintiffs were not ready and willing to perform their part of the contract and consequently dismissed the suit for specific performance. The said finding, being contrary to the material evidence available on record, cannot be sustained.

20. In the given circumstances, this Court is of the considered opinion that the matter requires reconsideration by the Trial Court, particularly with regard to the readiness and willingness of the plaintiffs to perform their part of the contract and the other issues arising for consideration. Therefore, without expressing any opinion

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on the merits of the remaining issues, it is just and appropriate to set aside the impugned judgment and decree and remit the matter to the Trial Court for fresh consideration, in accordance with law, keeping in view the observations made hereinabove.

21. Accordingly, the following:

ORDER

(i) The appeal is allowed.

(ii) The judgment and decree dated 22.07.2016 passed by the XI Additional City Civil Judge, Bengaluru City, in O.S. No.1631/2008 are hereby set aside.

(iii) The matter is remitted back to the Trial Court for fresh consideration and disposal, in accordance with law, keeping in view the observations made in this judgment.

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(iv) The parties are directed to appear before the Trial Court on 18.12.2026, without awaiting any further notice.

(v) The Trial Court is directed to dispose of the suit as expeditiously as possible, and in any event, within a period of six months from the date of appearance of the parties.

(vi) The parties are at liberty to adduce additional evidence and produce additional documents, if any, subject to the provisions of law.

(vii) All other contentions of the parties are kept open to be urged before the Trial Court.

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(H.T. NARENDRA PRASAD)
JUDGE

CM
LIST NO.: 1 SL NO.: 47