



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO. 1457 OF 2022 (SP)

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BETWEEN:

1. SRI. BYLAMURTHY
S/O LATE SIDDAPPA
AGED ABOUT 48 YEARS
R/AT VISHVESWARAPURA VILLAGE
KASABA HOBLI,
NELAMANGALA TALUK
BANGALORE RURAL DISTRICT-562123
REPRESENTED BY
SRI CHANDRASHEKARAIHAH G.,
ADVOCATE

...APPELLANT

(BY SRI D.L.JAGADEESH, SENIOR COUNSEL FOR
SRI G. CHANDRASHEKHARAIHAH, ADVOCATE

AND:

1. SMT. M.G.GANGALAKSHMAMMA
D/O M.D.GANGARANGAIAH
MAJOR
2. SMT. MANJULA
D/O M.D.GANGARANGAIAH
MAJOR
3. SMT. M.G.HEMALATHA
D/O M.D. GANGARANGAIAH
MAJOR





4. SRI MANJUNATH
S/O M.D. GANGARANGAIAH
MAJOR

5. SRI DEVRAJ
S/O M.D.GANGARANGAIAH
MAJOR

ALL ARE RESIDENT OF
NO.6259, NEAR VISHALA SCHOOL,
SUBHASHNAGAR,
NELAMANGALA TOWN,
NELAMANGALA,
BANGALORE RURAL DISTRICT-562125.

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 25.08.2022
PASSED IN R.A.NO.135/2018 ON THE FILE OF THE IX
ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU
RURAL DISTRICT, BENGALURU, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 20.08.2018
PASSED IN O.S.NO.1306/2009 (OLD NO.1465/2008) ON THE
FILE OF THE SENIOR CIVIL JUDGE, NELAMANGALA.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY,
THE COURT DELIVERED THE FOLLOWING:



JUDGMENT

1. This matter is listed for admission and heard the learned counsel for the appellant and the learned counsel for the respondents.

2. This second appeal is filed against the concurrent finding in rejecting prayer of specific performance.

3. The factual matrix of case of plaintiff before the Trial Court that there was an agreement of sale and the same came to be executed by father of defendant on 05.02.2003 and sale consideration of Rs.8,65,000/- and sale consideration of Rs.4,00,000/- was paid. Subsequently an amount of Rs.1,00,000/- was also paid on 21.07.2004. It is also the case that only father has acquired the property vide sale deed dated 11.10.1990 and the same is absolute property of father of the defendant and the said Gangarangaiah died leaving behind defendant who succeed estate including the suit property



in question and hence the defendants are bound to execute the sale deed after receiving balance sale consideration and inspite of that they did not come forward to execute the sale deed and hence issued notice on 17.06.2008 and untenable reply was given by the defendants. Hence, the plaintiff filed the suit for relief of specific performance.

4. In pursuance of the suit summons, the defendants have filed written statement denying the very execution of sale agreement. Hence, the Trial Court having considered the pleadings of the parties framed the issues as whether there was a sale agreement and whether the plaintiff was always ready and wiling to perform his part of contract and whether the plaintiff is entitled for the relief of specific performance. The Trial Court considered the material available on record, answered issue No.1 as affirmative that there was a sale agreement between the plaintiff and intersay father of defendant. However, answered the issue No.2 as negative in coming to the



conclusion that sale agreement was came into existence in the year 2003 and also considered the additional payment of Rs.1,00,000/- on 21.07.2004 and in the meanwhile the executant of agreement passed away in the year 2005 and notice was issued in the year 2008. The remaining sale consideration of Rs.3,65,000/- and no effort was made between 2003 to 2008 to execute sale deed. Hence, comes to the conclusion that Section 16(c) of Specific Relief Act has not been complied by the plaintiff and hence the Trial Court declined to grant the relief of specific performance and ordered to refund the amount of Rs.5,00,000/- with 6% interest.

5. Being aggrieved by the judgment and decree of the Trial Court, an appeal is filed in R.A.No.135/2018 before the First Appellate Court. The First Appellate Court having considered the grounds which have been urged in the appeal memo and also considering both oral and documentary evidence available on record, formulated the point for consideration as whether the Trial Court is



justified in holding that the plaintiff has failed to prove his readiness and willingness to perform his part of contract and whether judgment and decree of the Trial Court requires interference and on re-assessing both oral and documentary evidence, the First Appellate Court taking into note of Ex.P2-sale agreement dated 05.02.2003 and also considering additional payment of Rs.1,00,000/- in the year 2004 and the First Appellate Court comes to the conclusion that in between 05.02.2003 to 21.07.2004, nothing is placed on record to establish that plaintiff was made his effort to execute the sale deed and not complied with provisions of Section 16(c) of Specific Relief Act and not made any effort to pay the balance amount and he kept quite almost for a period of almost 5 years from the date of agreement and hence he did not comply with Section 16(c) and affirmed the judgment of the Trial Court in coming to the conclusion that he has not produced any document to show that remaining consideration is already arranged by him for performance of contract and nothing is placed before the Trial Court to pay the balance amount



of Rs.3,65,000/-. Hence, the First Appellate Court confirmed the judgment of the Trial Court.

6. Being aggrieved by the said concurrent findings, present second appeal is filed before this Court. The counsel appearing for the appellant would vehemently contend that when both the Courts comes to the conclusion that there is an agreement and false defense was taken that no such agreement was executed concurrently held that there is an agreement of sale and ought to have granted the relief of specific performance. The counsel would vehemently contend that maximum sale consideration was paid and remaining payment of sale consideration payable is only Rs.3,65,000/-. The counsel also brought to notice of this Court that there is an admission with regard to the fact that original executant of the sale deed was died in the year 2005 and notice was issued and he did not come forward to execute the sale deed. Both the Courts fail to consider the material on record and committed an error in coming to the conclusion



that Section 16(c) of Specific Relief Act has not been complied. The very approach is erroneous and hence this Court has to admit and frame substantial question of law.

7. The counsel in support of his argument he relied upon the judgment of this Court passed in ***R.S.A.No.5366/2012 in case of Pawadi Rewappa Pidai and others V/s Ningappa Rewappa Mali*** and brought to notice of paragraph No.22 wherein discussion was made with regard to " ready and willingness " is concerned and in the plaint is not a mandatory requirement, but the fact that the plaintiff has been ready and willing to perform his part of contract must be a matter which can be discerned on a reading of the plaint. Thus, on reading of plaint, even in the absence of the aforesaid words, the contents of the plaint discloses, readiness and willingness then such a plaint cannot be discarded has been not in compliance with a Section 16(c) of the Specific Relief Act.



8. The counsel also relied upon the judgment reported in ***AIR 2012 SC 2035 in case of Narenderjit Singh V/s North Star Estate Promoters Limited*** and brought to notice of this Court paragraph No.17 wherein also an observation is made by the Apex Court that the concurrent findings recorded by the Trial Court and lower appellate Court and issues of execution of agreement by the appellant's father and the respondent's readiness and willingness to perform its part of the agreement were based on correct evaluation of the pleadings and evidence of the parties. The readiness and willingness cannot be treated as a straight jacket formula and issues has to be decided keeping the facts and circumstances relevant to the intention and conduct of the parties is concerned.

9. The counsel also relied upon the judgment of this Court passed in ***R.S.A.No.681/2023 dated 01.07.2024 in case of Smt.Lalithamma and another V/s Sri.A.D.Govindaiah*** and counsel referring this judgment also would contend that when the major portion



of amount has been paid, issuance of notice is not mandatory and also contend that strict compliance of Form No.47 and Form No.48 of CPC is also not warranted when maximum amount has been paid by the plaintiff and hence this Court has to admit and frame substantial question of law.

10. Having heard the appellant's counsel and also on perusal of material on record, no doubt the very execution of agreement is disputed, however both the Trial Court as well as First Appellate Court taking into note of the material on record, particularly Ex.P2 comes to the conclusion that there is a sale agreement. It is also not in dispute that when the suit is filed for the relief of specific performance, Court has to take note of in toto evidence available on record. It is also settled law that mere execution of sale agreement itself is not a ground for granting the relief of specific performance and even the Court comes to the conclusion that there is an agreement and Court has to see the conduct of the parties while



granting the relief of specific performance. It is also important to note that when the relief is sought for the relief of specific performance, readiness and willingness also play a vital role, whether the plaintiff is entitled for the relief of specific performance or not. In the judgment relied upon by the appellant's counsel in **AIR 2012 Supreme Court Cases 2035** in **Narenderjit Singh** case in paragraph No.17 the Apex Court discussed with regard to Section 16(c) of the Specific Relief Act and in the very same paragraph, Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms, the performance of which has been prevented or waived by the defendant. The continuous willingness on the part of the plaintiff is condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the Court by granting or refusing to grant the relief. If the plaintiff fails to either



aver or prove the same, he must be to adjudge whether the plaintiff is ready and willing to perform his part of contract. The Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances.

11. In keeping the principles laid down in the judgment of this Court relied upon by the counsel for appellant referred supra this Court referred in paragraph No.22, no doubt this Court held with regard to making of averment of plaint is concerned, readiness and willingness, discussed in detail. This Court in judgment of R.S.A taken note of whether prior notice is necessary or not while seeking the relief of specific performance. This Court having taken note of material available on record, in that case sale consideration was Rs.2,20,000/-. An amount of Rs.2,10,000/- was paid and maximum amount of 95% amount was paid and hence Court comes to the conclusion that Section 16(c) of Specific Relief Act will not play any role and also Form No.47 and Form No.48 of CPC will not



play any role. But, in the case on hand this Court has to consider the material on record. There is an agreement of the year 2003 and sale consideration is Rs.8,65,000/- and an amount of Rs.4,00,000/- was paid in the year 2003 and subsequently, on 21.07.2004 an amount of Rs.1,00,000/- was paid. No doubt the counsel appearing for the appellant brought to notice of this Court regarding additional payment, there is an endorsement in Ex.P2 and both Courts have also accepted the payment of Rs.5,00,000/- in toto and remaining balance of sale consideration is Rs.3,65,000/-. It is also brought to the notice of this Court that the very executant of sale agreement died in the year 2005. Both the Courts have made an observation that in terms of the sale agreement came into existence in the year 2003, balance payment payable remaining amount of Rs.4,65,000/- and no effort was made from the date of sale agreement till filing of suit except making additional payment of Rs.1,00,000/- in 2004 and also it is important to note that notice was given in terms of Ex.P3 in the year 2008 i.e., almost after 5 years of execution of sale



agreement since sale agreement dated 05.02.2003 and notice was given on 17.06.2008 and reply was given on 25.06.2008. Even after the death of the original executant for sale agreement in the year 2005, no effort was made by the plaintiff in between 2005 to 2008 till the issuance of notice Ex.P3. These are the materials taken note of by the Trial Court and also the First Appellate Court in considering the material available on record. When such no effort was made from 2003 to 2008 and balance sale consideration of Rs.3,65,000/- was not paid, even subsequent payment of Rs.1,00,000/- on 21.07.2004, not made any effort to make the balance payment.

12. The First Appellate Court having taken note of material on record, made an observation in paragraph No.32 that the appellant has not produced any document to show that remaining consideration amount is already arranged by him for performing his part of contract, nothing is placed on record. No dispute with regard to the principles laid down in the judgment referred supra and



also Court has to take note of facts of each case while applying the ratio and those circumstances not warranted to admit and frame substantial question of law. Even in the judgment of the Apex Court in paragraph No.17 relied upon by the appellate Court also very clearly says that the continuous readiness and willingness on the part of plaintiff is a condition precedent to grant the relief of specific performance. The Court has to take note of the conduct and nothing is placed on record that he was always ready and willing to perform his part of contract between 2003 to 2008 to make the balance payment of Rs.3,65,000/-. Hence, I do not find any error committed by the Trial Court as well as the First Appellate Court in declining to grant the relief of specific performance. Hence, no ground is made out to admit and frame substantial question of law to invoke Section 100 of CPC.

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



ORDER

- i) The Second Appeal is ***dismissed.***

- ii) In view of dismissal of the appeal, I.As., if any do not survive for consideration, the same stands disposed of.

**Sd/-
JUDGE**

RHS
List No.: 1 Sl No.: 76