

KABC010051162024



**IN THE COURT OF I ADDITIONAL CITY CIVIL &
SESSIONS JUDGE AT BENGALURU (CCH.No.2)**

PRESENT :- Sri. B.P.Devamane, LL.M.
I Addl. City Civil & Sessions Judge,
Bengaluru.

Dated this the 22nd day of January 2025.

O.S. No.1453 / 2024

PLAINTIFFS:-

1. M/s. Srinivasa Trust,
A Trust registered under the Indian Trust
Act, 1881,
having its Principal Office at 7/21, 1st
Cross, 9th Main, RMV Extension,
Bengaluru-560 080.

Rep. by its Trustee and Authorised
Signatory Sri.D.A.Srinivas.

2. Smt.Kalpaja Dalavoi,
Aged about 57 years,
Trustee of M/s.Srinivasa Trust,
No.87, Sai Keshav, Opposite Sai
Gardens, Seegahalli,
Bengaluru-560 067.

(By Sri.Shravan Madhav K.P., Adv.)

- VS -

DEFENDANTS:-

1. D.A.Thejeshwari,
Aged about 57 years,
W/o. K.M.Srinivasa Murthy,

R/at No.5/25, 10th Main, 13th Cross,
Jayanagara, 1st Block,
Bengaluru-560 066.

2. Smt.Ekta Kukreja,
Director of Anushka Constructions Pvt.
Ltd.,
D/o. Late Sri.Nanda Kumar Bashomal
Menda,
Aged about 48 years,
R/at Flat 21B, Kingfisher Towers,
Kasturba Road Cross,
Bengaluru-560001.

3. M/s. Anushka Construction Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956
having its registered office at No.100/1,
City Centre, Opp. Town Hall, J.C.Road,
Bengaluru-560 002.
Rep. by its Director,
Sri.Avnash Amarlal.

(By Sri.B.K.Narendra Babu, Adv. for D1

Sri.P.S.Gurumurthy, Adv. for D2 & D3)

ORDER ON I.A.No.7

Advocate for the plaintiffs filed this IA No.7 under Order 6 Rule 17 of CPC with prayer to permit the plaintiffs to amend the plaint by inserting para 16(a) & 16(b) to the plaint as under:

- 16(a) That, during the pendency of the suit, the plaintiff gained knowledge of the fact that, Defendant No.1 had executed a sale agreement on 07.11.2022 allegedly with respect to the schedule property in favour of defendant No.2 i.e., Anushka Constructions Private Limited. However, the Defendant No.1 in the meantime, executed a sale agreement in favour of the plaintiff and received a sale consideration of Rs.70 crores from the plaintiff.

- 16(b) However, in order to defeat the rights of the plaintiff, defendant No.1 has entered into a supplementary agreement on 16.02.2024 with defendant No.2 in novation of the earlier agreement dated 07.11.2022 by altering the material terms and conditions of the contract, by enhancing the sale consideration amount. Thereafter, the Defendant No.1 has allegedly executed a registered sale deed in favour of Defendant No.3 on 13.03.2024 in novation of earlier agreements; which is otherwise void; being in violation of the ex parte injunction granted by this Hon'ble Court on 26.02.2024 and therefore, the plaintiff is entitled to a decree of specific performance of the agreement dated 13.03.2023 executed by defendant No.1 in favour of the Plaintiff being the prior agreement thereto. It is to state, Defendant No.2 and Defendant No.3 has not paid any sale consideration amount in pursuance to registered sale deed dated 13.03.2024, pointing out the egregious fraud sought to be perpetrated in an attempt to grab the schedule property by dubious means.

2. In the affidavit supporting the IA, it is stated that, the defendant No.1 allegedly entered into agreement of sale with defendant No.2 on 07.11.2022. The defendant No.1 has entered into another agreement dated 16.02.2024 with defendant No.2, after gaining knowledge of sale agreement dated 13.03.2023, already executed in favour of the plaintiffs. The defendant No.1 has executed sale deed in favour of defendant No.2 in violation of the ex parte injunction order of this Court. Defendant Nos.2 and 3 have taken stand in the written statement that, by the sale agreement dated 07.11.2022, 16.02.2024 and sale deed dated 13.03.2024, the plaintiffs are not entitled for specific performance. Under these circumstances, it is necessary to amend the plaint by inserting these two paragraphs. The proposed amendment is necessary for complete adjudication of the matter in dispute and determination of the real controversy since the plaintiff is seeking to claim right under agreement of sale dated 13.03.2023, whereas, defendant Nos.2 and 3 are seeking to claim right by sale agreement dated 07.11.2022,

16.02.2024 and sale deed dated 13.03.2024. If the application is not allowed, the plaintiffs will be put to irreparable loss and injury. On the other hand, no loss or harm will be caused to the defendants and prayed to allow the IA.

3. Defendant Nos.2 and 3 filed objections and contended that, defendant No.1 entered into registered agreement of sale dated 07.11.2022 regarding sale of suit schedule property in favour of defendant No.3. The said agreement of sale was a registered document, which was reflected in the EC. The plaintiff was having constructive notice of the registered agreement of sale dated 07.11.2022 in favour of these defendants. Agreement of sale relied by the plaintiffs is among siblings and it is unregistered one. There is a strong circumstance and probability that, it is collusive, antedated, only to defeat the legitimate rights of these defendants, who had already paid Rs.21 Crores to the defendant No.1 at the time of entering the registered sale agreement dated 07.11.2022. The alleged agreement of sale dated 13.03.2023 could not have been entered in the face of an earlier registered agreement in favour of defendant No.3. Under the registered sale deed dated 13.03.2024 executed by the defendant No.1 in favour of defendant No.2, full sale consideration has been received and possession has been delivered in favour of the defendant No.2, wherein, defendant No.3 is joined as a confirming party. The defendant No.1 do not deny the receipt of the sale consideration. Under these circumstances, there are no good grounds made out to allow the IA, hence, prayed to dismiss the IA. Defendant No.1 has not filed any objections.

4. Heard the arguments from both the sides. Perused the materials on record.

5. Now the points that arise for my consideration are as follows :-

1. Whether IA No.7 filed by the plaintiffs under Order 6 Rule 17 of CPC, deserves to be allowed ?
2. What Order ?

6. My answer to the above points are as under:

Point No.1 :- In the Affirmative,

**Point No.2 :- As per the final order,
for the following:**

REASONS

7. **POINT No.1:-** Plaintiffs have filed this suit for specific performance of contract against the defendant No.1 based on the agreement of sale dated 13.03.2023 stating that, the defendant No.1 has entered into agreement of sale regarding sale of suit schedule property for sale consideration of Rs.80 Crores and received Rs.70 Crores as advance amount. Thereafter, defendant Nos.2 and 3 are impleaded as per the order dated 05.08.2024. It is the case of the defendant No.2 that, there was registered agreement of sale executed by the defendant No.1 in favour of the defendant No.3 dated 07.11.2022. Thereafter, on 13.03.2024, registered sale deed has been executed in favour of defendant No.2 by the defendant No.1, in which, defendant No.3 is a confirming party.

8. Advocate for the plaintiffs argued that, initially, suit was against defendant No.1 only. After impleading defendant Nos.2 and 3, there is necessity of relevant pleadings. The defendant No.2 claiming to be the purchaser of the suit schedule property, hence, the proposed

amendment is necessary for proper adjudication of the matter. Advocate for the defendant Nos.2 and 3 argued that, this defendant No.1 entered into registered agreement of sale dated 07.11.2022. Thereafter, based on the said agreement of sale, the defendant No.1 has executed registered sale deed in favour of the defendant No.2, in which, defendant No.3 is a confirming party. The plaintiffs who are the siblings of the defendant No.1, now colluding among themselves, have created the agreement of sale dated 13.03.2023 and filed this suit. Under these circumstances, the proposed amendment is not necessary and prayed to reject the IA.

9. On perusal of the proposed amendment, it is regarding gaining knowledge by the plaintiffs regarding agreement of sale dated 07.11.2022 only during the pendency of this suit. It is contended that, in order to defeat the rights of the plaintiffs, supplementary agreement dated 16.02.2024 was executed. Further, it is contended that, registered sale deed in favour of defendant No.3 dated 13.03.2024 is in violation of exparte injunction granted by this Court on 26.02.2024. As stated above, initially, the suit was filed against the defendant No.1 only. Thereafter, defendant Nos.2 and 3 are impleaded as they are the purchasers of the suit schedule property. In this case, evidence is not yet commenced and the plaintiffs have filed this amendment application at the earliest point of time, hence, without touching to the merits of the case, looking to the facts and circumstances of the case, in the considered opinion of this Court, proposed amendment is necessary for proper adjudication of the matter. Accordingly, I answer point No.1 is in the Affirmative.

10. **POINT No.2** :- In view of the aforesaid discussions, I proceed to pass the following :-

ORDER

I.A.No.7 filed by the plaintiffs under Order 6 Rule 17 of CPC, is allowed.

Plaintiffs to carry out amendment and to furnish the amended plaint on the next date of hearing.

(Dictated to the Stenographer-III, transcribed and typed by her, corrected and then pronounced by me in the open court on this the 22nd day of January, 2025)

(B.P.Devamane)

I Addl. City Civil & Sessions Judge,
Bengaluru.