

**BEFORE THE II ADDL DISTRICT & SESSIONS JUDGE,
MYSURU, AT: MYSURU.**

Present: Sri.Hosamani Pundalik,
Presiding Officer,
II Addl. District & Sessions Judge,
Mysuru.

Dated this the 6th day of January 2022

O.S.No.8/2018

Plaintiff :

1. P.R.Radhakrishna S/o Late M.S.Rangaswamy Iyengar, aged about 66 years residing at No.1265/B, 5th Cross, Ashoknagar, Mandya.
2. G.N.Gundu Rao S/o G.K.Narasimhamurthy, aged about 63 years residing at No.1198, 2nd Cross, Ashoknagar, Mandya.
3. C.Chandrashekar S/o B.Channegowda, aged about 54 years residing at Srinivasapura village, Ksasaba Hobli, Mandya taluk.
4. Smt.Vijayalakshmi W/o Somashekar, aged about 61 years residing at No.214, Siddalingeshwara Layout, J.P.Nagar, Mysuru.

[By Sri. A.Sunil Kumar, Advocate]

/vs/

Defendants:

1. Smt.Sundaramma W/o Late A.G.Kittaiah, aged about 75 years – **dead**
2. K.Shivakumar S/o Late A.G.Kittaiah, aged about 51 years.

3. Smt.R.Geetha W/o K.Shivakumar, aged about 45 years.
4. Kum.S.Deepika D/o Shivakumar, aged about 23 years.

All are residing at No.411, 15th Cross, Nimishamba Layout, Giriyas Road, Kuvempunagar, Mysuru.

[By Sri. V.Krishnamurthy Advocate]

Order on Jurisdiction of the Court

This is a suit filed by the Plaintiff against the Defendant for recovery of an amount of Rs.2,67,73,000/- with interest at the rate of 18% p.a. on Rs.1,60,00,000/-.

2. The case of the Plaintiff in brief as under:

That the Defendants are represented to the Plaintiffs that they are absolute owners of 17 acres 98 cents of suit schedule property and there is a black granite rock formation found in 9 acres of the said land. The Defendant No.2 has obtained necessary licence for carrying out of quarrying work in 2 acres of the property in Sy.No.366 for a period of 10 years. The Defendants do not have resources for quarrying work and Defendants have fixed the total price of suit schedule property of Rs.6 crores and affirm to sell the 70% of sale in suit schedule property for consideration of Rs.4,20,00,000/-. The memorandum of understanding dated 11.6.2014 came into existence

between the parties. The Plaintiff agreed to pay sale consideration of Rs.4,20,00,000/- and initial the Plaintiffs have agreed to pay Rs.1,50,00,000/-. The Defendants have executed agreement of sale dated 19.8.2016 in favour of the Plaintiffs and the Plaintiffs have paid in total an amount of Rs.1,60,00,000/- to the Defendants. The Plaintiffs sought recovery of Rs.1,60,00,000/- and interest in total Rs.2,67,73,000/- The Defendants have issued legal notice dated 15.4.2017 for cancellation of memorandum of understanding and agreement of sale. Hence, the Plaintiffs have constrained to file present suit for recovery of amount of Rs.2,67,73,000/- with current and future interest at the rate of 18% p.a. on Rs.1,60,000/- and damages of Rs.50 lakhs.

3. After institution of the suit, the learned predecessor passed an order on 1.1.2019 holding that the present suit is not maintainable before this Court.

4. Being aggrieved by the order dated 1.1.2019 passed by this Court by my learned predecessor the Plaintiffs have preferred W.P.No.9266/2019 before the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka allowed the Writ Petition as per order dated 18.9.2020 and matter was remanded to this Court to examine the jurisdiction of the Court in the light of the observation made above by taking note notification bearing No.LAW 39 LCE

2016 dated 8.11.2017 and notification bearing No.LAW/LCE/48/2019 dated 9.10.2019.

5. Thereafter, I have heard arguments advanced by the learned counsel for the Plaintiffs and that of the learned counsel for the Defendants.

6. The points that would arise for my consideration in this case are as under:

- 1) Whether this Court has got jurisdiction to try the present commercial suit ?
- 2) What Order ?

7. My findings to the above points are as under:

Point No.1 : In the Affirmative

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

REASONS

8. **Point No.1** : It is pertinent to note that as already pointed out by me the Plaintiffs have filed the present suit for recovery of amount of Rs.2,67,73,000/- alleging that the Defendants are represented to the Plaintiffs that they are absolute owners of 17 acres 98 cents of suit schedule property and there is a black granite rock formation found in 9 acres of the said land. The Defendant No.2 has obtained necessary licence for carrying out of quarrying work

in 2 acres of the property in Sy.No.366 for a period of 10 years. The Defendants do not have resources for quarrying work and Defendants have fixed the total price of suit schedule property of Rs.6 crores and affirm to sell the 70% of sale in suit schedule property for consideration of Rs.4,20,00,000/-. The memorandum of understanding dated 11.6.2014 came into existence between the parties. The Plaintiff agreed to pay sale consideration of Rs.4,20,00,000/- and initially the Plaintiffs have agreed to pay Rs.1,50,00,000/-. The Defendants have executed agreement of sale dated 19.8.2016 in favour of the Plaintiffs and the Plaintiffs have paid in total an amount of Rs.1,60,00,000/- to the Defendants. The Plaintiffs sought recovery of Rs.1,60,00,000/- and interest in total Rs.2,67,73,000/- The Defendants have issued legal notice dated 15.4.2017 for cancellation of memorandum of understanding and agreement of sale. Hence, the Plaintiffs have constrained to file present suit for recovery of amount of Rs.2,67,73,000/- with current and future interest at the rate of 18% p.a. on Rs.1,60,000/- and damages of Rs.50 lakhs.

9. It is pertinent to note that my learned predecessor in office has raised objection regarding maintainability of the suit immediately after filing of the suit that this Court has not notified as a Commercial Court under the Commercial Courts Act to try the commercial suits. In view of notification issued by the Government of Karnataka in LAW/39/LCE/16 dated

8.11.2017 this Court (II Addl.District & Sessions Court, Mysuru.) designated as Commercial Court for trying the commercial suit comes under Commercial Court Act 2015. In view of of the notification of the Government of Karnataka, I am of the considered opinion that this Court is empowered to deals with the commercial suits comes within the definition of Commercial Court Act 2015, the present suit relating to the commercial transaction is a Commercial suit as defined under the Commercial Courts Act. Therefore, this Court is empower to try the present commercial suit. Hence, I hold that this Court has got jurisdiction to try the present commercial suit in view of the notification issued by the Government of Karnataka referred above. Hence, I answered **Point No.1 in the Affirmative.**

10. **Point No.2:** In view of my finding on Point No.1, I proceed to pass the following:

ORDER.

This Court has got jurisdiction to try
the present commercial suit.

(Dictated to the Judgment Writer directly on computer and then pronounced in the open court on this the 6th day of January 2022)

(Hosamani Pundalik)
Presiding Officer,
II Addl. District & Sessions Judge,
Mysuru.

