



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
AT SINDHANUR**

Present :- SRI. LAKSHMIKANTH JANAKIRAM MISKIN, M.A., LL.M.,
Senior Civil Judge & J.M.F.C.
SINDHANUR.

: REGULAR APPEAL No : 27/2023:
DATED: 2nd day of June 2026

APPELLANTS :- 1. Ghouse Khan S/o Usman Khan
Age: 62 years, Occ:Agriculturist,
R/o Kalmangi village,
Sindhanru, Dist. Raichur.

(By Sri. GSS, Advocate)

-V/s-

RESPONDENTS:-1. Sharanegouda S/o Basanagouda
Police Patil, Age: 64 years
Occ: Agri., R/o Kurubanal village,
Tq. Kushtagi, Dist. Koppal

(By: Sri. KAG Advocate)

Date of Institution of Appeal : 01.04.2023

Nature of Appeal : Appeal against the
Judgment and decree
dated 04.02.2023
in O.S.No. 452/2018
passed by the Addl. Civil
Judge, Sindhanur.



Date on which the Judgment
was pronounced : 02.06.2026

Total duration : year/ s month/s Day/s
03 02 01

: J U D G M E N T :

This appeal filed by the appellant/defendant being aggrieved by the Judgment and decree dated 04.02.2023 in O.S.No.452/2018 passed by the Addl. Civil Judge, Sindhanur in decreed the suit filed for specific performance of contract.

2. For the sake of convenience, the parties are referred in this Judgment as per their ranks before this court.

3. The case of the plaintiffs, as set out in the plaint, is as below:-

Description of suit property

Kalluru village NA land bearing Sy.No.5/P/B now recorded as Sy.No.5/*/4 as phodi record as per Phodi



Mukata Gram scheme measuring 6 acres of Kalmangi village out of this land an area of 2 acres towards west and the same is bounded by:

East: Remaining land of the defendant. West: Cart track which leads to Gadratagi Bolareddeppa's family land and kori patti.

North: Land of Faijulla Khan S/o. Usaman Khan

South: Land Nek Mohammed Sab S/o. Usaman Khan.

It is the case of the plaintiff that the defendant is absolute owner of suit schedule property. The defendant offered to sell the suit schedule property. Sale talks were concluded for Rs.4,02,000/-on 06-06-2012. He paid substantial part consideration amount of Rs.3,52,000/- to the defendant. The defendant executed a registered agreement of sale in respect of suit property in his favour through document No.2766/2012-13. The defendant agreed to conclude the contract on demand by execute registered sale deed by receiving balance sale consideration amount. The defendant also agreed to furnish 11-E survey sketch,



nil encumbrance certificate at the time of registration. Thereafter, the defendant asked him to pay Rs.30,000/- to file application for seeking 11-E sketch and for his family necessities out of balance sale consideration amount. He paid the said amount to defendant. Thereafter, he requested the defendant to get 11-E sketch map. But defendant dodged the matter for one or other pretext by giving assurance. Thereafter, the defendant approached him to give copy of agreement of sale to file application for 11-E sketch since he had no photocopy. He had also no photocopy of agreement of sale. Hence, he handed over the original agreement of sale to the defendant. The defendant assured that after taking photocopy of agreement of sale he will return the same. But defendant did not return the said document. He approached the defendant. But defendant said that he lost original agreement of sale. Hence, he secured certified copy of agreement of sale from Sub-Registrar Office at Sindhanur. Further, he sought permission to lead secondary evidence in respect of agreement of sale.



Thereafter, he approached several times and requested the defendant to conclude the said contract. The defendant assured to execute sale deed. But not come forward on the assured date. On 15-07-2018 the plaintiff approached the defendant. The defendant declined to execute sale deed by stating that his family members not allowed to execute sale deed. He issued legal notice to defendant on 19-07-2018 through registered post by calling upon to execute registered sale deed by receiving balance consideration amount of Rs.20,000/-. The said notice was duly served on defendant on 24-07-2018. But the defendant did not reply to said notice and not come forward to execute registered sale deed. Hence, this suit.

4. The defendant appeared through his counsel and filed his written statement. He denied the averments of plaint. He contended that he is not absolute owner of suit property. The suit property is his family property. He borrowed loan of Rs.50,000/-from the plaintiff. Plaintiff in order to get



security for his loan amount he demanded to execute suit schedule property for security purpose. Hence, he executed the agreement of sale by believing the words of plaintiff. The plaintiff obtained his signature in the office of Sub-Registrar, Sindhanur. The plaintiff instead of taking loan security he got registered agreement of sale. Thereafter, he repaid the entire loan amount of Rs.50,000/- to the plaintiff. Then plaintiff assured to get cancel the registered agreement of sale. Despite several requests the plaintiff did not cancel the same. When he received the legal notice from the plaintiff then only he came to know about the alleged agreement of sale. He did not receive Rs.3,52,000/- from the plaintiff. He and his family members are doing agriculture work in suit property and it is only source of income to eke out their livelihood. The suit is barred by law of limitation. The plaintiff has not shown his readiness and willingness to perform his part of contract. Hence, he prayed to dismiss the suit.



5. On the basis of rival pleadings this court has framed following issues.

I S S U E S

- 1) Whether the plaintiff proves that the defendant agreed to sell his land for Rs.4,02,000/- and executed the registered agreement of sale dated 06-06-2012 by receiving Rs.3,52,000/- earnest money?
 - 2) Whether the defendant proves that the said transaction is loan transaction of Rs.50,000/- and for security he executed agreement of sale?
 - 3) Whether the plaintiff proves that he is always ready and willing to perform his part of contract?
 - 4) Whether the plaintiff proves that he paid further Rs.30,000/- to the defendant?
 - 5) Whether the plaintiff is entitle for relief of specific performance of contract? If not, whether the plaintiff is entitle for alternative relief of refund of earnest money of Rs.3,80,000/- with interest?
 - 6) What order or decree?
6. In order to prove the case, the plaintiff examined himself as PW-1. He filed his evidence by way of affidavit



in lieu of chief examination. He examined two witnesses by their names Pampayya Swamy and Virupakshi Gouda as PW-2 and 3. The documents were marked as Ex.P1 to P5. On the other hand the defendant examined himself as DW-1. He filed his evidence by way of affidavit in lieu of chief examination. He examined a witness by name Mahammad Rafi as DW-2. Two documents were marked as Ex.D-1 and 2.

7. After hearing the arguments and considering the oral and documentary evidence let in before it, the learned trial Judge has decreed the suit of the plaintiff by giving following findings on the above points:

- Issue No.1:- In the Affirmative
- Issue No.2:- In the Negative
- Issue No.3:- In the Affirmative
- Issue No.4:- In the Negative
- Issue No.5:- Entitle for the relief of specific performance of contract
- Issue No.6:- As per final order for the following.



8. Being aggrieved by partly decree of the suit the appellant/defendant has come with regular appeal by setting the following grounds in the appeal.

GROUND FOR APPEAL

- 1) The trial court has grossly erred in decreeing the suit of the plaintiff.
- 2) The trial Court has grossly erred in giving the finding on issues No.1 to 3, & 5 in affirmative and issue No.2 & 4 in negative.
- 3) The trial Court has grossly erred in not believing the version of DW-1 & 2.
- 4) The trial Court has grossly erred in believing the Version of PW-1 to 3.
- 5) The trial court has grossly erred in not considering the documents produced by the appellant/ defendant which are marked an Ex-D1 & 2.
- 6) The trial court has grossly erred in considering the documents produced by the respondent which are marked as Ex-P1 to 5.
- 7) That the trial court has grossly erred in passing the impugned Judgment & Decree without considering the material evidence placed by the appellant/defendant.
- 8) That the Judgment & Decree passed by the trial court is illegal, arbitrary, erroneous,



capricious one which is oppose to the facts and probabilities of the case and principles of natural justice.

- 9) That the impugned Judgment & Decree passed by the trial court is barred, vague, and without proper findings, reasoning and discussions on said issues.
- 10) That the trial court has totally misconceived the facts and probabilities of the case and grossly erred in decreeing the suit of the Respondents/plaintiffs, and the same is liable to be set aside in lemini itself.
- 11) The trial court erred in considering the fact that, this defendant/appellant has borrowed the hand loan of Rs.50,000/- and repaid the same, the plaintiff for the purpose of security has got executed the alleged documents called as Sale Agreement from the defendant.
- 12) The trial court has erred in considering the legal aspects with regard to the passing of consideration such a huge amount as alleged by the respondent / plaintiff in his plaint.
- 13) The trial court has not considered that, the plaintiff has concocted the sale agreement without proper explanation to this appellant, in order to improve his money lending and real estate business the plaintiff/respondent has got executed the alleged Sale Agreement same is not proved by producing sufficient documents and



placed evidence before the Hon'ble trial court, even though the trial court only considered the Exhibit P-1 Document and passed decree in favour of the plaintiff which is effect to the rights and liabilities of the defendant.

- 14) That in the cross examination of PW-1 he himself has deposed that, he is not aware of the recitals of the Sale Agreement as well as the legal notice, as well as the consideration of alleged agreement, when the plaintiff himself is not aware of facts of the case the question of granting the specific relief in favour of the plaintiff does not arise.
- 15) The judgment and decree passed by the Hon'ble trial court will cause irreparable loss and injury to the defendant/appellant as except this property the appellant does not hold any other property to eke out his livelihood.
- 16) That this appellant has got good grounds in succeeding this appeal on the above said grounds and other grounds which will be urged at the time of arguments. Hence this appeal.

9. I have heard the arguments addressed by the learned counsels appearing for the both the parties on main appeal.



10. From the grounds made out in the appeal, materials placed before this court and the arguments addressed by both sides the following points would arise for my consideration.

1. Whether the appellant/defendant prove that the impugned judgment and decree dated, 04.02.2023 passed in O.S. No.452/2018 by the trial court in decreed the suit, is contrary to law, facts, evidence and probabilities of the case and as such, it is liable to be interfered with?
2. Whether appeal is barred by law of limitation?
3. Whether the respondent/plaintiff is entitled for relief of refund of earnest money even if they have not pleaded?
4. What order?

11. My findings to the above points are as follows, as per the reasons discussed below: -

- | | | |
|------------|----|------------------------------|
| POINT NO.1 | :- | In the Affirmative |
| POINT NO.2 | :- | In the Affirmative |
| POINT NO.3 | :- | In the Affirmative |
| POINT NO.4 | :- | As per final the final order |



:: R E A S O N S ::

12. **POINT No.1 :-** Admittedly the suit land Sy.No.5/P/B now recorded as Sy.No.5/*/4, measuring 06 acres, situated at Kalmangi village out of this land an area of 02 acre towards as shown at registered agreement for sale dated 6.06.2012 marked at exhibit P-1 . The price agreed for sale is just Rs. 4,02,000/- as shown at registered agreement for sale dated 6.06.2012 marked at exhibit P-1. Admittedly the suit land measuring suit land Sy.No.5/P/B now recorded as Sy.No.5/*/4, measuring 06 acres, situated at Kalmangi village out of this land an area of 02 acre towards is valuable and irrigated land. It is made clear by this court for a meager sum of Rs.4,02,000/- consideration as shown at registered agreement for sale dated 6.06.2012 marked at exhibit P-1, even an open plot cannot be purchased during said period. The consideration shown at registered agreement for sale dated 6.06.2012 marked at exhibit P-1 is considered to be a meager sum of Rs.4,02,000. The suit land Sy.No.5/P/B



now recorded as Sy.No.5/*/4, measuring 06 acres, situated at Kalmangi village out of this land an area of 02 acre towards . The suit land suit land Sy.No.5/P/B now recorded as Sy.No.5/*/4, measuring 06 acres, situated at Kalmangi village out of this land an area of 02 acre towards is large one and consideration shown there in is v a meager sum of Rs.4,02,000/-.

13. The property for a price that the conscience of this court cannot justify to grant a decree for specific performance of contract. Showing of low price is nothing but an exploitation which really clearly indicates that it is unfair because the fair market value of the property is far far above what has been offered, even assuming the contract as is executed, a Court would refuse enforcement. In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka reported in 1998 (6) KLJ 547 in between Kareemsaheb Nabeesaheb Nadaf Vs



Basavantappa Shankarappa Pattanshetti (deceased) by
L.Rs. the para NO.6 of the order reads as under.

Regular Second Appeal No. 139 of 1992

Decided on 28-11-1997

6]. This virtually brings one to the essential issue that is at the core of this dispute namely the question as to whether the doctrine of unconscionability will have to be applied in this case. The doctrine which has its roots in English Law has been enforced by the Courts in this country, though on a few occasions. **The first essential ingredient is that it must be demonstrated that having regard to the economic disparity between the parties which is manifest in the transaction, the agreement becomes unacceptable or unfair insofar as it is a transaction between**



unequal wherein the effort is to get hold of the property for a price that one's conscience cannot justify. The basic test and in fact that second principle which the Courts would cull out from a situation such as this is the aspect of exploitation which really flows from the first principle and where the contract clearly indicates that **it is unfair because the fair market value of the property is far far above what has been offered, the Court would put itself on guard and even assuming the contract as is executed, a Court would refuse enforcement.** It is this principle really that is embodied in the substantial point of law that falls for determination in the present case and to my mind, while Courts are required to exercise



judicial discretion the contract would have to pass the test of scrutiny on the rule of fairness and legality. The present record unmistakably indicates that the value of the property would have been more than three times than what has been indicated and also indicates that having regard to the two years period which was prescribed, that the defendant did not really intend or want to sell the property but that he had entered into the agreement because he needed the money in the hope that within the period of two years he would be able to have his house. The whole transaction is a colorable one and once the Court comes to this decision, the enforcement of such an agreement will have to be refused.



The ratio laid down by the Hon'ble High Court of Karnataka reported in (1998) 6 KLJ 547 in between Kareemsaheb Nabeesaheb Nadaf Vs Basavantappa Shankarappa Pattanshetti (deceased) by L.Rs. it is unfair because the fair market value of the property is far far above what has been offered, the Court would put itself on guard and even assuming the contract as is executed, a Court would refuse enforcement for showing the low price in the agreement for sale.

14. In view of law laid down by the Hon'ble High Court of Karnataka reported in 1998 (6) KLJ 547 in between Kareemsaheb Nabeesaheb Nadaf Versus Basavantappa Shankarappa Pattanshetti (deceased) by L.Rs in the present case also very meager amount of just meager Rs.4,02,000/- suit land Sy.No.5/P/B now recorded as Sy.No.5/*/4, measuring 06 acres, situated at Kalmangi village out of this land an area of 02 acre towards is fixed thus the plaintiff is not entitled for the relief of



specific performance of contract. This court cannot permit the plaintiff to enrich at the cost of the defendant. On this ground also the suit of the plaintiff is not maintainable.

15. The Hon'ble Supreme Court of India in the case of Parakunnnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's son and others AIR 1987 SC 2328 to canvass the proposition that specific performance should not be granted when litigation is used as an instrument of oppression to have an unfair advantage. Once again there is no dispute to this proposition of law, however, facts of each case have to be seen whether an unfair advantage is being derived so that the specific performance should be refused. The Hon'ble Supreme Court of India in the case of Parakunnnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's son and others AIR 1987 Supreme Court 2328 held that the proposition that specific performance should not be granted when litigation is used as an instrument of



oppression to have an unfair advantage. Once again there is no dispute to this proposition of law, however, facts of each case have to be seen whether an unfair advantage is being derived so that the specific performance should be refused. the Hon 'ble Supreme Court of India reported in 1987 AIR SC 2328 in between Parakunna Veetil Joseph's Son Mathew Vs. Nedumbara Kuruvila's Son and Ors is that Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance.

16. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. In this regard it is beneficial to refer to the Hon'ble Supreme Court of India



reported in reported in AIR 1987 SC 2328, =[1987 Supp
(1) SCC 340] in between Parakunna Veetil Joseph'S
Son ... vs Nedumbara Kuruvila'S Son And Ors the para
No.14 read as under. .

Civil Appeal No. 1109 of 1975.

Dated. 14.09.1987

14]. [Section 20](#) of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of



oppression to have an unfair advantage to the plaintiff The High Court has failed to consider the motive with which Varghese instituted the suit. It was instituted because Kuruvila could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit by Varghese is the agreement for sale Ex A1. Since Chettiar had waived his rights there under, Varghese as an assignee could not get a better right to enforce that agreement. He is, therefore, not entitled to a decree for specific performance.

The ratio (underline emphasized by me) laid down by the Hon'ble Supreme Court of India reported in reported in AIR 1987 SC 2328, =[1987 Supp (1) SCC 340] in between Parakunnam Veetil Joseph'S Son vs Nedumbara Kuruvila'S Son And Ors is that the Court should meticulously consider all facts and



circumstances of the case and the Court is not bound to grant specific performance merely because it is lawful to do so. Further the Hon'ble Supreme Court of India held that the motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff.

17. So it clearly reveals that he was not ready and willing to perform his part of contract. There is no evidence at all to show that the plaintiff approached the defendant for performance of his obligation as per contract from the date of agreement till filing of suit. The balance consideration amount was too meager, when the plaintiff paid major portion of amount, he must approached the defendant for perform his obligation.

18. In the present case also as discussed above, in the present case also very meager amount of just meagre



Rs.4,02,000/- for suit land Sy.No.5/P/B now recorded as Sy.No.5/*/4, measuring 06 acres, situated at Kalmangi village out of this land an area of 02 acre towards is fixed as shown at registered agreement for sale dated 6.06.2012 marked at exhibit P-1, in view of law laid down by Hon'ble Supreme Court of India, the plaintiff is not entitled for the relief of specific performance of contract. This court cannot permit the plaintiff to enrich at the cost of the defendant. On this ground also the suit of the plaintiff is not maintainable.

19. The relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into consideration the



circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. The court's discretion to grant specific performance is not exercised to be exercised by this court if the contract is not fair .

20. It is made clear by this court that mere pleadings in the trial court is not sufficient,. The plaintiff has to prove beyond it. The plaintiff has to prove his readiness and willingness to perform his part of the contract. The plaintiff has to show that he has sufficient money in his bank account. It is made clear by this court that mere pleadings are in sufficient to prove readiness and willingness to perform his part of the contract. In this regard it is beneficial to refer to the decision of the Hon



'ble High Court of Karnataka reported in (2020) 1 KCCR 735 =[(2019) 4 AIR KAR R 610] =[2019 SCC ONLINE KAR 1175] =[AIR 2020 (NOC) 224] in between Smt. Pushpalatha v. Sri. D. R. Sadananda Murthy, the para No.46 reads as under.

R.F.A. No. 174 of 2014

and C/W

R. F.A. No. 1896 of 2013.

Dated-19.07.2019.

46. From the above judgments, it is crystal clear that **it is not just a plaint averment that the plaintiff was ready and willing to perform his part of the terms of agreement is sufficient to entitle him for the relief of specific performance, but he is also required to prove that he has always been ready and willing**



**to perform his part of the
promise under the agreement.**

The ratio (underline emphasized by me) laid down by the Hon 'ble High Court of Karnataka reported in (2020) 1 KCCR 735 =[(2019) 4 AIR KAR R 610] =[2019 SCC ONLINE KAR 1175] =[AIR 2020 (NOC 666) 224] in between Smt. Pushpalatha v. Sri. D. R. Sadananda Murthy, is that mere pleadings in the plaint that the plaintiff was ready and willing to perform his part of the terms of agreement is not sufficient to entitle him for the relief of specific performance, but he is also required to prove that he has always been ready and willing to perform his part of the promise under the agreement by his conduct.

21. Besides it the plaintiff did not produce any documents to show that he has sufficient amount available in his bank account. In a suit for specific performance of contract, the plaintiff must prove that he has sufficient



amount in his bank account showing his part of his contract. The plaintiff could have produced bank pass-book or bank statement to show that he has remaining balance consideration amount to show that he has sufficient that he is ready and willing to perform his part of the contract. In this regard it is beneficial to refer to the decision of the Hon 'ble High Court of Karnataka reported in (2020) 1 KCCR 735 =[(2019) 4 AIR KAR R 610] =[2019 SCC ONLINE KAR 1175] =[AIR 2020 (NOC 666) 224] in between Smt. Pushpalatha v. Sri. D. R. Sadananda Murthy, the para No.54 reads as under.

R.F.A. No. 174 of 2014

and C/W

R. F.A. No. 1896 of 2013.

Dated-19.07.2019.

54. Interestingly, in the case on hand, even though it is taken that a Power of Attorney holder can give his evidence on behalf of



the plaintiffs, even in a suit for specific performance, still, PW-1 though in his evidence has stated that the plaintiffs were always ready and willing to pay the remaining consideration amount, **but, has not produced any documents to show that the plaintiffs had any financial capacity too, to pay the balance amount or that the funds to pay the balance amount was available with them.**

The ratio (underline emphasized by me) laid down by the Hon 'ble High Court of Karnataka reported in (2020) 1 KCCR 735 =[(2019) 4 AIR KAR R 610] =[2019 SCC ONLINE KAR 1175] =[AIR 2020 (NOC 666) 224] in between Smt. Pushpalatha v. Sri. D. R. Sadananda Murthy, is that in order to prove the readiness and willingness to perform his part of the contract he shall produce documents documents to prove his financial



capacity too, to pay the balance amount or that the funds to pay the balance amount was available with them.

22. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in reported in AIR 2020 SC 4865 =[AIRONLINE 2020 SC 88] =[2020 SCC ONLINE SC 86] in between Sukhwinder Singh Vs. Jagroop Singh the para No.9 reads as under.

Civil Appeal No. 760 of 2020

(Arising out of SLP (Civil) No.10949 of 2019),,

Dated-28-01-2020

9. The suit being the one for specific performance of the contract on payment of the balance sale consideration, the readiness and willingness was required to be proved by the plaintiff and was to be considered by the Courts below as a basic requirement if a decree for



specific performance is to be granted.

In the instant case though the defendant No.2 had denied the agreement as also the receipt of the earnest money, the same would not be of consequence as the agreement claimed by the plaintiff is with the defendant No.1 and the contention of the defendant No.2 to deny the same is without personal knowledge on that aspect. However, even in the absence of the defense put forth, the plaintiff was required to prove his readiness and willingness and that aspect of the matter was to be considered by the Courts below. In the present case though the plaintiff examined himself as PW1, as also PW2 and PW3, the document writer, and the witness to the agreement who stated with



regard to the execution of the agreement, the evidence to prove the readiness and willingness with regard to the resources to pay the balance sale consideration is insufficient. In the absence of denial by the defendant No.1, even if the payment of Rs.69,500/- and the claim by the plaintiff of having gone to the office of Sub-Registrar on 15.06.2004 is accepted, the fact as to whether the plaintiff had notified the defendant No.1 about he being ready with the balance sale consideration and calling upon the plaintiff to appear before the Sub-Registrar and execute the Sale Deed was required to be proved. **From among the documents produced and marked as Exhibit P-1 to P-9 there is no document to that**



effect, more particularly to indicate the availability of the balance sale consideration as on 15.06.2004 and as on the date of filing the suit. Despite

the same, merely based on the oral testimony of PW1, the Courts below have accepted the case put forth by the plaintiff to be ready and willing to complete the transaction.

The ratio (underline emphasized by me) laid down by the Hon'ble Supreme Court of India reported in reported in AIR 2020 SC 4865 =[AIROnline 2020 SC 88] =[2020 SCC Online SC 86] in between Sukhwinder Singh Vs. Jagroop Singh in order to prove readiness and willingness the plaintiff is required to produce documents showing he has availability if amount in his bank account . In the present case plaintiff did not produce any documents such as bank statement and bank pass-book to prove his readiness and willingness to perform his part of the contract



to pay remaining balance consideration amount. Hence point No.1 is answered in Affirmative.

23. **POINT NO.2:-**In the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement which does not provide specifically that time is of the essence of the contract should be decreed provided it is filed within the period of limitation notwithstanding the time limits stipulated in the agreement for doing one or the other thing by one or the other party.

24. In the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the court



may infer that it is to be performed in a reasonable time if the conditions are from the express terms of the contract , from the nature of the property and from the surrounding circumstances, for example, the object of making the contract . In other words, the court should look at all the relevant circumstances including the time-limit specified in the agreement and determine whether its discretion to grant specific performance should be exercised.

25. The plaintiff has chosen to file the suit within a reasonable time although there is no time is not specified in the registered agreement for sale dated-06-06-2012 marked at exhibit P-1 in respect of suit land. The the plaintiff filed sit after more than six and half years years from the date of execution of the registered agreement for sale dated-06-06-2012 marked at exhibit P-1 in respect of suit land. In that context, it is not a case of mere delay, it is a case of total inaction on the part of the plaintiff for more than six and half years from the date of execution



of the registered agreement for sale dated-06-06-2012 marked at exhibit P-1 in clear violation of the terms of the agreement which required him to pay the balance consideration and then ask for execution of the sale deed. It is made clear by this court that if the defendant has not come forward to execute the sale deed, though time is not the essence of the contract, the suit for specific performance ought to have filed within a reasonable time. In this regard it is beneficial to refer to the decision of the Hon ble High Court of Karnataka reported in ILR 2014 KAR 233 (DB) =[2013 SCC ONLINE KAR 8544 (DB)] =[(2014) 1 KCCR 1 (DB)] =[(2014) 1 AIR KANT R 706] Smt. Padmini Raghavan Vs Mr. H.A. Sonnappa, the para No.120 reads as under.

RFA No. 1242 of 2003

and

Misc. Civil No. 13365 of 2010.

Dated-11.10.2013.



120]. In the instant case, the agreement stipulates 6 months as the period of stipulation. According to the parties it was reduced to 3 months by way of correction. Subsequently, 3 months has been made 13 months by way of interpolation. As is clear from the terms of the agreement, out of the sale consideration of Rs. 3,47,100/-, Rs. 75,000/- was paid under the agreement according to the first defendant. According to the plaintiff Rs. 1,75,000/- was paid. According to the interpolated term, Rs. 1,00,000/- has to be paid within 13 months and the balance amount is to be paid within 3 months. As is clear from the terms of the agreement, there is no corresponding obligation which is to be performed by the first defendant before the plaintiff pays the balance consideration agreed upon. Within the time stipulated plaintiff has not pointed out to the



defendant No. 1 what is the obligation she was expected to perform so that the plaintiff could pay the balance consideration and obtain a sale deed. In the evidence an attempt is made to contend that, in the agreement of sale it is mentioned that the balance consideration was payable only after the property is surveyed and the sale deed is to be executed. There is no such recital in the sale deed. On the contrary, the recital is, it is the responsibility of the first defendant to get the measurement of the property done and boundaries fixed. She has already handed over Xerox copies of all the documents of title. The said survey and fixing the boundary was not a condition precedent for the plaintiff to pay the balance sale consideration as contended. Therefore, the plaintiff ought to have paid the balance consideration according to them within 13 months,



according to the first defendant within 3 months. However, the plaintiff has not paid the amount even according to his own case. It is because he did not possess the requisite money, he agreed to the cancellation of the sale deed. Consequently, the first defendant sold the property and from the consideration received the first defendant instead of forfeiting the amount has returned Rs. 75,000/- received under the agreement of sale to the plaintiff. It is in this context, if really the plaintiff has paid Rs. 1,75,000/- as contended by them and was ready and willing to pay the balance amount of Rs. 1,72,100/- within 13 months and if the defendant has not come forward to execute the sale deed, though time is not the essence of the contract, the suit for specific performance ought to have filed within a reasonable time. It is here for



nearly two long years the plaintiff has not raised his little finger. There is no demand in writing. As set out earlier, there is no material placed on record to show that he was ready with the balance sale consideration. The plaintiff has chosen to file the suit few days prior to the expiry of the period of limitation. In that context, it is not a case of mere delay, it is a case of total inaction on the part of the plaintiff for two years in clear violation of the terms of the agreement which required him to pay the balance consideration and then ask for execution of the sale deed. Further, as the plaintiff was badly in need of money after cancelling the agreement of sale, she has proceeded to sell the property to defendants 2 to 4. They have purchased the property for a valuable consideration. The second defendant has purchased it on the assumption that the suit



agreement is cancelled. In so far as defendants 3 and 4 are concerned, they are not aware of the agreement of sale at all. As the defendants 2 to 4 have purchased the schedule property for valuable consideration and have taken possession of the property and have invested money for its improvement coupled with the fact that the mutation entries are made in their name, they are paying taxes, the delay in filing the suit has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff. Moreover, when the plaintiff has not come to the Court with clean hands, he has interpolated the material terms of the agreement of sale, certainly such conduct disentitles the plaintiff from invoking the discretionary relief of specific performance at the hands of this Court.



The ratio laid down by the Hon ble High Court of Karnataka reported in ILR 2014 KAR 233 (DB)] = [2013 SC C ONLINE KAR 8544 (DB)]] = [(2014) 1 KCCR 1 (DB)] = [(2014) 1 AIR KANT R 706 (DB)] in between Smt. Padmini Raghavan Vs Mr. H.A. Sonnappa, since dead by his LRs and Others is that if the defendant has not come forward to execute the sale deed, though time is not the essence of the contract, the suit for specific performance ought to have filed within a reasonable time the delay in filing the suit has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff. As discussed above, in the present case, the plaintiff has filed the suit though within time as per article 54 of the Limitation Act, 1963, but there is total inaction for a period of six and half years from the date of execution of the the registered agreement for sale dated- 06-06-2012 marked at exhibit P-1 in respect of the suit this disentitled the plaintiff from obtaining the discretionary relief of specific performance of the contract



26. In the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time limits stipulated in the agreement for doing one or the other thing by one or the other party. In the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the court may infer that it is to be performed in a reasonable time if the conditions are from the express terms of the contract , from the nature of the property and from the surrounding circumstances, for example, the object of making the contract . In other



words, the court should look at all the relevant circumstances including the time-limit specified in the agreement and determine whether its discretion to grant specific performance should be exercised.

27. It is made clear by this court that even where time is not of the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property. In this regard it is beneficial to refer to the decision of the Hon 'ble Supreme Court of India reported in AIR 1997 SC 1751 = [1997 (1) SCALE 739 = [(1997) 3 SCC 1] in between K.S. Vidyanadam and Others Vs. Vairavan the para No.13 read as under as under.

Civil Appeal No. 7467 of 1996.

Dated-06.02.1997



13]. In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2½ years in clear violation of the term of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices - according to the defendants, three times - between the date of agreement and the date of suit notice.

The ratio laid down by the decision of the Hon 'ble Supreme Court of India reported in AIR 1997 SC 1751 = [1997 (1) SCALE 739 = [(1997)3 SCC 1] in between K.S. Vidyanadam and Others Vs. Vairavan is that where there is a delay caused it would be inequitable to give the relief of specific performance to the plaintiff.



28. It is made clear by this court in view of law laid down by the the Hon ble High Court of Karnataka reported in ILR 2014 KAR 233 (DB)] =[2013 SC C ONLINE KAR 8544 (DB)]] =[(2014) 1 KCCR 1 (DB)] =[(2014) 1 AIR KANT R 706 (DB)] in between Smt. Padmini Raghavan Vs Mr. H.A. Sonnappa, and also the Hon 'ble Supreme Court of India reported in AIR 1997 SC 1751 =[1997 (1) SCALE 739 =[(1997)3 SCC 1] in between K.S. Vidyanadam and Others Vs. Vairavan that huge delay of six and half years caused by the plaintiff dis-entitled him from getting relief of specific relief of enforcement of the contract. But the trial court has ignored this crucial aspect of the matter and erroneously decreed the suit, which led to the miscarriage of justice. The trial court has ignored the settled principles of the law laid down by the the Hon ble Supreme Court of India and Hon ble High Court of Karnatka referred to above. .



29. It is also settled by various decisions of this Court that by virtue of [Section 20](#) of the Specific Relief Act, 1963 , the relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. In other words, the court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void . As dsicussed



above, huge delay of six and half years caused by the plaintiff dis-entitled him from getting relief of specific relief of enforcement of the contract. But the trial court has ignored this crucial aspect of the matter and erroneously decreed the suit, which led to the miscarriage of justice. The trial court has ignored the settled principles of the law laid down by the the Hon ble Supreme Court of India and Hon ble High Court of Karnatka referred to above. Hence point No.2 is answered in Affirmative

30. **POINT NO.3:-**Hardship of the defendant may be one of the grounds which may be taken into consideration for exercising its discretion by the Court in refusing to grant a decree for specific performance of contract. Section 20 of the Specific Relief Act 1963 embodies a Common law that is grant of a decree for specific performance of a contract is a discretionary one. The Court may, in a given situation, take into consideration subsequent events and also various similar transactions of the plaintiff of entering into the



agreement for sale with various persons as referred to above, the conduct of the plaintiff is not free doubt. Hence, the plaintiff is not entitled for the relief of specific performance of contract.

31. In the present case admittedly there is no prayer for refund of earnest money . When there being no relief claimed for refund of this money, in order to do safeguard the interest of the defendant the parties, this court is of the opinion that the court can suo-moto pass an order directing refund of earnest money with interest there on. In this regard it is beneficial to refer to the decision of the Hon 'ble High Court of Karnataka 1997 SCC ONLINE KAR 130 =[(1997) 4 KLJ 264] =[1998 AIHC 1078] Y.R. Mahadev Vs K. Dayalan the para NO.24 to para No.26 read as under.

Regular First Appeal No. 617 of 1994

Decided on February 24, 1997



24. In my considered view, if the above prayer of the appellant is carefully read along with the Explanation below the proviso of Section 21 (5), it can be said that the least the learned City Civil Judge would have done is to order for awarding compensation by directing refund of the advance amount particularly when the circumstances that the contract had become incapable of performance specifically. **Hence, it appears to me that the learned City Civil Judge would have done well had he exercised that jurisdiction even suo motu on his own, not to make the appellant to suffer and to loose the advance money in the hands of the respondent. It is well known principle that none should be allowed to enrich oneself at the**



cost of another. In the instant case in hand, in fact the appellant had clearly prayed for an alternative relief at prayer (d) praying, the learned City Civil Judge for grant of such other reliefs as the City Civil Judge may deem fit to grant in the circumstances of the case, in the interest of justice and equity. When the learned City Civil Judge was exercising the jurisdiction under the Specific Relief Act, it is obvious that he was more concerned with the discretionary and equitable reliefs to the parties before it and that exercise of jurisdiction would therefore would have been as well be in favour of the appellant too. As a matter of fact in the reported decision cited before me by the learned Counsel for the respondent in *Kanshi Ram's case*, supra, the Hon'ble



Supreme Court had observed in para (5) of the said decision as follows:

“.....It is true that the rise in prices of the property during the pendency of the suit may not be the sole consideration for refusing to decree the suit for specific performance. But it is equally settled law that granting decree for specific performance of a contract of immovable property is not automatic. It is one of discretion to be exercised on sound principles. When the Court gets into equity jurisdiction, it would be guided by justice, equity, good conscience and fairness to both the parties”.

25. In that view of the matter, I am of the considered view, that the least the learned City



Civil Judge would have done is to compensate the appellant adequately as contemplated in the Explanation below proviso under Section 21(5) of the Specific Relief Act. When that is not done, I feel it is just and proper for this Court to do by directing the respondent to refund the advance of Rs. 20,000/- together with interest from the date of suit to the date of realisation. Now

the question is at what rate of interest. I should not forget here that the respondent had unnecessarily been dragged to Court by the appellant for no fault of his. This I observe for the reason that the appellant who had refused to encash the cheque for Rs. 21,400/- the respondent very well sent at the earliest point of time and within



10 or 12 days after the suit agreement after rescinding the contract when he came to know that the suit agreement could not be acted upon with the issue of Ex. D-1 notification by government banning registration of Bangalore Development Authority sites during the period of subsistence of lease period. But it is the appellant who did not oblige himself to encash the said cheque and be satisfied with. As such, it is the appellant who tried the path of litigation by making the respondent to bear his side of the cost of litigation unnecessarily. Hence, it would be too harsh a deal if the respondent is directed to return the advance amount at the agreed and contractual rate of interest at 12% p.a. Hence, I direct that the advance amount of Rs. 20,000/- now in the



hands of the respondent be returned to the appellant at the reduced rate of interest at 9% p.a. Hence, I answer point No. 2 in favour of the appellant.

26. In that view of the matter, the impugned judgment and decree passed by the learned City Civil Judge is set aside and modified to the extent that the respondent shall refund to the appellant the advance amount of Rs. 20,000/- together with simple interest at 9% p.a. from the date of agreement *i.e.*, 24-4-1988 to the date of realisation of the sum by him. The same is done by exercising powers to award compensation under explanation below proviso to sub-section (5) of Section 21 of the Specific Relief Act, 1963. As a matter of fact, the learned Counsel for the appellant had



submitted that the respondent has got no objection for a direction by this Court to refund the advance amount.

The ratio (underline emphasized by me) laid down by the Hon 'ble High Court of Karnataka 1997 SCC ONLINE KAR 130 =[(1997) 4 KLJ 264] =[1998 AIHC 1078] Y.R. Mahadev Vs K. Dayalan is that the court can grant refund of earnest money suo-moto without relief being claimed in the plaint.

32. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in reported in reported in AIR 2024 SC 4591 Usha Devi vs Ram Kumar Singh the para No.12 reads as under.

Civil Appeal No. 8446 of 2024

(Arising out of SLP (C) No.2997 of 2023),,

decided on 05/08/2024

12. **Accepting that the plaintiffs-respondents paid an**



amount of Rs. 80,000/- to the defendant-appellant, and there being no relief claimed for refund of this money, in order to do complete justice between the parties, we feel it appropriate that the said amount of Rs. 80,000/- be returned to the plaintiffs along with 12% simple interest by the appellants within three months from today.

The ratio (underline emphasized by me) laid down by the Hon'ble Supreme Court of India reported in reported in reported in AIR 2024 SC 4591 Usha Devi vs . Ram Kumar Singh is that though there is no relief in the plaint about the alternative relief of refund of amount, the court can order for refund of the advance amount with interest .

33. In view of the law laid down by the Hon 'ble High Court of Karnataka and also Hon'ble Supreme Court of



India it is just and proper to pass an order for refund of earnest money with 9% interest per annum there on directing the defendant to pay the same to the plaintiff. In the present also it is just and proper for this court to pass an order directing the defendant to pay the same. Hence point No.3 is answered in affirmative.

34. **POINT NO.4:-** In view of my findings on the above points, the appeal filed by the appellant/defendant liable to be allowed. Accordingly, I proceed to pass the following order.

:: ORDER ::

The appeal filed by the appellant/defendant is allowed.

Judgment and decree passed by the Addl. Civil Judge and JMFC at Sindhanoor in OS No.452/2018 dated 04.02.2023 is set aside.

Suit in OS No.452/2018 dated 04.02.2023 on the file of Addl. Civil Judge and JMFC at Sindhanoor is dismissed.



The defendant is directed to refund the earnest money of Rs. 3,80,000/- to the plaintiff with 9% from the date of suit till realization.

Draw decree accordingly.

Sent back the entire file to the trial court along with copy of this Judgment, forthwith.

(Dictated to the stenographer directly on computer, typed by him, revised by me and after corrections pronounced in the open court on this the 2nd day of June 2026)

(Lakshmikanth J. Miskin)
Senior Civil Judge & JMFC.
SINDHANUR