NC: 2026:KHC:12144
RFA No. 45 of 2011

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 45 OF 2011 (MON)

BETWEEN:

1. COMMANDER A.K. GEORGE
S/O LATE SRI. A.K.KOSHY
AGED 88 YEARS
ADVOCATE
NO.539, JAL VAYU VIHAR
KAMMANAHALLI MAIN ROAD
BANGALORE 84
SINCE DECEASED BY HIS LRs

1(A) MR. CHERIAN GEORGE
BUSINESS EXECUTIVE
AGED ABOUT 60 YEARS
514 B BLOCK, NATASHA GOLF VIEW
APARTMENTS, 2 INNER RING ROAD
DOMLUR LAYOUT, BENGALURU-560 071
PRESENTLY IN NEW JERSEY, USA
HEREIN REP. BY HIS
DULY CONSTITUTED AGENT
SRI. MATHEW .C.J
S/O LATE SRI. C.M.JACOB
AGED 51 YEARS
R/AT D.S.R SUNSHINE APARTMENTS
NO.A-G9, 1ST MAIN, KRISHNA REDDY LAYOUT
BANASWADI, BENGALURU-560 043.

1(B) MR. GEORGE GEORGE
BUSINESS MAN
AGED 56 YEARS
FLOW EDGE, SUITE 5NE NEIL OF
NEIL RAO TOWER, 117 ROAD

3 EPIP ZONE, WHITEFIELD
BENGALURU-560 066.
PRESENTLY AT SINGAPORE

...APPELLANTS

(BY SRI. SUNITHA H. SINGH, ADVOCATE)

AND:

1. M/S JAL VAYU VIHAR
APARTMENT OWNER'S ASSOCIATION
KAMMANAHALLI MAIN ROAD
BANGALORE - 560 084
REP. BY ITS PRESIDENT
PRESENTLY CMDE. C.D. BALAJI , I.N.(RETD.)

...RESPONDENT

(BY SRI. M. ARUN PONNAPPA, ADVOCATE FOR C/R)

THIS RFA IS FILED U/SEC.96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 29.09.2010 PASSED IN O.S.NO.10914/1996 ON THE FILE OF THE IV ADDL. CITY CIVIL & SESSIONS JUDGE, MAYO HALL UNIT, BANGALORE, (CCH-21), PARTLY DECREEING THE SUIT FOR RECOVERY OF MONEY.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned appeal is by the defendant calling in question the judgment and decree dated 29.09.2010 passed in O.S.No.10914/1996, whereby the suit filed by the plaintiff/Association for recovery of Rs.4,23,500/- is partly decreed granting recovery of Rs.3,50,000/- with interest at 6% per annum from the date of suit till realisation.

2. For the sake of brevity, the parties are referred to as per their rank before the trial Court.

3. Facts leading to the case are as under:

Plaintiff claims to be a registered association formed with the object of constructing and managing residential apartments, shopping complex and educational institutions at Jala Vayu Vihar situated on Hennur-Banaswadi Road, Bengaluru in layout formed by the Bangalore Development Authority. It is contented that Air Force Naval Housing Board, New Delhi constructed residential flats and allotted them to serving and retiring defence personnel. For the purpose of execution and registration of sale deeds in favour of allottees, plaintiff/association engaged a retired Naval Officer and a Practicing Advocate at Bengaluru and executed a General Power of Attorney in his favour to facilitate registration. Plaintiff claims that to expedite the process, a registration committee was constituted. It is the specific case of the plaintiff that out of amounts collected from the allottees, a sum of Rs.3,50,000/- was paid to the defendant through cheques towards purchase of stamp papers required for execution of sale deeds. The primary grievance of the association is that defendant encashed the cheques but failed to purchase the stamp papers. Despite repeated demands including a visit on 27.04.1996 by A.V.M.C.S. Doraiswamy (Retd.) and Cmde. J.P.Carnerio (Retd.) and a subsequent letter dated 01.05.1996, the defendant failed to refund the amount resulting in the present suit.

4. Defendant, upon receipt of summons, entered appearance, filed written statement and stoutly denied the entire averments made in the plaint. Defendant contested the suit by disputing that plaintiff is a registered association. Defendant claimed that it is a illegal body, allegedly engaged in commercial activities for profit and

hence the suit is not maintainable. Defendant also contended that suit is bad for non-joinder of necessary parties, namely the individual allottees. He also contended that there is no privity of contract between plaintiff and defendant and also denied receipt of money. He further contented that the amount was towards pre-registration expenses including typing, drafting, printing and incidental charges and not exclusively for purchase of stamp papers. He questioned the locus of the plaintiff to verify the stamp papers and sought for dismissal of the suit.

5. The trial Court, on appraisal of oral and documentary evidence, took cognizance of the admissions elicited in cross-examination of defendant regarding receipt of Rs.3,50,000/- and the receipt of cheques reflected in account books which contained defendant's signature acknowledging receipt of three cheques. Referring to this evidence let in by plaintiff, trial Court answered Issue No.1 in the affirmative holding that plaintiff has succeeded in proving payment of a sum of

Rs.3,50,000/- through cheque Nos.645293, 645294 and 645296 and this payment was made to the defendant for purchase of stamp papers for execution and registration of conveyance in favour of members of the plaintiff/association. The trial Court answered Issue No.9 in the negative and against defendant and recorded a finding that defendant has failed to prove that the amount paid to him was towards meeting various pre-registration expenses including preparation of sale deed, typing, printing and other miscellaneous expenses. Trial Court decreed the suit thereby holding that plaintiff is entitled to recover a sum of Rs.3,50,000/- with future interest at 6% per annum.

6. Heard the learned counsel appearing for defendant and the learned counsel appearing for the plaintiff. The following points would arise for consideration:

(i) Whether the trial Court was justified in holding that appellant/association is a duly

registered body and competent to maintain the suit?

(ii) Whether the finding of the trial Court that defendant has failed to establish that amount of Rs.3,50,000/- was lawfully utilized towards pre-registration expenses suffers from perversity and warrants interference?

(iii) What Order?

Finding on Point No.(i):

7. Regarding registration and maintainability of the suit, the principal contention urged by the defendant is that plaintiff is not a registered association and hence the suit is not maintainable. The defendant having set up such a contention, the plaintiff has countered this claim by placing reliance on a sale deed executed by defendant himself on behalf of association describing the plaintiff/association as a registered society under the Societies Registration Act with certificate dated 19.05.1980. One more crucial document marked at

Ex.P-28 also reveals that defendant as a legal counsel has filed a caveat petition on behalf of plaintiff/association clearly describing the plaintiff/association as registered under the Karnataka Apartment Ownership Act, 1972. The records further reveal that defendant himself while acting as a legal advisor and GPA holder represented the association as a registered body. Having taken such a position in earlier proceedings, this Court is of the view that defendant cannot approbate and reprobate.

8. Two more crucial aspects cannot be ignored by this Court. Pending consideration of the suit, an application in I.A.No.3 was filed seeking rejection of the plaint. On the ground of non-registration, same was rejected and confirmed before this Court in CRP.No.886/1999. A subsequent application under Order VII Rule 11(d) CPC was also rejected. These findings have attained finality and operate against the defendant. Therefore, the reliance placed on the decisions in

P. Rudrappa vs. Mukesh Textile Mills (P) Ltd.[1] and ***Gorakh Hilal Patil vs. Parit Samaj Seva Mandal***[2] are clearly misplaced as in the present case registration stands established by the documentary evidence and prior judicial determination. Accordingly, Point No.(i) is answered in the ***Affirmative***.

Finding on Point No.(ii):

9. Though defendant initially disputed receipt of money, but however, at the later part of the written statement, defendant has clearly acknowledged and admitted in unequivocal terms that amount was paid to him. Before this Court proceeds further, it would be apposite for this Court to extract para 20 of the written statement, which reads as under:

> *"20. With reference to paragraphs III (5), (6) and (7) of the Plaint, the Defendant states that the Plaintiff Association had no locus standi or authority to entrust the*

[1] RSA.No.135 of 1973
[2] Civil Revision Application No.202 of 2007

execution and registration of the instruments of conveyance in favour of allottees to the Defendant. It is denied that the allottees are members of the Plaintiff Association. Whatever money the Defendant had received from the allottees and from the members of the Association, as alleged, is a matter of record and nothing is admitted beyond the same and the Plaintiff is put to strict proof of the same. <u>The sums received by the Defendant were inter alia meant for meeting the various pre-registration expenses, preparation of Sale Deeds, typing, printing, book binding of Sale Deeds, cost of and preparation of requisite forms, declarations and affidavits in duplicate for each Sale Deed, purchase of stamp papers,</u> travelling and incidental expenses and other attendant charges, stationery, correspondence, preparation of Deed of Declaration, postage, telep-hone (sic.- telephone) bills, clerical and office expenses, liaison work with the Bangalore Development Authority, Urban Land Ceiling Authority, Bangalore City Corporation, Income-tax Authorities, Inspector General Registration and Commissioner of Stamps for Karnataka, Revenue Ministry, Law Ministry, Finance Ministry, District, Registrar, Sub-Registrars concerned, the Defendant's expenses/fees as <u>General Power of Attorney Holder of the Air Force Naval Housing Board, the Vendor and to attend to each of these matters and for meeting other miscellaneous expenses connected therewith and not for purchase of stamp papers alone as falsely alleged.</u> The amount drawn and in fact, funds much in excess of the amount so drawn has been expended. The Plaintiff has *without, any right or authority taken away the funds of the Registration Accounts from the persons maintaining the accounts and have not reimbursed the genuine bills of the Defendant. The Plaintiff has no legal right or authority or locus standi to direct the Defendant to produce stamp papers before it. The Defendant was at all timesthe General Power of Attorney Holder of the Vendor and an advocate and never a functionary under the superintendence, management or control of the Plaintiff."*

(Emphasis supplied)

10. On reading para 20, the payment of Rs.3,50,000/- stands substantiated in view of unequivocal admissions in the pleadings which is extracted supra. Once defendant acknowledged that he is in receipt of Rs.3,50,000/-, his primary contention that this money was paid to him towards pre-registration expenses including typing, drafting, printing and incidental charges and not exclusively for purchase of stamp papers squarely fell on defendant to discharge the burden by substantiating these contentions raised in the written statement. As stated supra, though defendant initially denied receipt of money

but later admitted receipt for services rendered, he has further admitted in cross-examination in regard to receipt of Rs.3,50,000/- through cheques. His signature when confronted was marked at Ex.P-6(a). Therefore, his contention that this payment was made towards pre-registration charges was required to be substantiated by defendants though a plea that Rs.25,000/- towards stamp papers were utilized is unsupported by documentary proof. From the records, it is forthcoming that no stamp vendor receipts or account statements are produced. When a fiduciary receives funds in his capacity as a legal advisor and a GPA holder, the burden lies heavily upon him to account for the same. Defendant as a legal advisor has clearly misutilized the money paid by the association. The subsequent filing of a memo along with a demand draft for a sum of Rs.3,50,000/- before this Court during the pendency of the appeal is itself an implied admission of liability. Accordingly, Point No.(ii) is answered in the ***Negative***.

11. On overall appreciation of oral and documentary evidence, this Court is of the view that trial Court has properly adverted regarding plea of non-joinder and privity of contract. The learned Judge was justified in holding that the suit is filed by the Association which collected funds from the allottees and disbursed the amount to the defendant in its representative capacity and therefore, learned Judge was justified in holding that individual allottees are not necessary parties. The association having paid the amount to the defendant through cheques is entitled to seek recovery and therefore, has rightly held that privity is clearly established through execution of GPA, engagement of defendant as a legal advisor and payments made by the association through cheques from the association funds.

12. This Court on independent appraisal of oral and documentary evidence is inclined to concur with the findings recorded by the trial Court. In view of findings recorded by this Court on Point Nos.(i) and (ii) formulated

above, this Court is of the view that trial Court has meticulously analyzed oral and documentary evidence, admissions of DW.1 in the plaint as well as during the course of the cross-examination clearly substantiate plaintiff's case. Since no perversity or misapplication of law is demonstrated despite raising several grounds, no interference is warranted and in view of points answered by this Court, this Court concludes that defendant having received Rs.3,50,000/- in his fiduciary capacity and having failed to account for its utilisation is bound to refund the amount. The plea of non-registration is an afterthought and contrary to documentary admissions made by the defendant himself in earlier proceedings.

Finding on Point No.(iii):

13. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) Appeal is ***dismissed***;

(ii) The judgment and decree dated 29.09.2010 rendered by the trial Court in O.S.No.10914/1996 are hereby affirmed;

(iii) The amount deposited before this Court, if any, shall be transmitted to the trial Court forthwith for disbursement to the plaintiff, in accordance with law.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

CA
List No.: 1 Sl No.: 9