



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF OCTOBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 567 OF 2014 (SP)

BETWEEN:

1. RAMESH KUMAR
S/O LATE CHUDAPPA SALIAN
A/A 64 YEARS
R/O SARASWATHI
OPP: MANGALA STADIUM
GANDHINAGAR, MANNAGUDDA
MANGALORE 575003.
2. KRISHNAPPA UCHIL
S/O LATE U MANJAPPA
A/A 58 YEARS
R/O DEEPA PARADISE
BALMATTA, MANGALORE 575 002.

...APPELLANTS

(BY SRI. R G HEGDE., ADVOCATE)

AND:

1. MOHAN D SHRIYAN
S/O LATE DWARAKANATH SHRIYAN
A/A 59 YEARS
R/O 103 MANAV APARTMENT
PLOT NO.133 & 1234, SECTOR 4
NEW PANVEL (E) - 410206
RAIGAD DISTRICT, NAVI MUMBAI
2. AJITH KUMAR D SHRIYAN
S/O LATE DWARAKANATHA SHRIYAN



A/A 56 YEARS
R/O OM SIMRAM C HS LTD
FLAT NO.303, 3RD FLOOR, PLOT NO.3/5/7
ROAD NO.10 SECTOR 11
NEW PANVEL (E) - 410206
RAIGAD DISTRICT, NAVI MUMBAI

3. MRS VIJAYALAXMI R SHRIYAN
W/O LATE ROHAS D SHRIYAN
A/A 49 YEARS, C/O JAGADISH
CHANDAPPA MAISTRI COMPOUND
BEJAI, KUNTIKAN, MANGALORE 575 004

4. KUM NANDINI
D/O LATE ROHIDAS D SHRIYAN
A/A 20 YEARS, C/O JAGADISH
CHANDAPPA MAISTRI COMPOUND
BEJAI, KUNTIKAN, MANGALORE 575 004

...RESPONDENTS

(BY SRI. SANATH KUMAR SHETTY K., ADVOCATE FOR
R-1 TO R-4)

THIS RFA IS FILED UNDER SECTION 96 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED:27.11.2013
PASSED IN O.S.161/2012 ON THE FILE OF THE III ADDL.
SENIOR CIVIL JUDGE, MANGALORE, PARTLY DECREETING THE
SUIT FOR SPECIFIC PERFORMANCE.

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

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE RAJESH RAI K



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE D K SINGH)

Heard Mr. R.G. Hegde, learned counsel for the appellants and Mr. Sanath Kumar Shetty K., learned counsel for the respondents.

2. The appellants-plaintiffs filed Original Suit No.161/2012 before the Court of III Additional Senior Civil and JMFC, Mangaluru, D.K., seeking a decree for specific performance of the agreement of sale dated 08.01.2007 executed between the plaintiffs and the defendants. The suit schedule property was undivided and the defendants claimed $3/4^{\text{th}}$ share and $1/6^{\text{th}}$ share in the scheduled property. When the agreement was entered into between the plaintiffs and the defendants, the shares were not earmarked or decided. In fact the suit for partition filed by the defendants in respect of the suit schedule property had been dismissed against which an appeal is pending for decision.



3. As per the agreement of sale dated 08.01.2007, the appellants-plaintiffs were ready to purchase the alleged undivided share of the defendants over the suit schedule property for an amount of Rs.1,75,000/- per cent. The plaintiffs had paid a sum of Rs.2,00,000/- to defendant Nos.1 to 3.

4. On the basis of the pleadings were completed the Trial Court framed the following issues for decision:

i. Whether the plaintiffs prove that the defendants No.1 to 3 have agreed to suit schedule property for valuable consideration of Rs.1,75,000/- per cent thereby executed agreement for sale on 08.01.2007 by receiving advance amount of Rs.2,00,000/- each?

ii. Whether the plaintiffs prove that they are always ready and willing to perform their part of contract?

iii. Whether the defendants prove that they have not gone through the contents of agreement of sale, without going through the contents of the said document, they have put their signature out of confidence?



iv. Whether the suit is bad for non-joinder of necessary parties?

v. Whether the suit of the plaintiffs is barred by law of limitation?

vi. Whether plaintiffs are entitled for the relief sought by them?

vii. What order or decree?

5. So far as issue Nos.1 to 5 are concerned, all these issues were decided in favour of the appellants-plaintiffs. However, so far as the other reliefs are concerned, the Trial Court has held that the plaintiffs are not entitled for the reliefs inasmuch as the defendant Nos.1 to 3 had no share in the property as their suit for partition came to be dismissed and the pendency of appeal would not be a ground for grant of relief. The amount paid by the plaintiffs has been directed to be refunded to them along with 6% interest from the date of its payment i.e., 08.01.2007.

6. Learned counsel for the appellants-plaintiffs has submitted that the defendants had agreed in the



agreement of sale dated 08.01.2007 to sell their share of the schedule property and therefore, demarcation of share was not necessary for passing the decree in favour of the plaintiffs.

8. We have considered the submissions made by the learned counsel for the parties.

9. Considering the fact that the suit filed by the defendants in respect of their share on the land had been dismissed, the question of partition of their share in the schedule property would not arise as they do not have any share in the land in question. Therefore, we are of the opinion that the Trial Court has not committed any error on facts or law which requires an interference and therefore, we uphold the judgment and decree insofar as denial of relief to the appellants-plaintiffs is concerned.

10. The Trial Court has granted only 6% interest which is statutory interest. Considering the fact that the land is used for commercial purpose, 6% interest awarded



by the Trial Court is not just and proper in the facts and circumstances of the case. In view thereof, we modify the judgment and decree passed by the Trial Court and award interest at 12% on the sum of Rs.6,00,000/- advanced by the appellants-plaintiffs to the respondents-defendants on 08.01.2007. The appellants-plaintiffs are entitled for a sum of Rs.6,00,000/- with interest at 12% from 08.01.2007 till the date of actual payment.

Let the modified decree be prepared.

With the aforesaid modification, the appeal is **disposed of.**

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(RAJESH RAI K)
JUDGE**

RKA
List No.: 1 Sl No.: 25