HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 280 OF 2011 (SP)

BETWEEN:

1. SRI. B.K. KRISHNA MOORTHY
SINCE DECEASED BY HIS LRs

1(A) B.K. PREMA
W/O LATE KRISHNA MOORTHY
AGED ABOUT 66 YEARS
R/AT.NO.26/1 (OLD NO.786)
EKADANTHA
1ST FLOOR
SRI RAMANJANEYA ROAD
HANUMANTHNAGAR
BANGALORE - 560 019.

1(B) SMT. B.K. JYOTHI
W/O GIRISH .G
AGED ABOUT 42 YEARS
R/AT NO.101, G.F.,
SIRI JASMINE APARTMENTS
UTTARAHALLI
BENGALURU-560 061.

1(C) SRI. B.K. KESHAV KIRAN
S/O LATE KRISHNA MOORTHY
AGED ABOUT 38 YEARS
R/AT NO.26/1 (OLD NO.786)
EKADANTHA, 1ST FLOOR
SRI RAMANJANEYA ROAD

Digitally signed by A.L. BHAGYA
Location: HIGH COURT OF KARNATAKA

HANUMANTHNAGAR
BANGALORE - 560 019.

[CAUSE TITLE AMENDED
VIDE COURT ORDER DATED 17.01.2022]

…APPELLANTS

(BY SRI. NAGARAJ SHETTY, ADVOCATE FOR A1(A TO C) AND
SRI. RANGANATHA REDDY AND
SRI. G.S. BALAGANGADHAR, ADVOCATES FOR APPELLANT)

AND:

1. SRI. N. SHIVANAND
S/O N. NARAYANA RAO
AGED ABOUT 55 YEARS
NO.142/4, 5TH CROSS
MAIN ROAD, CHAMARAJPET
BANGALORE - 560 018.

2. SRI. N.A. GOPINATH RAO
S/O N.S. ANANDA RAO
MAJOR
NO.174, 1ST MAIN ROAD
KEMPEGOWDANAGAR
GAVIPURAM GUTTAHALLI
BANGALORE - 560 019.

3. SRI. VENKATARAMAIAH PINGALE

[R3 IS DELETED AS PER COURT ORDER
DATED 23.09.2011]

…RESPONDENTS

(BY SRI. N. JAGADISH BALIGA AND SUNDARESH, ADVOCATES
FOR C/R1;
V/O DATED 24.03.2011 NOTICE TO R2 HELD SUFFICIENT
BY WAY OF PAPER PUBLICATION;
V/O DATED 08.03.2011 R3 IS DELETED)

THIS RFA IS FILED U/S 96 R/W ORDER XLI RULE 1 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 10.12.2010 PASSED IN O.S.NO.4672/1998 ON THE FILE OF THE XI ADDL. CITY CIVIL JUDGE, BANGALORE, (CCH 8), DECREEING THE SUIT FOR SPECIFIC PERFORMANCE AND PERMANENT INJUNCTION.

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 defendant No.2 directed against the judgment and decree rendered in O.S.No.4672/1998, whereby learned Judge has decreed the suit granting specific performance of contract and defendant No.1 was directed to execute registered sale deed in terms of agreement of sale vide Ex.P-1 within two months. Defendant No.2 who claims to be a purchaser is assailing the judgment and decree rendered by the trial Court.

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:

The suit schedule property is a residential house bearing Municipal No.142/1, comprising ground and first floors. The plaintiff has instituted the present suit seeking specific performance of an agreement to sell dated 15.06.1994, marked as Ex.P-1. It is the specific case of the plaintiff that defendant No.1 was the absolute owner of the suit property and had agreed to sell the same for a total sale consideration of Rs.4,75,000/-. The plaintiff asserts that a substantial portion of the sale consideration, namely Rs.4,50,000/-, was paid as advance pursuant to the execution of the agreement, leaving a balance of Rs.25,000/- to be paid at the time of registration of the sale deed. According to the plaintiff, the period stipulated for performance under the agreement was four years. Alleging that despite issuance of a legal notice dated 19.05.1998 calling upon defendant No.1 to execute the sale deed, there was no compliance or response, the

plaintiff was constrained to institute the present suit for enforcement of the contract.

4. Defendant No.1, though disputing the execution and genuineness of the suit agreement at Ex.P-1, did not contest the proceedings by filing a written statement or leading evidence. Defendant No.2, who claims under a subsequent transaction and is admittedly a *pendente lite* purchaser, entered contest. Defendant No.2 contended that the plaintiff was not an agreement holder but only a mortgagee/tenant and that defendant No.1 had earlier mortgaged the property in favour of one J. Parasmal. It was further contended that defendant No.2 discharged the alleged mortgage liability by paying a sum of Rs.5,50,000/- to J.Parasmal, who, claiming to be the General Power of Attorney holder of defendant No.1, executed a registered sale deed dated 17.05.2003 in favour of defendant No.2. While opposing the plaintiff's claim under Section 52 of the Transfer of Property Act, 1882, defendant No.2 asserted that his sale deed relates

back to a prior agreement to sell dated 28.06.1995 allegedly executed by defendant No.1 in his favour and therefore, the subsequent conveyance in his favour is not hit by the doctrine of lis pendens. On these grounds, dismissal of the suit was sought.

5. The Trial Court, on the basis of the pleadings, framed appropriate issues. The plaintiff and defendant No.2 adduced both oral and documentary evidence in support of their respective stands. The Trial Court, upon appreciation of evidence, discarded Ex.D-39, the unregistered mortgage deed relied upon by defendant No.2, and recorded a finding that the plaintiff had successfully established the execution of the agreement for sale dated 15.06.1994 and payment of advance consideration. While answering Issue No.3 in the negative, the Trial Court held that defendant No.2 failed to substantiate his contention that the transaction in favour of the plaintiff was in the nature of a mortgage and that the plaintiff was only a mortgagee. Further, the Court held

that defendant No.2, being a purchaser during the pendency of the suit, is bound by the doctrine of lis pendens and accordingly decreed the suit for specific performance.

6. Assailing the judgment and decree, learned counsel for defendant No.2 vehemently contends that defendant No.2 had secured an agreement to sell from defendant No.1 as early as 28.06.1995 and that the registered sale deed dated 17.05.2003 executed in his favour is only in furtherance of the said prior agreement. It is therefore contended that the transaction in favour of defendant No.2 cannot be held to be hit by the doctrine of lis pendens. It is further argued that even assuming the plaintiff has proved the suit agreement, the Trial Court has failed to exercise its discretion in accordance with settled principles governing grant of specific performance and has not properly weighed the equities arising in favour of defendant No.2. On these premises, it is urged that the findings recorded on Issue Nos.1 to 3 are perverse,

contrary to the evidence on record, and call for interference in appeal.

7. Per contra, learned counsel appearing for the plaintiff, while adverting to the conduct and status of defendant No.2, would vehemently contend that defendant No.2 cannot claim the status of a bona fide purchaser. It is specifically pointed out that defendant No.2 is a licensed stamp vendor and that the very stamp papers on which the suit agreement dated 15.06.1994 (Ex.P-1) came to be executed were admittedly purchased from him. Drawing attention to the admissions elicited in the cross-examination of defendant No.2, learned counsel would submit that defendant No.2 has candidly admitted his knowledge of the suit agreement as well as the pendency of the present suit. These admissions, according to the learned counsel, demolish the plea of want of notice and clearly establish that defendant No.2 had full knowledge of the prior contractual obligation undertaken by defendant No.1 in favour of the plaintiff.

8. Elaborating further, it is contended that the alleged agreement dated 28.06.1995 set up by defendant No.2 is only an afterthought and, in any event, cannot dilute the statutory embargo contained under Section 52 of the Transfer of Property Act, 1882. Once it is demonstrated that the plaintiff has proved the execution of the agreement and his readiness and willingness, and the Trial Court has exercised its discretion judiciously in granting specific performance, this Court, while exercising appellate jurisdiction under Section 96 of the Code of Civil Procedure, 1908, ought not to lightly interfere with such findings of fact. Defendant No.2, being a *pendente lite* purchaser with clear notice of the prior agreement and the pending litigation, cannot claim any equity. On these grounds, learned counsel prays for dismissal of the appeal.

9. Having heard the learned counsel appearing for the parties and on a careful and meticulous examination of the pleadings, oral evidence and documentary material placed on record, this Court has undertaken an

independent re-appreciation of the entire evidence. Upon such consideration, the following points arise for determination:

(i) Whether the finding of the Trial Court that the plaintiff has proved the execution of the suit agreement and is therefore entitled to the discretionary relief of specific performance suffers from perversity or illegality warranting interference in appeal?

(ii) Whether defendant No.2 has established that he is a bona fide purchaser for value without notice of the prior agreement in favour of the plaintiff?

(iii) Whether the registered sale deed dated 17.05.2003 obtained by defendant No.2 is hit by the doctrine of lis pendens as embodied under Section 52 of the Transfer of Property Act, 1882?

(iv) Whether the finding of the Trial Court that the suit is within limitation suffers from perversity or misapplication of law?

Finding on Point No.(i):

10. In order to discharge the burden cast upon him, the plaintiff has entered the witness box and examined himself as PW.1. He has reiterated the averments made in the plaint and has specifically deposed with regard to the execution of the agreement of sale dated 15.06.1994, which is marked as Ex.P-1. Since both defendant No.1 and defendant No.2 disputed the very execution of the agreement and the signature of defendant No.1 found therein, the learned Trial Judge, in order to arrive at a just conclusion, referred the disputed signatures to a handwriting and fingerprint expert by appointing a Commissioner.

11. The Commissioner, after conducting scientific examination and comparison of the disputed signatures on Ex.P-1 with the admitted signatures of defendant No.1, submitted a detailed report before the Court. The report unequivocally opines that the signature appearing on the suit agreement at Ex.P-1 is that of defendant No.1. The

expert has further certified that there is no tampering with the stamp paper, including the seal, date, and serial number. The authenticity of the instrument, therefore, stands fortified not only by oral testimony but also by expert evidence.

12. The Commissioner has also examined the documents relied upon by defendant No.2, particularly Ex.D-39 (an unregistered mortgage deed) and Ex.D-26 (rent receipts). The expert has categorically opined that the signatures attributed to the plaintiff on Ex.D-39 are not his and that the signatures appearing on Ex.D-26 are likewise not genuine. Though defendant No.2 filed objections to the Commissioner's report, it is pertinent to note that despite summons being issued at his instance to secure the presence of the expert for cross-examination, he did not pursue the matter further. In the absence of effective cross-examination, the expert's opinion remains unshaken and carries significant evidentiary value. Thus, the Commissioner's report conclusively establishes that

Ex.P-1 bears the genuine signature of defendant No.1 and that the stamp paper used for its execution is free from tampering.

13. On a careful scrutiny of this crucial evidence, certain significant circumstances emerge. It is not in dispute that defendant No.2 is a licensed stamp vendor. The evidence on record discloses that the stamp papers used for execution of Ex.P-1 were purchased from him. While defendant No.2 admits having sold the stamp papers, he feigns ignorance as to the purpose for which they were utilized. This explanation, in the backdrop of the expert opinion affirming the genuineness of the document, appears wholly unconvincing.

14. The plea advanced by defendant No.2 that the transaction under Ex.P-1 was in reality a mortgage and not an agreement of sale stands thoroughly discredited. The very document set up by him as evidencing a mortgage, namely Ex.D-39, has been found to bear

signatures not belonging to the plaintiff. Likewise, the rent receipts at Ex.D-26 relied upon to probabilise a tenancy arrangement have also been disbelieved by the expert. When the foundational documents relied upon by defendant No.2 crumble under forensic scrutiny, the defence sought to be projected loses all credibility.

15. This Court also cannot lose sight of the fact that defendant No.1, who is the alleged executant of the agreement and whose signature was in dispute, has chosen not to contest the proceedings. He has neither entered the witness box nor adduced any evidence to disown the agreement. The silence of defendant No.1, coupled with the categorical expert opinion affirming his signature on Ex.P-1 and the absence of any material to suggest fabrication or tampering, lends substantial credence to the plaintiff's case.

16. On a cumulative assessment of the oral testimony of P.W.1, the documentary evidence, and the

uncontroverted expert report, this Court is satisfied that the plaintiff has successfully proved the due execution of the agreement of sale dated 15.06.1994 marked at Ex.P-1. The findings recorded by the Trial Court on this aspect do not suffer from perversity or misappreciation of evidence. Accordingly, Point No.(i) formulated above is answered in the ***Negative*****.**

Finding on Point No.(ii):

17. The material on record unmistakably indicates that defendant No.2 is a licensed stamp vendor by profession. It has come in evidence that the very stamp papers on which the suit agreement dated 15.06.1994 (Ex.P-1) was executed were purchased from defendant No.2. Though he attempts to distance himself from the transaction by stating that he was unaware of the purpose for which the stamp papers were utilized, the fact remains that he was directly connected with the instrument at its

inception. This circumstance assumes significance when viewed in the backdrop of the defence now set up by him.

18. Defendant No.2 has virtually stepped into the shoes of defendant No.1 and has sought to project an altogether different narrative, contending that the document styled as an agreement of sale is in fact a mortgage transaction. However, this plea is conspicuously unsupported by any cogent or legally admissible evidence. The burden to establish that the transaction was one of mortgage, and not an agreement to sell, squarely rested on defendant No.2, especially when the document on its face purports to be an agreement of sale and stands fortified by expert evidence. Except for a bare assertion and reliance on documents which have already been discredited by forensic examination, no substantive material is placed to probabilise the theory of mortgage. The defence, therefore, remains devoid of evidentiary foundation.

19. On a closer scrutiny of the overall circumstances, this Court also finds that the manner in which defendant No.2 secured a sale deed through a General Power of Attorney holder of defendant No.1, and that too subsequent to the institution of the present suit, is shrouded in considerable suspicion. The timing of the transaction, the absence of any satisfactory explanation for the alleged prior agreement dated 28.06.1995, and the conduct of defendant No.1 in remaining ex parte collectively cast a serious doubt on the bona fides of the transaction in favour of defendant No.2. The sequence of events strongly suggests that the conveyance in favour of defendant No.2 was orchestrated during the pendency of litigation with full knowledge of the plaintiff's subsisting claim.

20. In the light of these significant circumstances, this Court deems it appropriate to advert to certain crucial admissions elicited in the cross-examination of defendant No.2, which have a direct bearing on the question of

notice, bona fides, and the true nature of the transaction. The relevant portion of his cross-examination is extracted hereunder:

> "ವಾದಿ ಪಾರಸ್‌ಮಲ್‌ರವರಿಗೆ ದಾವಾ ಸ್ವತ್ತಿನ ಬಗ್ಗೆ ಅಂದರೆ ನಂ. 142/4 ಬಗ್ಗೆ ಬಾಡಿಗೆಯನ್ನು 1997ರಿಂದ ನವಂಬರ್ 1998ರ ವರಗೆ ಕೊಟ್ಟಿರುತ್ತಾರೆ. ಬಾಡಿಗೆ ಕೊಟ್ಟಿಲ್ಲ ಎಂದು ಪಾರಸ್‌ಮಲ್‌ರವರು ವಾದಿಯ ಮೇಲೆ ಯಾವುದೇ ಕೇಸನ್ನು ಹಾಕಿರಲಿಲ್ಲ. ದಿ:03.11.1998 ರ ನಂತರ ವಾದಿ ಕೇಸನ್ನು ಹಾಕಿರುವ ಬಗ್ಗೆ ಪಾರಸ್‌ಮಲ್‌ರವರಿಗೆ ಗೊತ್ತಾಗಿತ್ತು. ನಿ.ಡಿ.9 ಕ್ರಯ ಪತ್ರವನ್ನು ಮಾಡಿಕೊಡುವ ಸಮಯದಲ್ಲಿ ವಾದಿ ಈ ಕೇಸನ್ನು ಹಾಕಿರುವ ಬಗ್ಗೆ ಪರಸ್‌ಮಲ್‌ರವರು ನನಗೆ ತಿಳಿಸಿದ್ದರು. ಈ ಕೇಸನ್ನು ಹಾಕಿರುವ ಬಗ್ಗೆ ನನಗೇ ಬಹುಶಹಾ 2000ದಲ್ಲಿ ಗೊತ್ತಾಯಿತು."

21. A careful reading of the extracted admissions in the cross-examination of defendant No.2 leaves no manner of doubt that he was fully aware of the agreement of sale executed by defendant No.1 in favour of the plaintiff. The admissions further disclose that he had knowledge not only of the prior transaction but also of the institution and pendency of the present suit. These categorical admissions strike at the very root of his plea that he is a bona fide purchaser for value without notice.

22. In order to claim protection as a bona fide purchaser under Section 19(1)(b) of the Specific Relief Act, 1963, a subsequent transferee must establish that he purchased the property for value, in good faith, and without notice of the original contract. The evidence on record, particularly the admissions of defendant No.2 and the surrounding circumstances discussed supra, clearly demonstrate that he had prior knowledge of the plaintiff's contractual rights. Once knowledge is established, the plea of good faith collapses. Therefore, this Court is of the considered view that defendant No.2 cannot claim the benefit of protection available to a bona fide purchaser under Section 19(1)(b) of the Specific Relief Act. Accordingly, Point No.(ii) is answered in the ***Negative***.

Finding on Point No.(iii):

23. The principal contention urged on behalf of defendant No.2 is that he had entered into an agreement of sale with defendant No.1 on 28.06.1995 and that the

registered sale deed dated 17.05.2003 executed in his favour through J. Parasmal, the alleged GPA holder of defendant No.1, is only in furtherance of the said earlier agreement. It is therefore contended that the sale deed should relate back to the date of the prior agreement and cannot be treated as a transfer *pendente lite* so as to attract the bar under Section 52 of the Transfer of Property Act, 1882.

24. This contention, in the opinion of this Court, is wholly untenable both on facts and in law. The suit for specific performance was instituted on 15.06.1998. It is an admitted position that the registered sale deed in favour of defendant No.2 was executed only on 17.05.2003, i.e., during the pendency of the suit. For the purpose of Section 52 of the Transfer of Property Act, 1882, what is material is the transfer of an interest in immovable property effected by a completed conveyance and not a mere agreement to sell.

25. Section 54 of the Transfer of Property Act, 1882, expressly provides that an agreement for sale does not, by itself, create any right, title or interest in or charge on the property. Therefore, even assuming that defendant No.2 had obtained an agreement of sale in the year 1995, the said agreement did not confer upon him any proprietary interest. The transfer of ownership was effected only upon execution and registration of the sale deed dated 17.05.2003, which undisputedly took place after the institution of the suit. Consequently, the transfer in favour of defendant No.2 squarely falls within the ambit of a transfer *pendente lite*.

26. The doctrine of lis pendens embodied under Section 52 of the Transfer of Property Act, 1882 is founded on sound principles of public policy, intended to maintain the *status quo* during the pendency of litigation and to prevent the defeat of rights under adjudication by private alienations. The Hon'ble Apex Court, in a catena of decisions, has consistently held that a transferee *pendente*

lite is bound by the decree ultimately passed and merely steps into the shoes of his vendor. Such a transferee cannot claim any independent or superior equities than those available to the transferor. The operation of Section 52 is not dependent upon notice or good faith; it attaches to the transfer by virtue of the pendency of litigation itself.

27. In the present case, apart from the statutory position, defendant No.2 has admitted in his cross-examination that he was aware of the prior transaction and the pendency of the suit. Thus, both on principle and on facts, defendant No.2 clearly answers the description of a transferee *pendente lite* within the meaning of Section 52 of the Transfer of Property Act, 1882. The plea that the sale deed relates back to a prior agreement and thereby escapes the rigour of lis pendens is misconceived and liable to be rejected. Accordingly, Point No.(iii) is answered in the ***Affirmative*****.**

Finding on Point No.(iv):

28. Insofar as limitation is concerned, the agreement of sale at Ex.P-1 is dated 15.06.1994 and, as per its terms, the period stipulated for performance was four years. The plaintiff has specifically pleaded and deposed that he issued a legal notice on 19.05.1998 calling upon defendant No.1 to execute the sale deed, and on failure of compliance, instituted the suit on 15.06.1998. In terms of Article 54 of the Limitation Act, 1963, a suit for specific performance is required to be filed within three years from the date fixed for performance or, if no such date is fixed, from the date when the plaintiff has notice that performance is refused. In the present case, the suit has been instituted well within the contractual period of four years and immediately upon failure of defendant No.1 to perform despite notice. Therefore, the Trial Court, on proper appreciation of the pleadings and evidence, has rightly held that the suit is within time. The said finding does not suffer from any perversity, illegality, or

misapplication of law warranting interference in appeal. Accordingly, Point No.(iv) is answered in the ***Negative*****.**

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

ORDER

(i) The appeal is ***dismissed***;

(ii) The judgment and decree dated 10.12.2010 passed by the learned Trial Judge in O.S.No.4672/1998 decreeing the suit for specific performance are hereby affirmed;

(iii) It is declared that the registered sale deed dated 17.05.2003 executed in favour of defendant No.2 through the alleged GPA holder of defendant No.1 is subject to the doctrine of lis pendens and shall not affect the rights of the plaintiff under the decree for specific performance;

(iv) Defendant No.1 (and defendant No.2, being a transferee *pendente lite* stepping into the shoes of defendant No.1) shall execute

a registered sale deed in respect of the suit schedule property in favour of the plaintiff on receipt of the balance sale consideration of Rs.25,000/- within a period of three months from the date of receipt of a copy of this judgment.

(v) In the event of failure to execute the sale deed within the stipulated period, the plaintiff is at liberty to have the sale deed executed through the process of Court in accordance with law.

(vi) Parties shall bear their respective costs.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

CA
List No.: 1 Sl No.: 20