



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR FIRST APPEAL NO. 1037 OF 2018 (SP)

BETWEEN:

SRI. R. SURENDRA BABU
S/O V. RAMAIAH
AGED ABOUT 50 YEARS
RESIDING AT NO.49
19TH J CROSS
KAGGADASANAPURA
C.V. RAMANAGAR POST
BANGALORE-560 093

...APPELLANT

(BY SRI. C.M. NAGABUSHANA, ADVOCATE)

AND:

1. SRI. M. LAKSHMAIAH
S/O LATE KATHYAPPA
AGED ABOUT 73 YEARS
2. SRI. NAGENDRA
S/O M. LAKSHMAIAH
AGED ABOUT 43 YEARS
3. KUMARI.DEEPA
D/O M. LAKSHMAIAH
AGED ABOUT 28 YEARS
4. SRI. PRAMOD
S/O M. LAKSHMAIAH
AGED ABOUT 26 YEARS
(MINOR GUARDIANSHIP
DISCHARGED AS PER THE ORDER
OF THE TRIAL COURT DATED 18.08.2017)





RESPONDENTS NO.1 TO 4 ARE
RESIDING AT NO.21
2ND MAIN ROAD, 2ND CROSS
BENNIGANAHALLI
DOORAVANINAGAR POST
BANGALORE-560 016

5. SRI. B.K. RAJU
S/O LATE THOTI KRISHNAPPA
AGED ABOUT 55 YEARS
6. KUM. ASHA RANI
D/O B.K. RAJU
AGED ABOUT 28 YEARS
7. KUM. GNANAMBA
D/O B.K. RAJU
AGED ABOUT 23 YEARS
(MINOR GUARDIANSHIP DISCHARGED
BY ORDER OF THE TRIAL COURT DATED
18.08.2017)
8. KUM. REKHA
D/O B.K. RAJU
AGED ABOUT 21 YEARS
(MINOR GUARDIANSHIP DISCHARGED
BY ORDER OF THE TRIAL COURT DATED
18.08.2017)

RESPONDENTS NO.5 TO 8
ARE RESIDING AT NO.179
CHOWDESHWARI TEMPLE ROAD
BYRASANDRA, C.V. RAMANAGAR POST
BANGALORE - 560 093

9. SRI. SURESH SALRAIYA
S/O LATE K.C. SALARIYA
AGED ABOUT 47 YEARS
RESIDING AT NO.12/1
VERSOVA LAYOUT



C.V. RAMANNAGAR POST
BANGALORE-560 093

10. SRI. V. MOHAMMED SHAFIULLA
S/O LATE ABDUL WAHID
AGED ABOUT 72 YEARS
RESIDING AT NO.80
ZAREENA MANZIL
NAGAVARA PALYA
C.V. RAMANAGAR POST
BANGALORE-560 093

11. SRI. ROHIT SALARIYA
S/O SUBHASH SALARIYA
AGED ABOUT 47 YEARS
RESIDING AT NO.12/1
VERSOVA LAYOUT
C.V.RAMANAGAR POST
BANGALORE-560 093

12. SRI. S. MOHAMMED SAMADHA
S/O V. MOHAMMED SHAFIULLA
AGED ABOUT 42 YEARS
RESIDING AT NO.80
ZAREENA MANZIL, NAGAVARA PALYA
C.V.RAMANAGAR POST
BANGALORE - 560 093

...RESPONDENTS

(BY SRI. SHRAVAN S. LOKRE, ADVOCATE FOR R1 AND R2 -
[ABSENT];
VIDE ORDER DATED 05.01.2024 SERVICE OF NOTICE TO
R3 IS HELD SUFFICIENT;
SRI. V. SRINIVAS, ADVOCATE FOR R4 - [ABSENT];
SRI. P.S. JAMADAGNI, ADVOCATE FOR R5, R7 AND R8;
SRI. Y.K. NARAYANA SHARMA, ADVOCATE FOR R6;
SRI. UMASHANKAR M.N, ADVOCATE FOR R9 TO R12)



THIS RFA IS FILED UNDER SEC.96 R/W ORDER 41 RULE 1 OF CPC., 1908 AGAINST THE JUDGMENT AND DECREE DATED 01.02.2018 PASSED IN OS.NO.7741/2010 ON THE FILE OF THE VIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, (CCH-15), BENGALURU, DISMISSING THE SUIT FOR SPECIFIC PERFORMANCE.

THIS APPEAL, COMING ON FOR DICTATING JUDGMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

This appeal is filed challenging the judgment and decree dated 01.02.2018 in O.S.No.7741/2010 on the file of the VIII Additional City Civil Judge, Bengaluru. The suit is dismissed. The plaintiff is before this Court in this appeal.

2. The suit before the Trial Court was one for specific performance of contract. The plaintiff claimed that on 01.06.2008, defendants No.1 to 8 agreed to sell the property bearing Sy.No.2/1, (old Sy.No.2) situated in Byrasandra Village, Varthur Hobli, Bengaluru East Taluk. The extent of the property is 1 acre 4 guntas. The plaintiff contended that defendants No.1 to 8 agreed to sell the property for Rs.12,00,000/- and defendants No.1 to 8 received Rs.3,70,000/- towards advance consideration amount.



3. It is also stated that one year time was fixed to complete the sale transaction and out of Rs.3,70,000/-, Rs.3,00,000/- was paid on the date of agreement i.e., on 01.06.2008 and on 05.08.2009, Rs.50,000/- was paid and time to execute the sale deed was extended by 6 months.

4. The plaintiff contends that on 27.06.2010, defendant No.2 received another Rs.20,000/- towards part of the consideration amount. Thus, the plaintiff contends that Rs.3,70,000/- is paid in all to defendants No.1 to 8 towards part performance of the contract. It is also asserted that the plaintiff was ready and willing to perform his part of the contract throughout.

5. The suit is filed on the premise that defendants No.1 to 8 are trying to alienate the suit schedule property to the third party by suppressing the agreement for sale dated 01.06.2008. Accordingly, the suit was filed on 08.11.2010 seeking specific performance of the contract.

6. It is to be noticed that initially the suit was filed against defendants No.1 to 8. Later defendants No.9 to 12 got themselves impleaded.



7. It is contented by defendants No.9 to 12 that the property in question was purchased by their vendor in the year 1994 and subsequently in the year 2003, defendants No.9 to 12 had purchased the property under registered sale deeds dated 29.12.2003 and 30.04.2003. Thus, it is urged that defendants No.1 to 8 were not the owners of the property when the agreement for sale was executed on 01.06.2008. On this premise, defendants No.9 to 12 prayed for dismissal of the suit.

8. The Trial Court framed the following issues:

- "1. *Whether the plaintiff proves that defendants had agreed to sell the suit schedule property for Rs.12 lakhs and executed an agreement of sale dated 1/6/2008 by receiving advance amount of Rs.3 lakhs?*
2. *Whether plaintiff proves that subsequent to the agreement of sale dated 01-06-2008, he has paid Rs.50,000/- on 27/06/2010 to defendant No.2 towards the sale consideration?*
3. *Whether the plaintiff proves that he was always ready and willing to perform his part of the contract?*
4. *Whether defendants 5 to 8 prove that the plaintiff has omitted breach of contract and*



therefore the defendants are not liable to comply the terms of the agreement of sale dated 1/6/2008?

5. *Whether the plaintiff is entitled for the relief of specific performance of the agreement of sale dated 1/6/2008?*
6. *To what order or decree?*

ADDITIONAL ISSUES FRAMED ON 09-10-2015

1. *Whether D9 to 12 prove as on the date of filing of the suit D1 to 8 are not the owners of Suit Schedule Property?*
2. *Whether D9 to 12 prove suit is filed by plaintiff in collusion with D1 to 8?*

9. After considering the evidence placed on record, the Trial Court held issues No.1 to 5 in the negative and against the plaintiff. Additional issues No.1 and 2, which are framed casting burden on defendants No.9 to 12 are answered in favour of defendants No.9 to 12.

10. In terms of the aforementioned judgment and decree, the Trial Court has come to the conclusion that, as on 01.06.2008, defendants No.1 to 8 were not the owners of the



suit schedule property and it also concluded that the plaintiff has filed the suit in collusion with defendants No.1 to 8.

11. Aggrieved by the aforementioned judgment and decree, the plaintiff is before this Court.

12. Learned counsel appearing for the plaintiff/appellant contends that the Trial Court ought to have granted a decree for specific performance of contract. It is the contention that the agreement in question is duly established and the Trial Court could not have relied on the evidence of defendants No.9 to 12.

13. It is urged that, the Trial Court committed an error in relying on the secondary evidence led by defendants No.9 to 12 who have produced the certified copies of the sale deeds allegedly executed in their favour. In the absence of proof relating to the loss of original or without there being foundational facts to produce the secondary evidence, the trial Court could not have held that defendants No.1 to 8 are not the owners of the suit property.



14. It is also urged that defendants No.9 to 12 did not establish their title over the property, as such, the suit for specific performance could not have been rejected.

15. Since, defendants No.1 to 8 admitted the execution of the agreement for sale and also admitted the receipt of sale consideration amount, the suit for specific performance should have been decreed in his submission.

16. It is also urged that the decree granted in favour of defendants No.9 to 12 is virtually based on the revenue records and acting on the revenue records, the Trial Court has declared the title of defendants No.9 to 12 and thereby wrongly denied the decree for specific performance in favour of the plaintiff by holding that defendants No.5 to 8 were not the owners of the property as on the date of agreement for sale dated 01.06.2008.

17. Learned counsel appearing for defendants No.9 to 12 would contend that, as on the date of the suit, the property record stood in the name of defendants No.9 to 12 and despite that being the position, without producing the record of right for the suit property as of the date of the suit, by producing the



old property record, the suit is filed without impleading defendants No.9 to 12. It is urged that defendants No.9 to 12 on coming to know about the plot of plaintiff and defendants No.1 to 8 who acted in collusion, moved an application to come on record and contested the suit.

18. In addition to that, it is also urged that the plaintiff/alleged agreement holder was aware of the proceeding before the Tahsildar, Assistant Commissioner as well as the Deputy Commissioner in respect of the suit property, and also the proceeding before this Court. In those proceedings, the verdicts have gone against the defendants No.1 to 8. In terms of the aforementioned orders, the names of defendants No.9 to 12 were recorded in the property records. Hence, the contention that plaintiff who was aware of the dispute and who was aware of the adverse findings on defendants No.1 to 8 in respect of the suit property, could not have entered into an agreement to purchase the same. By referring to these circumstances, it is urged that the agreement is executed in collusion with defendants No.1 to 8 to defeat the right of the defendants No.9 to 12.



19. It is further urged that, the Trial Court has taken note of the aforementioned facts and has rightly held that the agreement for sale is not established.

20. It is further submitted that the original sale deed is not produced as the original sale deed was mortgaged in favour of the Bank where defendants No.9 to 12 borrowed the loan and no objection was raised before the Trial Court for not producing the original and certified copy was marked without objection and the contention under Section 65 of the Indian Evidence Act, 1872 relating to inadmissibility of secondary evidence is raised for the first time, as such, the said contention cannot be accepted.

21. It is also his further submission that the original copy is required only to consider the signature and there is no dispute relating to the signature of the vendors. What is disputed is, the title of the vendors of defendants No.9 to 12 and that being the position, non-production of the original sale deed in favour of defendants No.9 to 12 will not cause any prejudice to the plaintiff.



22. It is noticed that the suit is for specific performance of contract and no relief is sought for refund of the consideration amount, in the alternative, in the event the Court not granting the decree for specific performance.

23. Accordingly, the application is filed before this Court to amend the plaint to incorporate the prayer for refund of earnest consideration amount. The said application was allowed and plaint was amended.

24. Defendant No.6 has filed additional written statement disputing the liability to pay alleged consideration amount on the premise that the consideration amount is not paid at all. Defendants No.5, 7 and 8 have also filed written statement disputing the liability. However, it is noticed that before the Trial Court, defendants No.5, 7 and 8 have filed written statement admitting the execution of agreement for sale and also the payment.

25. Under these circumstances the following points arise for consideration:



- (a) *Whether the plaintiff/appellant has made out a case for grant of specific performance of contract?*
- (b) *Whether the plaintiff/appellant has made out the case for refund of the amount against defendants No.1 to 8?*

26. It is to be noticed that on 19.02.2026, learned counsel for the plaintiff on instructions from the plaintiff had made a statement that claim for refund of earnest money against defendant No.6 will not be pressed. Said submission was placed on record.

27. The order dated 19.02.2026 reads as under:

" Learned counsel for respondent No.6 has filed a written statement disputing the claim of the appellant for refund of earnest money.

Learned counsel for the appellant on instructions would submit that the prayer for refund of earnest money is not pressed against defendant No.6/respondent No.6. It is noticed that there is no representation on behalf of respondents No.1 to 4.

Awaiting the appearance of counsel for respondents No.1 to 4.



List this matter on 24.02.2026 for 'dictating judgment'.

28. After hearing the case on the previous hearing date, the case was listed on 24.02.2026 for dictating judgment awaiting appearance of respondents No.5, 7 and 8.

29. As already noticed, learned counsel appearing for respondents No.5, 7 and 8 has appeared before the Court and today, filed written statement disputing the liability to pay the earnest consideration amount.

30. As can be seen from the records, the Trial Court has come to the conclusion that the sale deed executed in favour of defendants No.9 to 12 by their vendors in the year 2003 is valid and their vendors have purchased the suit schedule property in the year 1994 from the erstwhile owners. The said finding of the Trial Court is based on acceptable evidence, viz., the registered sale deed and other revenue records.

31. Though it is urged that defendants No.9 to 12 have not produced the original sale deeds in their favour, what is required to be noticed is the execution of the sale deed by the



owners and their signatures is not in dispute. The plaintiff contends that he is the agreement holder and based on the alleged agreement for sale allegedly executed by defendants No.1 to 8. Based on this, he is claiming specific performance of contract. The title of defendants No.1 to 8 is not in dispute and moreover, the execution of the sale deed in favour of defendants No.9 to 12 by defendants No.1 to 8 is not specifically disputed in pleadings.

32. As already noticed, the plaintiff was very much aware of the proceedings before the revenue authorities and before this Court, wherein the revenue authorities have come to the conclusion that defendants No.1 to 8 are not the owners of the property. Though the finding is recorded by the Revenue Courts, relating to the title, what is required to be noticed is the said finding is not questioned by defendants No.1 to 8 by filing appropriate suit. Thus, as on the alleged agreement for sale dated 01.06.2008, defendants No.1 to 8 were not the owners of the suit property.

33. Moreover, the plaintiff having represented the parties before the Revenue Courts, could not have filed a suit



by suppressing all these facts. On this ground also the Court is of the view that the plaintiff is not entitled to the discretionary relief of specific performance. Accordingly, the decree rejecting specific performance is affirmed and appeal is dismissed to the said extent.

34. As far as the question of repayment is concerned, it is to be noticed that, the said plea is raised for the first time before this Court by filing an application for amendment of the plaint.

35. This Court has permitted the amendment by considering the fact that there was an admission in the written statement relating to the payment of the consideration amount. However, after the prayer was granted, defendants No.5, 7 and 8 have filed additional written statement disputing the liability and defendant No.6 has also filed written statement disputing the liability.

36. Learned counsel appearing for defendant No.6 would submit that on 19.02.2026, a statement is made by the appellant that he is not going to press the claim against



defendant No.6 for refund and that being the position, there cannot be any decree for refund against defendant No.6.

37. Learned counsel appearing for the appellant submits that, the said statement was made on behalf of the appellant as the appellant carried the impression that remaining defendants who have admitted the payment before the Trial Court had not filed any additional written statement before this Court opposing the prayer for refund of the amount. And in this background, to avoid remand of the matter, a statement was made that he plaintiff would not claim refund against defendant No.6.

38. The Court has considered the contentions raised at the Bar and perused the records.

39. It is noticed that as on the date of the agreement for sale, defendants No.4, 7 & 8 were minors. It appears that as on the date of the suit, defendants No.7 and 8 were minors.

40. It is also admitted before this Court that the application is not filed to discharge the guardian on defendants on attaining the age of majority during the pendency of the



suit. As far as defendant No.6 is concerned, there is a slight dispute as to whether she had really turned 18 as on the date of the suit or not.

41. It is required to be noticed that the guardian was not discharged pursuant to an application filed by the plaintiff. It is a well-settled position of law, the minor after attaining the age of majority can take a stand which is contrary to the stand taken by the guardian.

42. Before the Trial Court the written statement was filed on behalf of the minors by the guardian. However, after attaining majority no opportunity was granted to the defendants who were minors when the suit was filed and who later, attained majority during the pendency of the suit.

43. For this reason, the Court is of the view that matter requires to be remanded to the Trial Court to consider the defence raised by the defendants who were minors and also the plea raised by the plaintiff seeking refund of the consideration amount.



44. The Trial Court shall frame the following additional issues:

- (a) *Whether the plaintiff establishes the payment of consideration amount as averred in the plaint?*
- (b) *If so, whether the prayer for recovery of the amount in respect of an alleged agreement for sale dated 01.06.2008 is maintainable even against the persons who were minors at the time of execution?*
- (c) *Whether the claim for refund of the amount is in time ?*
- (d) *Whether defendant No.6 establishes that he is not liable to pay the alleged consideration amount for the reasons stated in the additional written statement?*

45. The Trial Court shall record the evidence on the aforementioned issues and thereafter, pass appropriate decree.

46. It is made clear that since the suit for specific performance is not maintainable as defendants No.9 to 12 had



already purchased before the alleged agreement for sale dated 01.06.2008, the defendants No.9 to 12 are not necessary parties to the suit and the decree of dismissal of the suit against defendants No.9 to 12 is confirmed.

47. Hence the following:

ORDER

- (i) The Appeal is ***allowed in part.***
- (ii) The impugned judgment and decree dated 01.02.2018 on the file of VIII Additional City Civil Judge, Bengaluru in O.S.No.7741/2010 refusing decree for specific performance are confirmed.
- (iii) The matter is remitted to the Trial Court only to consider whether the prayer for refund of alleged advance sale consideration amount.
- (iv) The parties shall appear before the Trial Court on **23.03.2026** without any further notice in the said proceeding.
- (v) There is no need for defendants No.9 to 12 to appear before the Trial Court as the suit against them is dismissed.



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(vi) Registry to send back the Trial Court records
forthwith.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

GVP
List No.: 2 Sl No.: 15