



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR
REGULAR SECOND APPEAL NO. 575 OF 2022 (MON)

BETWEEN:

1. SMT M RAJAMMA
AGED 63 YEARS
W/O LT DUNDAIAH
2. SRI GURU
AGED 32 YEARS
S/O LT DUNDAIAH
3. KUMS SUCHITRA
AGED 36 YEARS
D/O LT DUDNAIAH
4. KUM SHWETHA
AGED 34 YEARS
D/O LT DUNDAIAH
5. SRI M D SUHAS
AGED 29 YEARS
S/O LT DUNDAIAH

ALL ARE R/AT NO 20
GROUND FLOOR
FIRST STAGE
KUVEMPUNGAR
MYSURU

...APPELLANTS

(BY SRI. RANGARAMU V., ADVOCATE)

Digitally
signed by B
LAVANYA
Location:
HIGH
COURT OF
KARNATAKA



AND:

1. SMT K RAMAMANI
W/O LT K S SRIRANGARAJU
AGED 61 YEARS
2. M S SANDEEP
S/OLT K S SRIRANGARAJU
AGED 61 YEARS

BOTH ARE R/AT NO 59
3RD BLOCK
KUVEMPUNAGARA
MYSURU
KARNATAKA

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 12.11.2021 PASSED IN RA.No.86/2021 ON THE FILE OF THE VI ADDITIONAL DISTRICT AND SPECIAL JUDGE, MYSURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 17.02.2020 PASSED IN OS No.567/2008 ON THE FILE OF THE III ADDITIONAL I CIVIL JUDGE, MYSURU.

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

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

Heard learned counsel for the appellants.

2. This appeal is preferred by the appellants/defendants challenging the judgment and



decree passed in R.A.No.86/2021 on the file of VI Additional District and Special Judge, Mysuru which dismissed the appeal of the appellants and confirmed the judgment and decree passed by the III Additional I Civil Judge, Mysuru, in O.S.No.567/2008 dated 17.02.2020 whereby the learned trial judge decreed the suit of the plaintiffs and directed the defendants to pay an amount of Rs.3,65,000/- per month within two months from the date of the order.

3. Parties to the proceedings shall be referred to as plaintiffs and defendants for the sake of brevity.

4. The brief facts of the case are as follows.

Defendants are the legal heirs of late M. Dundaiah, who was the absolute owner of the suit schedule property. The said M.Dundaiah, who is none other than the husband of the 1st defendant and father of the other defendants, approached the plaintiffs and offered to mortgage the suit schedule property in their favour for a period of 5 years in



the second week of July 2007. Plaintiffs, who were in search of a dwelling house, agreed to the suggestion that M.Dundaiah would mortgage the property for a period of 3 years, and accordingly, a sum of Rs.3,00,000/- was paid by way of two cheques dated 18.07.2007 of Rs.1,50,000/- each. It is stated that thereafter M.Dundaiah executed an agreement on 18.07.2007 in favour of the plaintiffs and put them in possession of the suit schedule property. Though the construction work was not completed at that time, plaintiffs occupied the property. M.Dundaiah was stated to have promised to complete the portion of the work that was incomplete. But, unfortunately, he died on 02.09.2007. After the death of M.Dundaiah, defendants succeeded to the property as legal heirs and plaintiffs approached them to complete the remaining work of construction of the suit schedule property. But later they declined by saying that they do not have money and demanded an additional mortgage amount of Rs.50,000/-



from the plaintiffs on the promise that they would refund the same after vacating the suit schedule property.

5. It is the case of the plaintiffs that at the request of defendants, additional amount of Rs.50,000/- was paid through cheque 06.10.2007. Despite the payment of the amount, the construction was not completed. Due to which the plaintiffs lodged a complaint to the jurisdictional police and the defendant Nos. 1 and 2 were arrested by the police and later released on bail. The defendants had created unnecessary interference in the suit schedule property. Due to all these events, a legal notice was issued to the defendants, calling upon them not to interfere in the suit schedule properties to reconnect the water supply and the electricity which were disconnected and pay the damages. The plaintiffs demanded the defendants to refund the mortgage amount of Rs.3,50,000/- and damages of Rs.4,000/- per month from 18.07.2007, which was not adhered to, and hence a suit came to be filed by the plaintiffs against the defendants.



6. Upon service of summons, defendants appeared, filed the written statement and contested the matter and stated that plaintiffs borrowed a sum of Rs.3,75,000/- as hand loan from Late M.Dundaiah and defendant No.1 and had given two cheques for security purposes. Plaintiffs have paid only Rs.3,00,000/- and have not paid the remaining amount.

7. On the basis of the pleadings, the trial Court framed the following issues for consideration.

1. Whether the plaintiff proves that they have entered into possessor mortgage agreement dated 18.07.2007 with the deceased Dundaiah the original owner of the suit schedule property?

2. Whether the plaintiffs proves that they have paid a sum of Rs.3 lakhs to the deceased Dundaiah under the said possessor mortgage agreement towards the mortgage amount?

3. Whether the plaintiffs further proves that they have paid further a sum of Rs.50,000/- to the defendants No.1 and 2 on Dtd:06.10.2007 towards the said possessor mortgage agreement?

4. Whether the plaintiffs further prove that they are entitled for damages amounting to



*Rs.34,000/- at the rate of Rs.4,000/- p.m., from
Dtd: 18.07.2007 till the date of filing of the suit?*

5. *Whether the plaintiffs are entitled for the
relief as sought?*

6. *What order or decree?*

8. In order to substantiate the issues and prove their case, Plaintiff No.1 examined himself as PW1 and got marked Ex.P1 to Ex.P12 also examined two additional witnesses as PW2 and PW3. Whereas the defendant No.1 examined himself as DW1 and got marked Ex.D1 and Ex.D2 and additional witness was examined as Court witness as CW1.

9. On Basis of the materials placed on record both oral and documentary, the trial Court upon careful consideration of all the materials on record decreed the suit of the plaintiff and directed the defendant Nos. 1 to 3, 5 and 6 to pay an amount of Rs.3,65,000/- including the cost of Rs.15,000/- to the plaintiffs within two months.



10. Aggrieved by the judgment and decree of the trial Court, the defendants preferred an appeal before the first appellate Court in RA.No.86/2021. Notices were issued to the respondents/plaintiffs, who appeared before the Court and upon re-consideration and re-appreciation of the entire materials on once again, the first appellate Court formulated the following points for consideration.

1. Whether the judgment and decree of the Trial Court partly decreeing the suit in O.S.567/2008 is contrary to the facts, law and material available on record?

2. Whether the judgment and decree of the Trial Court dtd:17.02.2020 passed by the 3rd Addl. Civil Judge, Mysuru in O.S.567/2008 partly decreeing the suit of the Plaintiffs, do call for interference by this court?

3. What Order?

11. The first appellate Court upon re-appreciation of the materials on record, both oral and documentary and upon consideration of the arguments of the learned counsel for both the parties, did not find favour with the defendants agreed with the judgment and decree rendered



by the trial Court and so also the documents placed by the plaintiffs, by holding that the suit is filed for recovery of money, the plaintiffs were tenants, and the defendants having advanced the amount of Rs.3,50,000/- in three installments, the payment was established upon completion of the term, the amount not paid was appreciated on the basis of the evidentiary material on record and also came to the conclusion that nothing was produced on record by the defendants to show the refund of the amount to the plaintiffs and accordingly, dismissed the appeal preferred by the plaintiffs and confirmed the judgment and decree of the trial Court.

12. It is this judgment and concurrent finding of the two Courts that the defendants are aggrieved by; hence, the present appeal on the ground that the trial Court and the first Appellate Court have committed an illegality and error in not considering the materials placed on record and the contention of the defendant is that the signature appearing on the document, namely Ex.P1, differs from



the signatures found in Exs.D1 and D2. However, this aspect has not been properly examined by either of the Courts. Furthermore, the evidence of CW.1 - Bank Manager, who deposed that there exists a discrepancy between the signatures in Ex.D1-Signature of Late M.Dundaiah and Ex.D2-Pension payment order has not been properly appreciated.

13. It is the contention of the learned counsel for defendants that both the Courts have failed to appreciate the fact that the defendants had advanced a hand loan to the plaintiffs without the execution of any document and that any document now produced by the plaintiffs is fabricated and concocted. It is further contended by the learned counsel for defendants that Late M. Dundaiah had never agreed to execute any lease deed and had never received any amount from the plaintiffs, much less the amount as stated in the plaint.



13.1 It is further contended by learned counsel for defendants that both the Courts have failed to take into consideration the fact that the plaintiffs had borrowed a hand loan of ₹3,75,000/- from Late M. Dundaiah, out of which, only a sum of ₹3,00,000/- has been repaid by way of two cheques, leaving a balance of ₹75,000/- still due. These material aspects have not been considered by either of the Courts. Consequently, it is contended that on account of such non-consideration of crucial facts, coupled with the discrepancy in signatures, the substantial questions of law arises for consideration in the present matter.

14. Having heard learned counsel for appellants–defendants, this Court does not find any good ground or cogent reason to issue notice to the respondents–plaintiffs, as it is not inclined to accept the arguments advanced on behalf of the defendants. The Court also finds no justification to delve further into the matter and does



not discern any ground to frame the substantial questions of law for the following reasons:

Apparently, it is seen that Late M. Dundaiah was the owner of the suit schedule property. The defendants along with the said Late M. Dundaiah approached the plaintiffs and offered the property as security for a mortgage. The mortgage amount was fixed at ₹3,00,000/-, which was paid by the plaintiffs in two instalments through two cheques of ₹1,50,000/- each and the same were duly encashed. It was further promised by the defendants that the pending work in respect of the property would be completed; however, the said promise was not adhered to. Thereafter, upon completion of the term of the lease and mortgage, when the plaintiffs demanded return of the amount, the defendants refused to repay the same.

15. The plaintiffs have produced documentary evidence, which has been duly appreciated by the trial Court as well as the first Appellate Court. The defendants have taken a plea that the signature of Late M. Dundaiah



is not genuine and that the same has been forged and fabricated and further that it differs from the signatures found on documents marked as Exs.D1 and D2. When such a plea is taken, the burden lies upon the defendants to establish the same by cogent evidence before the trial Court. However, no such effort was made by the defendants before the trial Court.

16. On the contrary, the trial Court has duly considered the contentions raised by the defendants, including the dispute with regard to the signatures and has adverted to Section 73 of the Indian Evidence Act, 1872. Upon comparison with other admitted signatures available on record, the trial Court arrived at a conclusion in favour of the plaintiffs and accordingly, partly decreed the suit, placing reliance on the documentary evidence marked as Exs.P1 to P12. The very same aspect has been re-appreciated by the first Appellate Court, which, upon a reappraisal of the entire material on record, both oral and documentary, found no merit in the contentions of the



defendants and consequently, dismissed the appeal and confirmed the judgment and decree of the trial Court.

17. Section 100 of CPC deals with the Scope and powers of the Appellate Court. It is a no more *res integra* to state that the powers as contemplated under Section 100 CPC are very narrow and limited. This Court, in several catena of judgments, has held that the Appellate Court sitting in the second appeal is not required to appreciate the evidence on record unless there is perversity shown in the judgments rendered by the trial Court as well as the first Appellate Court. When two Courts have already considered the question of fact and the question of law to a large extent in detail, even if this Court finds third opinion on the opinions already expressed concurrently by both Courts, it is a general Rule that this Court should refrain from imposing its third opinion merely for the sake of interference when there is no cogent material placed on record.



18. The question of framing of substantial questions of law would depend upon if there is any illegality or perversity in the judgments rendered by the trial Court as well as the first appellate Court. Having considered the submissions of learned counsels for the parties and having perused the impugned judgments of both the Courts and having gone through the records, I do not find any perversity or illegality in the judgments rendered by both the Courts. The appellants have not made out any good ground for this Court to frame any substantial question of law, as no such question of law, in my opinion, exists to be framed to decide the case on hand. The reasons assigned and conclusion arrived at by both the Courts are just and proper.

19. In view of the above discussion and the well reasoned judgments rendered by both the Courts on the basis of the material placed on record, this Court does not find any good ground or cogent reason to frame any substantial questions of law for consideration or to delve



further into the matter, as none arises. Both the Courts have elaborately dealt with the matter, including the defence taken by the defendants with regard to the signatures in Ex.P1 not tallying with those in Exs.D1 and D2.

20. Accordingly, I pass the following:

ORDER

This appeal is ***dismissed*** at the stage of admission itself, as this Court does not find any good ground to formulate any substantial question of law.

In view of dismissal of the appeal, pending interlocutory application, if any, does not survive for consideration and the same pales into insignificance.

**Sd/-
(PRADEEP SINGH YERUR)
JUDGE**

RCK,CPN
List No.: 1 Sl No.: 29