



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1242 OF 2016 (SP)

BETWEEN:

1. SRI. G. C. SATHISH KUMAR
S/O. D.L. CHANDRASHEKARAIAH,
AGED ABOUT 40 YEARS,
OCCUPATION: MERCHANT,
RESIDENT OF KODI CAMP,
TARIKERE TOWN-577 528.

...APPELLANT

(BY SRI. RAVI B NAIK, SENIOR COUNSEL;
GNANESHA N I., ADVOCATE AND
K.B. MONISH, ADVOCATE)

AND:

1. SRI. T. C. VIJAYA KUMAR
S/O. CHANDRAPPA,
AGED ABOUT 50 YEARS,
2. KUMARI MONIKA
D/O. T.C. VIJAYAKUMAR,
AGED ABOUT 18 YEARS,
3. KUMARI MONISHA
D/O. T.C. VIJAYAKUMAR,
AGED ABOUT 18 YEARS,
4. KUMARI MOHITHA





D/O. T.C. VIJAYAKUMAR,
AGED ABOUT 14 YEARS,
RESPONDENT No.4 MINOR,
REPRESENTED BY FATHER AND NATURAL GUARDIAN,
SRI. T.C. VIJAYA KUMAR,
ALL ARE RESIDENTS OF GALIHALLI,
TARIKERE,
CHIKMAGALURU DISTRICT-577228.

...RESPONDENTS

(BY SRI. VIGHNESHWAR S SHASTRI, SENIOR COUNSEL;
SANTHOSH R NELKUDRI, ADVOCATE FOR R1)

(R4 IS MINOR REP BY R1)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 15.04.2016 PASSED IN
RA.NO.14/2013 ON THE FILE OF THE II ADDL. DISTRICT
JUDGE, CHIKKAMAGALURU, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 15.12.2012
PASSED IN OS.NO.57/2007 ON THE FILE OF THE SENIOR CIVIL
JUDGE AND PRL.JMFC., TARIKERE.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI



ORAL JUDGMENT

1. This Regular Second Appeal is filed by the appellant challenging the judgment and decree dated 15.04.2016 passed in R.A.No.14 of 2013 by the learned II Additional District Judge, Chikkamagaluru and the judgment and decree dated 15.12.2012 passed in O.S.No. 57 of 2007 by the learned Senior Civil Judge and Prl.JMFC., Tarikere, refusing to grant a relief for specific performance of contract.
2. For convenience, the parties are referred to based on their rankings before the trial Court. The appellant was the plaintiff, and respondents were the defendants.
3. Brief facts, leading rise to the filing of this appeal are as follows:
4. The plaintiff filed a suit against the defendants for specific performance of a contract. It is the case of the plaintiff that the defendants are the absolute



owners of the suit schedule property and they agreed to sell the suit schedule property for a consideration of ₹8,60,000/- and executed a sale agreement on 09.12.2005. Defendant No.1 on the day of execution of sale agreement received ₹1,00,000/- from the plaintiff for himself and acting on behalf of his minor children and agreed to accept another sum of ₹1,00,000/- by the end of January 2006, and the balance consideration of ₹ 6,60,000/- was agreed to be paid to the plaintiffs at the end of April 2006, after which, the absolute sale deed would be conveyed by the defendants in favour of him.

5. It is contended that the defendants have borrowed a loan from the bank and financial institutions but not discharged the debts. Defendant No.1 requested the plaintiff to extend the period of registration of sale deed and executed a renewal of agreement. Defendant No.1 had not disclosed the debts due to the Karnataka Khadi Gramodyoga Rural Industries,



Chikkamagalur on the schedule property and also not disclosed the mortgaging of the suit schedule property to the Karnataka State Financial Corporation, Chikkamagaluru. The plaintiff issued a legal notice to the Karnataka State Financial Corporation (for short 'KSFC'), Chikkamagaluru and Khadi Gramodyoga Rural Industries for disclosing the debts over the suit schedule property borrowed by defendant No.1. Only Khadi Gramodyoga Rural Industries responded to the notice, however, the KSFC did not respond to the legal notice issued by the plaintiff. The plaintiff demanded defendant No.1 to clear the outstanding dues of both the financial institutions. The defendants have not cleared the debts due to creditors. The plaintiff to show that he was ready and willing to perform his part of contract issued a legal notice calling upon the defendants to receive the balance sale consideration amount and execute the register sale deed. The defendants



replied to the legal notice denying the execution of a sale agreement in favour of the plaintiff. Hence, a cause of action arose for the plaintiff to file a suit for specific performance of a contract. Accordingly, prays to decree the suit.

6. The defendants filed a written statement denying the averments made in the plaint and also denied the execution of a sale agreement in favour of the plaintiff and the receiving of earnest money. It is contended that the plaintiff has filed two private complaints before the Additional JMFC Court, Tarikere regarding the transaction took place between the plaintiff and defendant No.1. The plaintiff has received two blank cheques from defendant No.1 towards the repayment of the loan amount borrowed by defendant No.1 from the plaintiff. It is contended that transaction between the plaintiff and defendant No.1 is a loan transaction and not a sale transaction. Hence, there is no cause of



action to file the suit. The cause of action shown in the plaint is false and imaginary. Accordingly, prays to dismiss the suit.

7. The trial Court, based on the rival pleadings of the parties, framed the following issues for consideration:

- 1) *Whether the plaintiff proves that defendants have agreed to sell the suit schedule property to him under an agreement dated 09.12.2005 for Rs.8,60,000/- and received Rs.1,00,000/- as part consideration amount?*
- 2) *Whether the plaintiff proves that he is ready and willing to perform his part of the contract?*
- 3) *Whether the defendant proves that the suit of the plaintiff is bad for non-joinder of necessary parties?*
- 4) *Whether the plaintiff is entitled for the relief of specific performance of contract as prayed for?*



5) *Whether the plaintiff proves that he is entitled to recover Rs.1,60,000/- with interest @ 18% from the date of receipt of the amount till the payment by way of damages from the defendants alternatively as prayed for?*

6) *To what decree or order?*

8. The plaintiff, to substantiate his case examined himself as PW1 and marked two documents as Exhibit P1 and Exhibit P2. In rebuttal, defendant No.1 examined himself as DW1, and marked 10 documents as Ex.D1 to D10.
9. The trial Court, after recording the evidence, hearing both sides and after assessing the verbal and documentary evidence answered issue Nos. 1 and 2 in the affirmative, issue No. 3 do not arise for consideration, issue No. 4 in the negative, issue No.5 partly in the affirmative, and issue No.6 as per the final order. The suit of the plaintiff was partly decreed vide judgment dated 15.04.2016 and



directed the defendants to refund the earnest money, and dismissed the suit for specific performance of a contract.

10. The plaintiff, aggrieved by the dismissal of suit for specific performance of a contract in OS No. 57 of 2007, preferred an appeal in RA No. 14 of 2013 on the file of the learned II Additional District Judge, Chikkamagaluru.

11. The first appellate court, after hearing the learned counsel for the parties, framed the following points for consideration:

1) *Whether the appellant/plaintiff proves that the judgment and decree of the trial Court is opposed to law, facts, evidence on record and liable to the dismissed?*

2) *What order?*

12. The first appellate court, after re-appreciating the entire evidence on record, answered point No.1 in the negative, and point No.2 as per the final order.



The appeal was dismissed vide judgment dated 15.04.2016, and confirmed the judgment and decree passed in O.S.No. 57 of 2007.

13. The plaintiff, aggrieved by the impugned judgments, filed this Regular Second Appeal.
14. Heard Sri. Ravi B Naik, learned senior counsel for the plaintiff, and Sri. Vighneshwar S Shastri, learned senior counsel for the defendants.
15. Learned Senior counsel for the plaintiff submits that the trial Court has answered issue Nos. 1 and 2 regarding a finding that the plaintiff has proved the execution of a sale agreement by defendant No.1 on behalf of himself and on behalf of the other defendants. Defendant No.1 has received the earnest money of ₹1,60,000/- and he submits that defendant No.1 has suppressed that he had borrowed loan from the financial institutions. He submits that the plaintiff issued a legal notice to the financial institutions and



also to defendant No.1 to clear the debts, to receive the balance sale consideration amount and execute a registered sale deed in his favour. He submits that both the courts below have concurrently recorded a finding of fact that the plaintiff has proved the sale agreement and also readiness and willingness, but the trial Court has dismissed the suit for specific performance of a contract only on the ground that the plaintiff has purchased a portion of the property in a public auction by the KSFC. Hence, by exercising the discretion under Section 20, dismissed the suit for specific performance of a contract.

16. He submits that both the courts below have not properly exercised the judicial discretion vested under Section 20 of the specific relief Act (Pre-Amendment). He submits that the defendants have not taken the contention in the written statement regarding the fact that the plaintiff has taken an unfair advantage over the defendants and further he



also submits that the defendants have not pleaded in case if the relief of decree for specific performance of a contract is granted, the defendants would be put to hardship. He submits that the trial Court, without considering the ingredients of Section 20 of the specific relief Act, has committed an error in dismissing the suit for specific performance of a contract. To buttress his arguments, he has placed a reliance on the judgment of the Hon'ble Apex Court in the case of **Basavaraj vs. Padmavathi and others** and another reported in **2023 (4) SCC 239**, wherein similar facts are involved in the said case. Hence, on these grounds, he prays to allow the appeal.

17. *Per contra*, learned Senior Counsel for the defendants submits that the defendants never agreed to sell the suit schedule property as alleged by the plaintiff in the plaint, and the transaction between the plaintiff and defendant No.1 is a loan



transaction, and he also submitted that the suit schedule property is the ancestral property of the defendants, and defendant No.1 alone had no right to execute alleged agreement of sale. He submits that the plaintiff created the said alleged agreement of sale and he submits that the alleged agreement of sale was executed as a security for the repayment of the loan amount. He also submitted that father had no right to alienate the property of a minor and he submits that no permission has been obtained by defendant no. 1 as per Section 8(2) of the Hindu Minority and Guardianship Act. Hence the alleged transaction entered between the defendant No.1 and the plaintiff is not binding on the minors. He also submits that the plaintiff has failed to prove that the plaintiff was ready and willing to perform his part of a contract. He also submits that the plaintiff has not complied with the requirements of Section 16(C) of the Specific Relief Act, and to buttress his



arguments, he has placed a reliance on the judgment of the Hon'ble Apex Court in case of **C.S. Venkatesh vs. A.S.C. Murthy(D) by LRs. and others** reported in **2020 (3) SCC 280** and he also submitted that the first appellate Court, considering the minor's interest has rightly confirmed the judgment and decree passed by the trial court. Hence, on these grounds, he prays to dismiss the appeal.

18. This Court, vide order dated 24.04.2025, framed the following substantial questions of law:

i. Whether the plaintiff proves that the impugned judgments passed by the courts below are arbitrary and erroneous when both the courts below have concurrently recorded their finding that appellants have proved execution of a sale agreement and readiness and willingness and failed to decree the suit for specific performance of a contract?



ii. Whether the plaintiffs prove that both the courts below have committed an error in not properly exercising judicial discretion under Section 20 of the Specific Relief Act?

Regarding Substantial question of law No.1:

19. The plaintiff filed a suit for specific performance of a contract contending that the defendants are the absolute owners of the suit schedule property and they agreed to sell the suit schedule property for a valuable consideration of ₹8,60,000/-. Accordingly the plaintiff paid a sum of ₹1,60,000/- on different dates towards the sale consideration amount and defendant No.1 executed a sale agreement on 09.12.2005. It was agreed that the balance sale consideration amount to be paid at the time of registration of the sale deed and the sale to be concluded at the end of April 2006. It is contended that the defendant No.1 borrowed a loan by mortgaging the suit schedule property in favour of



the financial institutions. The plaintiff issued legal notices to the financial institutions seeking for the particulars about the outstanding dues. Khadi Gramodyoga Rural Industries replied to the legal notice, and KSFC did not respond to the legal notice. After the receipt of reply from one of the financial institutions, the plaintiff to show his readiness and issued a legal notice calling upon the defendant No.1 to receive the balance sale consideration amount, and to execute the registered sale deed.

20. Defendant No.1 replied to the legal notice and did not comply with the demand made in the legal notice. The plaintiff to substantiate his case examined himself as PW.1. He reiterated the plaint averments in the examination-in-chief and produced the documents. Ex.P1 is the original sale agreement executed by defendant No.1 in favour of the plaintiff, agreeing to sell the suit schedule property for a



valuable consideration. Ex.P2 is the extension of the agreement (shara).

21. During the cross examination, it is suggested to PW.1 that the transaction between the plaintiff and defendant is a loan transaction, and not a sale transaction and the said document is executed as a security towards a loan amount and not as an agreement of sale. The said fact has been denied by PW.1.
22. Defendant No. 1 examined himself as DW.1 and he reiterated the written statements averments in the examination-in-chief and produced the documents. Ex.D1 is a certified copy of PCR No.48 of 2006. The defendant deposed that the plaintiff is the money lender, and the transaction between the plaintiff and the defendant is a loan transaction and not a sale transaction. The defendant has produced the affidavit marked as Ex.D2. Ex.D3 is the legal notice dated 27.11.2006 issued by the plaintiff to the defendants



and Ex.D4 is the reply notice dated 07.12.2006 issued on behalf of defendant No.1 to the plaintiff. In reply, defendant No.1 has admitted the fact regarding the execution of sale agreement in favour of the plaintiff and receipt of earnest amount .

23. From the perusal of the records produced by both the parties, it is an undisputed fact that the defendant No.1 is the absolute owner of the suit schedule property and he agreed to sell the suit schedule property in favour of the plaintiff for a valuable consideration, and accordingly he received the earnest money and executed a sale agreement dated 09.12.2005 and also Shara dated 28.04.2006.

24. The courts below have concurrently recorded a finding that the plaintiff has proved the execution of a sale agreement in favour of the plaintiff and also the plaintiff has proved that he was ready and willing to perform his part of contract. On the other hand, the defendants have failed to perform their part of



contract. The trial court has dismissed the suit for specific performance of the contract only on the ground that under the sale agreement possession was not delivered to the plaintiff by the defendants apart from that, already 7 years was lapsed from the date of agreement and also on the ground that during the pendency of the suit the plaintiff had purchased the portion of property from the Karnataka State Financial Corporation.

25. To consider the case on hand, it is necessary to examine Sub-section (2) of Section 20 of the Specific Relief Act (Pre-amendment) which reads as follows:

20. Discretion as to decreeing specific performance.—

(1)The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by



judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

26. From the above, it is clear that some of the principles
the court should take into consideration while



exercising discretion. The factors to be considered while exercising discretion include hardship to the defendant/seller which he did not foresee, hardship to the plaintiff/purchaser in case of non-performance, or whether the contract, even when not void, was entered under the circumstances that make the enforcement of specific performance inequitable, or whether the plaintiff has done substantial acts or suffered losses as a consequence of the contract, and the conduct of the parties, including that of the defendant/seller and other circumstances under which the contract was entered are such that they give an unfair advantage over the defendant/seller. The Court should examine whether the plaintiff/purchaser had, in fact, performed his part of the contract, and if so, how and to what extent, and in what manner he has performed, and whether such performance was in conformity with the terms of the contract, the status of the parties, and whether the



plaintiff/purchaser is a speculator in the property, who buys and sells properties, and whether his conduct reflects and attempt to gain on account of the rise in the price of the property, hoping that the delay in payment of full consideration would go to his advantage, will be a relevant consideration.

27. From the perusal of the records, it is clear that the defendants have not pleaded in the written statement that, in case, if specific performance is granted, the defendants would be put to hardship. Both the courts below have concurrently recorded a finding of fact that the plaintiff has proved the execution of a sale agreement, and also the readiness and willingness. However, the trial Court has committed an error in dismissing the suit of the plaintiff for specific performance of a contract. The plaintiff has also paid the earnest money and the plaintiff was always ready and willing to perform his part of contract. The defendants have admitted the



execution of an agreement to sell, and receipt of the advance sale consideration amount.

28. As observed above, the courts below given a finding that the plaintiff has proved the execution of a sale agreement, and receipt of advance sale consideration amount though the defendants contended that it is a loan transaction and not a sale transaction. Admittedly, Ex.P1 is the agreement of sale and it is reduced into writing. To contradict the terms and conditions of instrument, the oral evidence is inadmissible in evidence as per Section 92 of the Indian Evidence Act. It appears that both the courts below have heavily relied upon the fact that during the pendency of the suit, portion of the property was sold by KSFC, wherein defendant No.1 has obtained a loan from the KSFC, and could not repay the said amount. Rest of the said property was purchased by the plaintiff in the auction.



29. The trial Court has not properly exercised the discretion under Section 20 of the Special Relief Act. Section 20 of the Special Relief Act is a discretionary relief and it has to be exercised judicially. Admittedly in the instant case, the trial Court has not exercised the discretion properly.
30. The Learned counsel for the plaintiff has placed a reliance on the judgment of the Hon'ble Apex Court in the case of ***Parswanath Saha v. Bandhana Modak (Das) and Another*** reported in ***2024 SCC Online SC 3834*** wherein the Hon'ble Apex Court held that in para 29 which reads as follows :

"29. Then again, it is necessary to remember that mere rise in price subsequent to the date of contract or in advocacy of price is not to be treated as a hardship entailing Refusal of specific performance of a contract. Further, the hardship should be one not foreseen by the party and should be collateral to the contract. In sum, it is not just one factor or two that is relevant for consideration. But it is the some



total on various factors which is required to enter into the judicial verdict."

31. The trial Court has not framed any issues regarding the hardship that may be caused to the defendants. It is also pertinent to note that the first appellate court concurred with the trial Court on all the issues without application of mind. There is nothing to indicate in the pleadings or evidence that there was a hardship of any kind which the defendants did not foresee at the time they executed the sale agreement or that the hardship which the defendants would face as the result of an act of the plaintiff based on his super winning acts. The doctrine of comparative hardship has been thus statutory recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous for the defendants or improvements in its nature, shall not constitute an unfair advantage to



the plaintiff or the defendants, or unforeseeable hardship on the defendants.

32. Both the courts below have committed an error in refusing to grant a relief of specific performance of a contract. Thus, the plaintiff is entitled to relief of specific performance of a contract. In view of the above discussion, I answer the Substantial question of law No. 1 in the affirmative.

Regarding Substantial question of law No.2 :

33. I have already recorded the finding that both the courts below have committed an error in declining to grant a relief of specific performance of a contract even though the defendants have admitted regarding the execution of a sale agreement, receipt of advance sale consideration amount and though readiness and willingness was proved. The Hon'ble Apex Court in the case of P. Ramasubbamma V Vs. Vijaylakshmi and others in Civil Appeal No.2095 of



2022 disposed of on 11.04.2022, held that, once the execution of agreement to sale and the payment of advance substantial sale consideration is admitted by vendor, nothing further is required to be proved by the vendee. Admittedly, the defendants produced no documents to prove that the transaction is a loan transaction and not a sale transaction. The trial Court has not properly exercised the discretion under Section 20 of the Specific Relief Act, and committed an error in declining to grant a relief for specific performance of a contract. The plaintiff is entitled to relief or specific performance of a contract.

34. In view of escalation in the market value of the suit schedule property the plaintiff is directed to pay an additional consideration of Rs.60,00,000/-, and deposit the said amount before the trial Court within a period of two months from today. In view of the above discussion, I answer substantial question of law No. 2 in the affirmative.



35. In view of the above discussion, I proceed to pass the following order.

ORDER

- i. The Regular Second Appeal is ***allowed.***
- ii. The impugned judgments and decrees passed by the courts below are set aside.
- iii. The suit of the plaintiff for a specific performance of contract is hereby decreed.
- iv. In view of increase in the market value of the suit schedule property the plaintiff is directed to pay an additional consideration of Rs.60,00,000/-, and deposit the said amount before the trial Court within a period of two months from today. Thereafter, the defendant is directed



to execute a registered sale deed within a period of two months, failing which, the plaintiff is entitled to execute the registered sale deed by appointing the court commissioner by due process of law.

- v. The office to draw decree accordingly.
- vi. Pending IA(s), if any, shall stand disposed off accordingly.

Sd/-
(ASHOK S.KINAGI)
JUDGE

sks, ssb