IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

RFA NO. 1520 OF 2007 (SP)
C/W
RFA NO. 2287 OF 2023 (POS)

IN RFA NO.1520/2007
BETWEEN:

1 . ELSIE MARIE CONCESSOR
@ E.C. KAMATH
W/O. LATE HENRY PETER CONCESSO
AGED 81 YEARS

SINCE DEAD BY LR
APPELLANT NO.2
ALREADY ON RECORD

2 . ROY FRANCIS CONCESSOR
S/O. LATE HENRY PETER CONCESSO
AGED 45 YEARS
R/AT ECHICOTE
RED BUILDING
KANKANADY
MANGALORE - 575 002.

...APPELLANTS

(BY SRI. G. BALAKRISHNA SHASTRY, ADVOCATE)

AND

1 . D PADMANABHA KUMAR
S/O LATE NARAYANA
ADULT
R/AT VEERAPPANNA COTTAGE

RED BUILDING, KANKANADY
MANGALORE - 575 002.

...RESPONDENT

(BY SRI. B.L. ACHARYA, SENIOR ADVOCATE FOR
SMT. PUSHPALATHA, ADVOCATE FOR C/R)

THIS RFA IS FILED U/S.96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 16.12.2006 PASSED IN O.S.NO.323/1995 ON THE FILE OF THE PRL. CIVIL JUDGE (SR.DN) AND CJM, MANGALORE, DECREEING THE SUIT FOR SPECIFIC PERFORMANCE OF AGREEMENT.

IN RFA NO. 2287/2023
BETWEEN:

1 . ELSIE MARIE CONCESSO
ALIAS E.C. KAMATH
W/O LATE HENRY PETER CONCESSO
AGED 81 YEARS
R/AT ECHICOTE RED BUILDING
KANKANADY
MANGALORE-575 002.

2 . MR. ROY FRANCIS CONCESSO
S/O LATE HENRY PETER CONCESSO
AGED 45 YEARS
R/AT ECHICOTE, RED BUILDING
MANGALORE-575 002
APPELLANT NO.2 R/BY GPA HOLDER
MRS. NIRMALA VERONICA CONCESSO
AGED ABOUT 57 YEARS
R/O DOOR NO. 3-119, ECHICOTE
RED BUILDING ROAD, NAGORI
KANKANADY, MANGALORE, D.K.-575 002.

...APPELLANTS

(BY SRI. M.P. SHENOY, ADVOCATE FOR APPELLANT NO.1;
SRI. G. BALAKRISHNA SHASTY, ADVOCATE FOR
APPELLANT NO.2)

AND

1 . D. PADMANABHA KUMAR
S/O LATE NARAYANA
AGE MAJOR
R/AT VEERAPPANA COTTAGE
RED BUILDING, KANKANADY
MANGALORE-575 002.

…RESPONDENT

(BY SRI. B.L. ACHARYA, SENIOR ADVOCATE FOR
SMT. PUSHPALATHA, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 16.12.2006 IN O.S.No. 46/2006 PASSED BY PRINCIPAL CIVIL JUDGE (SR.DVN.) AND C.J.M., MANGALORE, DISMISSING THE SUIT FOR RECOVERY OF POSSESSION.

THESE RFAs HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.02.2026, THIS DAY JUDGMENT WAS PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

C.A.V. JUDGMENT

Captioned appeals are by the defendants assailing the decree for specific performance granted in O.S.No.323/1995 and dismissal of suit for possession by the defendants in O.S.No.46/2006.

2. For the sake of convenience, the parties are referred to as per their rank before the trial Court in O.S.No.323/1995.

3. The facts leading to the case are as under:

Plaintiff instituted a suit for specific performance of contract in O.S.No.323/1995 based on an agreement for sale dated 4.12.1992 alleging that defendant agreed to sell 10 cents for a sale consideration of Rs.2,41,000/- and in part performance, defendants delivered actual possession of schedule A property and further permitted plaintiff to make improvements in the suit schedule property. Plaintiff further alleged that he paid an advance consideration of Rs.15,000/- and in all has paid Rs.1,30,000/- on various dates and the balance amount of Rs.96,000/- was agreed to be paid as on the date of execution of sale deed. Plaintiff further specifically pleaded that he is ready and willing to perform his part of the contract.

4. Per contra, defendants upon receipt of summons entered appearance and filed written statement and stoutly denied the entire averments made in the plaint filed in O.S.No.323/1995. Defendants, on the contrary, seriously disputed the alleged agreement on the premise that it is concocted and a fake document. Defendants did admit that there was an oral agreement between plaintiff and defendants and as per the oral agreement, defendants had agreed to sell 6 cents and had received a sum of Rs.1,44,000/- from the plaintiff in installments. The defendants further alleged that plaintiff was a big nuisance to his earlier landlord and was in arrears of rent and when his earlier landlord was about to evict him, he forcibly entered into the property and started altering the shed. When defendant No.1 noticed it, she rushed to the suit schedule property and when enquired, plaintiff assaulted her, which led to registration of complaint. Defendants therefore, contended that except shed, defendants are in

exclusive possession of the remaining portion of the land and hence, sought for dismissal of the suit.

5. Defendants in O.S.323/1995 also filed a suit in O.S.46/2006 seeking permanent injunction and accordingly, sought possession of schedule B property.

6. Both the suits were clubbed together and common evidence was recorded. Trial Court on appraisal of the oral and documentary evidence held that plaintiff has succeeded in proving the agreement for sale dated 4.12.1992 and defendants had put the plaintiff in possession of the schedule A property and further, plaintiff was permitted to make improvements on the suit schedule property. While answering Issue No.3 in O.S.323/1995 partly in the affirmative, the suit for specific performance was decreed and the defendants are directed to execute the sale deed by receiving balance sale consideration within a period of two months. Consequently, the suit filed by the defendants in O.S.No.46/2006 was dismissed.

7. The defendants have questioned the decrees rendered in both the suits. RFA.1520/2007 is filed challenging the decree for specific performance granted in O.S.No.323/1995. The connected RFA.No.2287/2023 is filed assailing the dismissal decree rendered in O.S.No.46/2006.

8. Learned counsel appearing for the defendants, reiterating the grounds urged in the memorandum of appeal in RFA No.1520/2007, would vehemently contend that the alleged agreement of sale dated 04.12.1992 (Ex.P1) is a concocted and fabricated document brought into existence by the plaintiff, who is admittedly a practicing advocate. He would submit that in the absence of examination of independent attesting witnesses to Ex.P1, the serious challenge mounted by the defendants has not been properly appreciated by the Trial Court.

9. Placing strong reliance on Ex.D1 dated 29.04.1993, a letter written by the plaintiff's friend Veera Pinto, learned counsel would argue that though the suit

agreement is alleged to have been executed on 04.12.1992, the said letter written barely four months thereafter does not even whisper about the existence of such an agreement. On the contrary, according to him, the tenor of Ex.D1 probabilises the defence version that there was only an oral agreement to sell 6 cents.

10. He would further draw attention to Ex.P61 to contend that the plaintiff's case regarding purchase of an additional 4 cents with a stipulation of 13% interest is unsupported by pleadings and inconsistent with the recitals in Ex.P1. Referring to Ex.P82 dated 09.12.1994, a letter addressed by the plaintiff to the jurisdictional Tahsildar seeking transfer of RTC, learned counsel would argue that the plaintiff projected himself as owner without seeking enforcement of Ex.P1, which is indicative of conduct inconsistent with a subsisting agreement. The said letter, written nearly 1½ years after the alleged agreement, is also relied upon to contend that the plaintiff himself acted contrary to the stipulated terms.

11. Learned counsel would also place reliance on Ex.P3, legal notice issued by the plaintiff, and submit that there is no reference therein to Ex.P1, thereby casting serious doubt on the very existence of the written agreement. According to him, the material on record demonstrates that the plaintiff had paid only Rs.1,44,000/- towards purchase of 6 cents and Rs.1,000/- towards the well, and nothing more.

12. Heavy reliance is placed on Exs.P40 to P45. Referring to these documents, learned counsel would submit that the defence version appears more probable. Defendant No.1, has consistently admitted that she had orally agreed to sell only 6 cents. The purchase of stamp papers worth Rs.14,400/- which corresponds to 10% stamp duty on Rs.1,44,000/- fortifies the defence that the agreed sale consideration was Rs.1,44,000/- for 6 cents.

13. It is contended that if Ex.P1 had already been executed on 04.12.1992 on proper stamp paper for sale of

10 cents for Rs.2,41,000/-, there was no necessity for subsequent purchase of stamp papers worth Rs.14,400/- as evidenced under Exs.P40 to P45. This circumstance, according to the defendants, demolishes the plaintiff’s version and renders the defence more probable.

14. Learned counsel would further contend that Ex.P1 contains a forfeiture clause stipulating consequences in the event of failure to perform within the agreed time. The legal notice was admittedly issued on 02.06.1995 and the suit was instituted on 02.12.1995, well beyond the stipulated period. Therefore, even assuming Ex.P1 to be true, the agreement stood terminated by operation of its own terms, and the plaintiff cannot seek specific performance contrary to the contractual stipulation.

15. On the aspect of readiness and willingness, learned counsel would argue that the Trial Court erred in answering Issue No.5 in the affirmative. He would draw attention to Exs.D1 to D28 in O.S.No.46/2006 to

demonstrate that the plaintiff had purchased a car from defendant No.1 for Rs.20,000/- and had struggled to pay the said amount, making payments in small fractions. This financial conduct, according to him, clearly negatives the plaintiff's capacity and readiness to pay the balance sale consideration of Rs.96,000/- as required under Section 16(c) of the Specific Relief Act, 1963. Hence, the finding recorded by the Trial Court on readiness and willingness is assailed as perverse and contrary to evidence.

16. Upon hearing the learned counsel for the parties and on re-appreciation of the entire oral and documentary evidence on record, the following points arise for consideration:

> *"(i) Whether the finding of the Trial Court, while answering Issue No.1 in the affirmative in O.S.No.323/1995, holding that the plaintiff has proved execution of the agreement of sale dated 04.12.1992 (Ex.P1) in respect of 10 cents for a total consideration of Rs.2,41,000/-, suffers from perversity?*

(ii) Whether the defendants have established that the transaction between the parties was only an oral agreement for sale of 6 cents for Rs.1,44,000/-?

(iii) Whether the finding of the Trial Court that the plaintiff has proved his continuous readiness and willingness to perform his part of the contract, as mandated under Section 16(c) of the Specific Relief Act, 1963, is contrary to the evidence on record, particularly Exs.P22 to P28, and therefore perverse?

(iv) Whether the Trial Court has exercised its discretion judiciously in granting the equitable relief of specific performance for 10 cents, ignoring the rebuttal evidence, including Ex.D1 and Exs.P40 to P45?

(v) Whether the impugned judgment and decree warrant interference by this Court in exercise of appellate jurisdiction under Section 96 CPC?

(vi) Whether the defendants are entitled to recovery of possession of the remaining 4 cents, as claimed in the connected suit O.S.No.46/2006?

(vii) What order?"

Finding on Point No.(i)

17. The entire edifice of the plaintiff's claim rests upon Ex.P1, the alleged agreement for sale dated 04.12.1992. The suit for specific performance, being one founded on a written contract, necessarily hinges upon the plaintiff establishing the due execution, authenticity and enforceability of the said document. The burden squarely lies on the plaintiff to prove not only that Ex.P1 was executed by the defendants, but also that it embodies the true and concluded terms of the contract between the parties.

18. It is trite that when execution of a document is specifically denied, mere marking of the document as an exhibit does not dispense with the requirement of strict proof. The plaintiff must establish execution in the manner known to law, particularly when the defendants have taken a categorical plea that the document is concocted and

fabricated. The degree of scrutiny in a suit for specific performance is all the more rigorous, having regard to the equitable nature of the relief sought.

19. In the present case, the defendants have unequivocally denied execution of Ex.P1 insofar as it relates to sale of 10 cents for a total consideration of Rs.2,41,000/- However, they have candidly admitted that there was an oral agreement to sell 6 cents for a total consideration of Rs.1,44,000/-, which amount, according to them, has been substantially received. This partial admission assumes significance. The defence is not one of total denial of transaction, but a specific and consistent stand that the transaction was confined to 6 cents and not 10 cents as alleged by the plaintiff. Therefore, the controversy narrows down to whether Ex.P1 truly represents the concluded contract or whether it is an embellishment over and above the admitted oral understanding.

20. In this backdrop, certain surrounding circumstances assume crucial importance. One such significant document is Ex.D1 dated 29.04.1993, which was marked on confrontation. This document came into existence barely four months after the alleged execution of Ex.P1 dated 04.12.1992. If, in fact, there existed a written agreement for sale of 10 cents for Rs.2,41,000/-, one would legitimately expect a reference to such an agreement in subsequent contemporaneous correspondence between the parties or persons acting on their behalf.

21. However, a careful perusal of Ex.D1 reveals that there is absolutely no reference to the alleged agreement dated 04.12.1992. There is no mention of sale of 10 cents, nor any allusion to a written contract embodying such terms. On the contrary, the tenor of Ex.D1 probabilises the defence version that the understanding between the parties was limited and oral in nature. The silence of Ex.D1 regarding Ex.P1, particularly when it was written within a

short span of time after the alleged agreement, casts a serious cloud over the genuineness of the plaintiff's version.

22. Having regard to the centrality of Ex.D1 in assessing the rival contentions, this Court deems it appropriate to extract the relevant contents of Ex.D1, which reads as under:

> *"Aunty (E.C.kamath) this letter comes from Veera, I am keeping well, how are you? I thought of writing to you earlier, but later thought that since I was coming in April to Mangalore, I would meet you personally. But I cannot come right now Aunty - I may come by November.*
>
> *Aunty, If we were to start a new life, it will be in your compound. Panna has told me a lot about you, that you are well educated and manage a good family.*
>
> *Aunty, Panna must have already told you about us and that there is none in my family, who will help us in this matter. We believe that you will definitely help us in this matter. All we want is our parents blessings and to get married publicly in a hall, and for this purpose we are praying to god every day.*
>
> *Aunty, as soon as Panna arrived on the 29th, I phoned you up and later I tried to phone you up*

several times same night I rang you up, the phone was ringing but none picked it up. Then your phone went dead. The things you had requested for, Panna will give you.

Aunty, after my arrival there, let us register the plot. Till then, Panna and myself will try and give you as much money as possible.

We want 10 cents of land, but first we pay you for only 6 cents. After our you have promised to accommodation, thanks for it. We will try to build a as early as possible. (sic.)

Aunty, with this letter Panna and are sending you Rs.16,000/-. Since Panna has come to Bahrain, I have spent lots of money. (sic.)

Aunty, panna was very happy I'll try my best to come down to Mangalore as early as possible.

Aunty you will definitely help us wont you? You will surely reply to my letter isnt' it? The rest of the news Panna will tell you.

Your Loving,
Mrs. Panna

534 997
Joz Beauty Parlour

Miss Veera Pinto
C/O Gulmar,
P.O.Box No.10189
MANAMA-327
BAHRAIN."

On a careful reading of the contents of Ex.D1, this Court finds considerable force in the defence version. The author of Ex.D1, namely Veera, demonstrates clear acquaintance with both the plaintiff and defendant No.1, and the communication is written at an undisputed point of time subsequent to the alleged execution of Ex.P1 dated 04.12.1992. Significantly, the negotiations and deliberations reflected in Ex.D1 pertain only to 6 cents of land.

23. This circumstance assumes great importance. If Ex.P1 had indeed been executed on 04.12.1992 for sale of 10 cents for a total consideration of Rs.2,41,000/-, there would have been no occasion, within a span of four months, to refer to the transaction as one confined to 6 cents. Equally significant is the total absence of any reference in Ex.D1 to the alleged written agreement dated 04.12.1992. The tenor of the letter unmistakably proceeds on the footing that the transaction was limited to 6 cents and does

not even remotely suggest the existence of a concluded written agreement for 10 cents.

24. This omission is not trivial or inconsequential. In matters of this nature, contemporaneous correspondence carries substantial evidentiary value. The silence of Ex.D1 regarding Ex.P1, particularly when the letter was written after the alleged execution of the agreement, creates a serious dent in the plaintiff's case. On the contrary, the contents of Ex.D1, marked on confrontation, probabilise the defence that the agreement was oral and confined to 6 cents, and thereby cast a grave doubt on the very existence of Ex.P1 in the form projected by the plaintiff.

25. The next crucial circumstance which cannot be overlooked is found in Exs.P42 to P45. These documents disclose purchase of stamp papers worth Rs.14,400/-. The evidence on record indicates that the prevailing stamp duty at the relevant point of time was 10% of the sale consideration. If so, stamp duty of Rs.14,400/- would

correspond precisely to a sale consideration of Rs.1,44,000/-.

26. This exact mathematical co-relation strongly supports the defendants' plea that the agreed extent was 6 cents for a total consideration of Rs.1,44,000/-. If, as contended by the plaintiff, Ex.P1 had already been executed on 04.12.1992 for a consideration of Rs.2,41,000/- relating to 10 cents, there would have been no necessity for subsequent purchase of stamp papers corresponding to Rs.1,44,000/-. The subsequent purchase of stamp papers worth Rs.14,400/- is wholly inconsistent with the plaintiff's case and substantially fortifies the defence version. This circumstance, when read in conjunction with Ex.D1, further erodes the credibility of Ex.P1.

27. Yet another material circumstance is the failure of the plaintiff to examine the independent attesting witnesses to the alleged agreement of sale. When execution of a document is specifically denied and allegations of

fabrication are made, the burden on the propounder to prove execution assumes greater rigour. In a transaction involving substantial immovable property and considerable sale consideration, non-examination of attesting witnesses assumes serious evidentiary significance.

28. The plaintiff, being a practicing advocate, is presumed to be well aware of the legal necessity of proving execution through cogent and reliable evidence. The omission to examine the attestors, without any satisfactory explanation, compels this Court to draw an adverse inference. The plaintiff cannot expect the Court to decree a suit for specific performance merely on the strength of a disputed document, without discharging the burden cast upon him.

29. The next aspect that merits close scrutiny is the comparison of the disputed signature of defendant No.1 appearing on Ex.P1 with her admitted signatures found on Exs.P22 to P28. Exs.P22 to P28 pertain to acknowledgments

of payments made by the plaintiff to defendant No.1 towards purchase of a car, and the signatures therein are not in dispute. These documents, therefore, furnish admitted signatures for the purpose of comparison.

30. In exercise of the power conferred under Section 73 of the Indian Evidence Act, 1872, this Court has undertaken a comparison of the admitted signatures in Exs.P22 to P28 with the disputed signature in Ex.P1. On careful examination, noticeable variations are evident. The formation of the alphabet "E" in the admitted signatures substantially differs from its formation in the disputed signature. The divergence is perceptible even to the naked eye. Likewise, the terminal strokes in the letters "th" display marked dissimilarity in structure and execution. Further, in the disputed signature found in Ex.P1, the alphabet "a" in the word "Kamath" appears to be missing, which is otherwise consistently present in the admitted signatures.

31. These material discrepancies cannot be brushed aside as minor variations attributable to passage of time or writing conditions. The differences go to the root of authenticity. Having regard to these tangible variations, this Court is of the considered opinion that the plaintiff has failed to satisfactorily establish that Ex.P1 bears the genuine signature of defendant No.1 insofar as it relates to sale of 10 cents.

Consequently, this Court holds that the plaintiff has failed to prove due execution of Ex.P1 as pleaded. Accordingly, Point No.(i) is answered in the ***Affirmative.***

Finding on point No.(ii):

32. Unlike a case of total denial, the defendants herein have taken a consistent and qualified stand. While they have categorically denied execution of Ex.P1 insofar as it relates to sale of 10 cents for Rs.2,41,000/-, they have candidly admitted that there was an oral agreement to sell 6 cents and that they have received approximately

Rs.1,41,000/- to Rs.1,42,000/- in instalments. Such admission, being clear and unequivocal, constitutes substantive evidence against the maker and significantly narrows the scope of controversy.

33. The documentary evidence on record lends support to this admitted position. Exs.P42 to P45 disclose purchase of stamp papers worth Rs.14,400/-. As already noted, the prevailing stamp duty at the relevant time was 10% of the sale consideration. The stamp value of Rs.14,400/- precisely corresponds to a consideration of Rs.1,44,000/-, which is the amount attributed by the defendants to the sale of 6 cents. This exact co-relation cannot be brushed aside as a mere coincidence.

34. Further, Ex.D1, which was admitted by the plaintiff on confrontation, refers only to negotiations and deliberations concerning 6 cents. Significantly, even in this subsequent communication authored by the plaintiff's close associate, there is no reference whatsoever to the alleged

written agreement dated 04.12.1992 for sale of 10 cents. This omission assumes importance in light of the plaintiff's case that a concluded written agreement had already come into existence. If such an agreement had indeed been executed, it is reasonable to expect that the same would have found mention in subsequent correspondence.

35. The aggregate payments of around Rs.1,44,000/- are not seriously disputed by either side. When the purchase of stamp papers worth Rs.14,400/- is substantiated through documentary evidence and supported by the defence version, the alleged transaction under Ex.P1 relating to 10 cents becomes highly doubtful. The cumulative effect of these circumstances probabilises the defence that the agreement was confined to 6 cents for Rs.1,44,000/- and not 10 cents for Rs.2,41,000/-.

36. Thus, on appreciation of admissions and surrounding documentary evidence, the transaction relating to 6 cents stands admitted and proved.

Accordingly, Point No.(ii) is answered in the ***affirmative.***

<u>Finding on Point No.(iii):</u>

37. The defendants have specifically contended that the plaintiff lacked financial capacity and was not ready and willing to perform his part of the contract. In support of this contention, they have relied upon the car transaction evidenced by Exs.D1 to D28 (in O.S.No.46/2006), to demonstrate the plaintiff's financial constraints. The evidence indicates that the car was sold for Rs.20,000/- and the plaintiff discharged the said amount in several small instalments, some running into a few hundreds of rupees. This circumstance, according to the defendants, reflects his limited financial means during the relevant period.

38. It is well settled that readiness and willingness, as contemplated under Section 16(c) of the Specific Relief Act, 1963, must be assessed on the totality of circumstances, including financial capacity, conduct of

parties, and contemporaneous acts. Mere pleading is not sufficient; the plaintiff must demonstrate continuous readiness and willingness from the date of agreement till the date of decree.

39. In the present case, though the defendants' admission regarding receipt of nearly the entire consideration of Rs.1,44,000/- for 6 cents may lend support to the plaintiff's readiness to that limited extent, the plaintiff has failed to establish that there existed a valid agreement for 10 cents and that he was financially capable of paying the balance consideration of Rs.96,000/- under the alleged Ex.P1. On the contrary, the rebuttal evidence produced by the defendants, particularly Exs.D1 to D28, casts serious doubt on the plaintiff's financial capacity to perform a larger contractual obligation of Rs.2,41,000/-.

40. Therefore, this Court is of the considered view that the plaintiff has failed to prove continuous readiness

and willingness to perform the contract as pleaded in respect of 10 cents.

Accordingly, Point No.(iii) is answered in the ***Affirmative***.

Finding on Points (iv) and (v):

41. The Trial Court has proceeded on the premise that Ex.P1, the alleged agreement of sale dated 04.12.1992, stood conclusively proved. However, on re-appreciation of the entire material on record, this Court finds that the Trial Court has failed to critically examine the suspicious circumstances surrounding the said document.

42. The plaintiff is admittedly a practicing advocate. The stamp papers on which Ex.P1 is stated to have been drafted were purchased on 22.11.1991, whereas the agreement is alleged to have been executed more than one year thereafter, on 04.12.1992. No satisfactory explanation is forthcoming as to why stamp papers purchased in November 1991 were utilized for an agreement allegedly

executed in December 1992. This time gap, though not by itself fatal, assumes significance when viewed in the light of other suspicious circumstances.

43. A glaring omission on the part of the Trial Court is its failure to properly appreciate Ex.D1 – the letter written by the plaintiff's close associate subsequent to the alleged execution of Ex.P1. If Ex.P1 had indeed been executed for sale of 10 cents for Rs.2,41,000/-, it is highly improbable that subsequent correspondence between persons closely connected with the transaction would remain completely silent about such a concluded written agreement. The total absence of any reference to Ex.P1 in Ex.D1 creates a serious dent in the plaintiff's case and probabilises the defence version that the transaction was confined to 6 cents.

44. Further, as already discussed, the signatures of defendant No.1 appearing on Ex.P1 do not tally with her admitted signatures found on Exs.P22 to P28. The material

variations noticed in the formation of letters and strokes cannot be brushed aside as minor discrepancies. These circumstances, taken cumulatively, render the execution of Ex.P1 doubtful. The Trial Court, in accepting Ex.P1 at face value, has failed to subject the document to the degree of scrutiny warranted in a suit for specific performance.

45. It is well settled that the relief of specific performance is discretionary and is governed by sound judicial principles. Though the Court may ordinarily grant specific performance where a valid and enforceable contract is proved and the plaintiff establishes readiness and willingness, such relief is not automatic. The discretion, though judicial and not arbitrary, must be exercised upon consideration of all relevant circumstances, including the conduct of the parties, surrounding circumstances, and their respective equities.

46. As a general rule, specific performance ought to be granted when damages are not an adequate remedy.

However, the foundational requirement is proof of a valid and concluded contract. Where the very execution of the agreement is clouded by suspicious circumstances and not satisfactorily proved, the question of exercising discretion in favour of the plaintiff does not arise. Equity does not assist a party who fails to establish the genuineness of the contract on which the relief is founded.

47. On a comprehensive re-appreciation of the entire oral and documentary evidence, this Court is of the considered view that the finding of the Trial Court that execution of Ex.P1 stands proved is not supported by reliable and cogent evidence. The Trial Court has failed to properly evaluate the rebuttal evidence and the suspicious circumstances discussed hereinabove.

48. The conduct of the plaintiff, who is a practicing advocate, in projecting a document which has not been satisfactorily proved, and in seeking to enforce a contract beyond what is probabilised by the admitted material,

disentitles him to the discretionary relief of specific performance. Once this Court has come to the conclusion that Ex.P1 insofar as it relates to 10 cents is not proved, the grant of specific performance by the Trial Court cannot be sustained.

Accordingly, Point No. (iv) is answered in the ***Negative*** and Point No. (v) is answered in the ***Affirmative***.

Finding on Point No.(vi):

49. In view of the findings recorded on Points No.(i) to (v), this Court holds that the transaction between the parties stands proved only to the extent of 6 cents for a consideration of Rs.1,44,000/-. Consequently, the defendants are entitled to retain possession of the remaining extent in excess of 6 cents.

50. The defendants, while executing the sale deed in favour of the plaintiff to the extent of 6 cents, shall be entitled to have the remaining 4 cents properly identified

and demarcated. The plaintiff, who is in possession beyond the admitted 6 cents, shall hand over vacant possession of the excess 4 cents to the defendants. Upon such restoration and subject to compliance with any balance formalities, the plaintiff shall be entitled to obtain a registered sale deed in respect of 6 cents.

Accordingly, Point No.(vi) is answered in the ***Affirmative.***

Finding on Point No.(vii)

51. In view of the findings recorded on Point Nos.(i) to (vi), this Court proceeds to pass the following:

ORDER

(i) RFA No.1520/2007 is allowed in part. The judgment and decree dated 16.12.2006 passed in O.S.No.323/1995 are hereby modified. The plaintiff shall be entitled to specific performance only to the extent of 6 cents of land out of the suit schedule property.

(ii) The plaintiff shall, as a condition precedent to execution and registration of the sale deed, hand over vacant and peaceful possession of the remaining 4 cents (Schedule 'B' property) to the defendants and shall file a memo before the Trial Court expressing his readiness to relinquish all claims over the said 4 cents. Only upon such delivery of possession and compliance shall the defendants execute the sale deed in respect of 6 cents within the time stipulated by the Trial Court.

(iii) RFA No.2287/2023 is allowed. The defendants are declared entitled to recovery of possession of Schedule 'B' property measuring 4 cents.

(iv) The Office is directed to draw the decree accordingly, incorporating the above conditions.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

ALB