



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

MISCELLANEOUS FIRST APPEAL NO. 6534 OF 2025 (CPC)

BETWEEN:

1. SRI H NAGABHUSHANA
S/O LATE SRI H. R. HOSALLAPPA,
AGED ABOUT 53 YEARS,
RESIDING AT ATTIBALE VILLAGE,
ANEKAL HOBLI, BANGALORE 562 107.
2. SMT. ANUPAMA
W/O. SRI H NAGABHUSHANA,
AGED ABOUT 36 YEARS,
RESIDING AT ATTIBALE VILLAGE,
ANEKAL HOBLI, BANGALORE 562 107.
3. MS. N. JANHAVI,
D/O. SRI. H. NAGABHUSHANA,
AGED ABOUT 10 YEARS
BEING MINOR, REPRESENTED BY
HER FATHER AND NATURAL GUARDIAN
SRI. H NAGABHUSHANA,
RESIDING AT ATTIBALE VILLAGE,
ANEKAL HOBLI, BANGALORE 562107
REPRESENTED BY HER GUARDIAN,
HER FATHER, SRI. H. NAGABHUSHANA.
4. MS. H. PUSHPAKUMARI
D/O. LATE SRI H. R. HOSALLAPPA,
AGED ABOUT 67 YEARS,
RESIDING AT NO. 265/1,
OLD POST OFFICE ROAD,
ATTIBELE, BANGALORE 562107
MENTALLY INCAPACITATED

Digitally signed by
MAHALAKSHMI B M
Location: HIGH
COURT OF
KARNATAKA



REPRESENTED BY HER NEXT FRIEND,
HER BROTHER, SRI. H. NAGABHUSHANA.

5. SMT. PUSHPAKUMARI H
ALIAS PUSHPA
W/O. MAHADEVA SWAMY S,
D/O. LATE H. R. HOSALLAPPA,
AGED ABOUT 64 YEARS,
RESIDING AT NO. 556/10,
LINGAYATH BEEDI,
NEAR POST OFFICE, ATTIBELE,
BANGALORE 562 107.
6. MS. H. GEETHA
W/O. GANGADHARAPPA,
D/O. LATE H. R. HOSALLAPPA,
AGED ABOUT 56 YEARS,
NO. 265/1, OLD POST OFFICE ROAD,
LINGAYAT STREET, ATTIBELE,
BANGALORE 562 107.
7. SRI. H. RAJASHEKAR,
S/O. LATE H. R. HOSALLAPPA,
AGED ABOUT 59 YEARS,
RESIDING AT NO. 524-2,
OLD POST OFFICE ROAD,
ATTIBELE, ANEKAL,
BANGALORE 562 107.
8. SMT. RAJAMMA
W/O. SRI H. RAJASHEKAR,
AGED ABOUT 42 YEARS,
RESIDING AT NO. 524-2,
OLD POST OFFICE ROAD,
ATTIBELE, ANEKAL,
BANGALORE 562 107.
9. SRI. A. R. GANESH
S/O. LATE H. RAJASHEKAR,
AGED ABOUT 23 YEARS,



RESIDING AT NO. 265/1,
OLD POST OFFICE ROAD,
ATTIBELE, BANGALORE 562 107.

10. SMT. MANGALAMMA
W/O. LATE SRI. H. SHIVAKUMAR,
AGED ABOUT 43 YEARS,
RESIDING AT NO. 524,
LINGAYAT STREET,
OLD POST OFFICE ROAD,
ANEKAL, BANGALORE 562 107.

11. MS. LAVANYA S
D/O LATE H SHIVAKUMAR
AGED ABOUT 30 YEARS
RESIDING AT NO.524
LINGAYAT STREET
OLD POST OFFICE ROAD
ANEKAL, BANGALORE-562 107.

12. SRI. SUBHASH S,
S/O. LATE H. SHIVAKUMAR,
AGED ABOUT 25 YEARS,
RESIDING AT NO. 524,
LINGAYAT STREET,
OLD POST OFFICE ROAD,
ANEKAL, BANGALORE 562 107.

...APPELLANTS

(BY SRI. SRINIVASAN RAGHAVAN V, SENIOR COUNSEL FOR
SRI. S SUDHARSAN SURESH., ADVOCATE)

AND:

SRI VIJU B JAIN
S/O R. BABULAL JAIN,
AGED ABOUT 48 YEARS,
RESIDING AT NO. 5052,
PRESTIGE SOUTH RIDGES,
APARTMENT NO. 125,
BANASHANKARI III STAGE,



HOSAKEREHALLI SIGNAL,
BANGALORE 560 085.

...RESPONDENT

(BY SRI. L M CHIDANANDAYYA., ADVOCATE)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF THE CPC, AGAINST THE ORDER DT. 05.04.2025 PASSED ON IA NO. 2 IN O.S.NO.1537/2024 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND JMFC, ANEKAL AT BANGALORE RURAL DISTRICT, ALLOWING THE IA.NO.2 FILED UNDER ORDER 39 RULE 1 AND 2 R/W SEC.151 OF CPC, 1908.

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

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

This Miscellaneous First Appeal is preferred by the defendants challenging the order dated 05.04.2025 passed on I.A.No. 2 in OS No. 1537/2024 by the Principal Senior Civil Judge and JMFC, Anekal ('the trial Court for short'), whereby the trial Court granted an order of temporary injunction restraining the defendants from alienating the suit schedule properties.



Brief facts

2. The respondent/plaintiff instituted a suit for specific performance contending that there existed an oral agreement of sale dated 22.01.2024 in respect of the suit schedule properties for total sale consideration of ₹ 12.50 crores out of which ₹ 2,47,50,000/- was alleged to be paid as advance consideration. The defendants, while non-disputing the receipt of money, have taken a categorical stand that the transaction was not an agreement of sale but a loan transaction, and that the amount received by the defendants have been subsequently repaid along with interest, amounting to ₹ 3.37 crores which was withdrawn by the plaintiff on 13.01.2025.

3. Pending the suit the plaintiff filed I.A. No. 2 under Order XXXIX Rule 1 and 2 seeking injunction against alienation, which was allowed by the trial Court.

4. Learned Senior Counsel appearing for the appellants/defendants contends that,



- (i) The alleged agreement of sale is purely oral and not substantiated by any concluded contract terms and therefore does not establish a prima facie enforceable contract.
- (ii) The transaction in reality was a loan transaction and the entire amount along with interest has been repaid and accepted, thereby extinguishing any alleged contractual relationship.
- (iii) The acceptance and withdrawal of the amount by the plaintiff clearly demonstrate absence of readiness and willingness to perform the contract.
- (iv) Once the amount has been repaid and accepted, the very substratum of the suit for specific performance is lost and consequently, no injunction could have been granted.



- (v) The trial Court has failed to properly appreciate that no prima facie case exists and that the grant of injunction would cause undue hardship to the defendants.

5. In support of his contention, learned Senior Counsel places reliance upon the decision of the Apex Court in the case of ***Sangita Sinha v. Bhawana Bhardwaj and Others***¹. Learned Senior Counsel submits that the trial Court erred in granting injunction despite the fact that the defendants have filed a detailed objections on 11.11.2024 clearly setting out the nature of transaction and repayment.

6. Per contra, the learned counsel appearing for the respondent submits that,

- (i) The transaction was indeed an agreement of sale and the substantial advance consideration had already been paid.

¹ 2025 SCC Online 723



- (ii) The repayment alleged by the defendants was not voluntary and cannot amount to cancellation by the agreement.
- (iii) Reliance is placed on the decision of the Apex Court in the case of ***K. Nanjappa (Dead) by Legal Representatives vs R. A. Hameed alias Ameersab (Dead) by Legal Representatives and Another***² to contend that (a) oral agreements are valid in law and (b) the burden of proof is a matter of trial and injunction can be granted when a prima facie case is made out. It is further submitted placing reliance on para 21 of the said judgment, that suspicious circumstances or disputed facts must be adjudicated and the trial cannot defeat interim protection.

² (2016) 1 SCC 762



7. This Court has considered the rival submission and the point that arises for consideration is,

whether the trial Court is justified in granting an order of temporary injunction in favour of the plaintiff in light of the admitted receipt and subsequent repayment of amount and the disputed nature of the transaction?

8. The trial Court while allowing the application held that,

- (i) The plaintiff has established a prima facie case based on payment of substantial consideration.
- (ii) There exists a likelihood of alienation of the property which may lead to multiplicity of proceedings.
- (iii) Balance of convenience and irreparable injury are in favour of the plaintiff.



Accordingly, injunction was granted restraining the defendants from alienating the property.

9. The very foundation of the plaintiff's case is an oral agreement of sale, which is seriously disputed. The defendants have consistently contended that the transaction was a loan transaction and not a sale. Though it is a settled proposition of law that even a decree for specific performance can be granted on basis of an oral agreement, as held by the Apex Court in the case of **K. Nanjappa** (*supra*), however, in the present case, the issue is not merely proof of agreement, but the subsequent conduct of the plaintiff in accepting repayment which is decisive and admitted fact. It is not in dispute that the amount has been repaid and accepted/withdrawn by the plaintiff. Such a conduct is a crucial circumstance which goes to the root of the matter.

10. The issue, "*whether a suit for specific performance can be decreed when the buyer has accepted refund of advance consideration*" fell for consideration



before the Apex Court in ***Sangita Sinha*** (supra). The Apex Court held that acceptance of refund amounts to acceptance of repudiation and the agreement stands cancelled, disentitling the plaintiff from relief of specific performance and held at para No.21 as under :

"21. This Court is also of the view that the act of the Respondent No.1-buyer in encashing the demand drafts leads to an irresistible conclusion that the agreement in question stood cancelled."

11. The Apex Court further held that readiness and willingness must be continuous and conduct such as acceptance of refund negates such readiness and held at para no. 18 as under :

"18. Continuous readiness and willingness on the part of the Respondent No. 1-buyer/purchaser from the date of execution of Agreement to Sell till the date of the decree, is a condition precedent for grant of relief of specific performance. This Court in various judicial pronouncements has held that it is not enough to show the readiness and willingness up to the date of the plaint as the conduct must be such as to disclose readiness and willingness at all



times from the date of the contract and throughout the pendency of the suit up to the decree. A few of the said judgments are reproduced hereinbelow:—

A. In Gomathinayagam Pillai v. Palaniswami Nadar, (1967) 1 SCR 227, it has been held as under:—

"6. But the respondent has claimed a decree for specific performance and it is for him to establish that he was, since the date of the contract, continuously ready and willing to perform his part of the contract. If he fails to do so, his claim for specific performance must fail. As observed by the Judicial Committee of the Privy Council in Ardeshir Mama v. Flora Sassoon, 1928 SCC OnLine PC 43:

"In a suit for specific performance, on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness, from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brought with it the inevitable dismissal of his suit."

The respondent must in a suit for specific performance of an agreement plead and prove that he was ready and willing to perform his



part of the contract continuously between the date of the contract and the date of hearing of the suit...."

(emphasis supplied)

B. In Vijay Kumar v. Om Parkash, 2018 SCC OnLine SC 1913, it has been held as under:—

*"6. In order to obtain a decree for specific performance, **the plaintiff has to prove his readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown throughout and has to be established by the plaintiff...."***

(emphasis supplied)

C. In J.P. Builders v. A. Ramadas Rao, (2011) 1 SCC 429, it has been held as under:—

*"27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. **It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness"***



to perform the part of the contract has to be determined/ascertained from the conduct of the parties."

(emphasis supplied)

D. In Umabai v. Nilkanth Dhondiba Chavan (Dead) By LRs., (2005) 6 SCC 243, it has been held as under:—

*"30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16 (c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. **A bare averment in the plaint or a statement made in the examination-in- chief would not suffice. The conduct of the plaintiff- respondents must be judged having regard to the entirety of the pleadings as also the evidence brought on records."***

(emphasis supplied)

E. In Mehboob-Ur-Rehman (Dead) through Legal Representatives v. Ahsanul Ghani (supra), it has been held as under:—

"16. Such a requirement, of necessary averment in the plaint, that he has already performed or



*has always been ready and willing to perform the essential terms of the contract which are to be performed by him being on the plaintiff, mere want of objection by the defendant in the written statement is hardly of any effect or consequence. **The essential question to be addressed to by the Court in such a matter has always been as to whether, by taking the pleading and the evidence on record as a whole, the plaintiff has established that he has performed his part of the contract or has always been ready and willing to do so...***

(emphasis supplied)

F. In C.S. Venkatesh v. A.S.C. Murthy (Dead) by Legal Representatives (supra), it has been held as under:—

"16. The words "ready and willing" imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the



*plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. **Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.***

*17. In N.P. Thirugnanam v. R. Jagan Mohan Rao [N.P. Thirugnanam v. R. Jagan Mohan Rao, (1995) 5 SCC 115], it was held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. **To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior to and subsequent to the filing of the suit along***



with other attending circumstances. The amount of consideration which he has to pay to the defendant must necessarily be proved to be available.

18. In Pushparani S. Sundaram v. Pauline Manomani James [Pushparani S. Sundaram v. Pauline Manomani James, (2002) 9 SCC 582], this Court has held that inference of readiness and willingness could be drawn from the conduct of the plaintiff and the totality of circumstances in a particular case. It was held thus : (SCC p. 584, para 5)

"5. ... So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit



was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved.”
(emphasis supplied)”

12. In view of the repayment and acceptance of money by the plaintiff, the existence of a subsisting enforceable contract is doubtful and therefore, no prima facie case exists. The grant of injunction would unnecessarily restrain the defendants’ property rights whereas refusal would not cost irreparable injury as the plaintiff can be compensated in monetary terms. No irreparable injury is made out particularly when the plaintiff has already accepted the amount. The Apex Court in ***Wander Limited Vs. Antox India Pvt. Ltd.***³ (*Wander Limited*) and in the case of ***Dalpat Kumar and Another vs Prahlad Singh and Ors***⁴ (*Dalpat Kumar*) has observed that the three essential ingredients while considering a refusal or grant of injunction is *prima facie case, balance*

³ 1990 (Supp) SCC 727

⁴ (1992) 1 SCC 719



of convenience and irreparable loss. The settled proposition is also that the appellate Court while exercising the jurisdiction under Order XLIII Rule 1 can interfere with the findings of the trial Court if the trial Court's order suffers from perversity, illegality and arbitrariness.

13. For the foregoing reasons, the perusal of the impugned order clearly establishes that the trial Court has failed to consider that the issue was not merely the proof of agreement but the subsequent conduct of the plaintiff in accepting the repayment. Accordingly, the point framed for consideration is answered and this Court pass the following :

ORDER

- (i) The Miscellaneous First Appeal is ***allowed.***
- (ii) The order dated 05.04.2025 passed on I.A No. 2 in OS No. 1537/2024 is hereby ***set aside.***



- (iii) I.A No. 2 filed by the plaintiff stands ***dismissed.***
- (iv) It is made clear that any observation made herein is *prima facie* and the trial of the suit to be considered independently.

Sd/-

JUSTICE K.S. HEMALEKHA

CKL
List No.: 1 Sl No.: 72