



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 24TH DAY OF MARCH 2026
BEFORE
THE HON'BLE MRS JUSTICE GEETHA K.B.
REGULAR SECOND APPEAL NO. 5403 OF 2010 (SP)

BETWEEN:

MUKTUR SIDDAPPA
S/O. BASAPPA M., AGE: 43 YEARS,
OCC: AGRICULTURE,
R/O. H.NO.1342/1A,
SANAPUR ROAD,
4/5 WARD, KAMPLI-580015,
HOSPET TALUK,
BALLARY DISTRICT.

...APPELLANT

(BY SRI. C.S. SHETTAR, ADVOCATE)

GIRIJA A.
BYAHATTI



Digitally
signed by
GIRIJA A.
BYAHATTI
Location:
HIGH COURT
OF
KARNATAKA,
DHARWAD
BENCH

AND:

1. V. THIPPESWAMY
S/O. HULUGAPPA,
AGE: 45 YEARS, OCC: COOLIE,
R/O. CHAPPARADHALLI, 4TH WARD,
KAMPLI, HOSPET TALUK-580015,
BALLARY DISTRICT.
2. SMT. MUTKUR MANGALAMMA,
W/O. SIDDAPPA, AGE: 38 YEARS,
OCC: HOUSE WIFE,



R/O. H.NO.1342/1A,
SANAPUR ROAD,
4/5 WARD, KAMPLI,
HOSPET TALUK,
BALLARY DISTRICT-580015.

...RESPONDENTS

(BY SRI. HANUMANTHAREDDY SAHUKAR, ADVOCATE FOR C/R1;
NOTICE TO R2 IS SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC.,
PRAYING TO SET ASIDE THE JUDGMENT AND DECREE PASSED
BY THE FAST TRACK COURT-III, HOSPET IN REGULAR APPEAL
NO.147/2008 DATED 11-02-2010 CONFIRMING THE JUDGMENT
AND DECREE PASSED BY THE COURT OF ADDITIONAL CIVIL
JUDGE (SR. DN), HOSPET IN O.S.NO.61/2005 DATED 18-06-
2008 AND ALLOW THE ABOVE REGULAR SECOND APPEAL WITH
CAST IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: THE HON'BLE MRS JUSTICE GEETHA K.B.



ORAL JUDGMENT

This is the appeal filed under Section 100 of CPC by the appellant/defendant, praying for setting aside the judgment and decree dated 11.02.2010 passed in RA No.147/2008 on the file of Fast Track Court-III Hospet (for short 'First Appellate Court') by confirming the judgment and decree dated 18.06.2008 in OS No.61/2005 on the file of Additional Civil Judge, (Sr. Dvn.), Hospet (for short 'trial Court').

2. Parties would be referred with their ranks, as they were before trial Court for sake of convenience and clarity.

3. Plaintiff has filed the suit before trial court praying for Specific Performance of the agreement dated 24.04.2004 directing the defendants to execute sale deed in his favour by receiving balance sale consideration amount of ₹.40,000/-; for Court costs and such other reliefs. Subsequent to filing of the suit, plaintiff amended the



prayer column and inserted alternative prayer for refund of ₹.1,10,000/- advance amount with interest at 24% per annum from the date of agreement till realization.

4. The case of plaintiff before trial Court in nutshell is that defendant No.1 was owner of suit schedule house property and to meet his unavoidable expenses, he agreed to sell suit schedule property to plaintiff for a sum of ₹.1,50,000/- by receiving advance sale consideration amount of ₹.1,10,000/- and executed the registered sale agreement dated 23.04.2004 on 24.04.2004 wherein defendant No.1 acknowledged the receipt of earnest money of Rs.1,10,000/- and also agreed to execute registered sale deed by receiving balance sale consideration amount of ₹.40,000/-. Afterwards defendant No.1 tried to transfer suit schedule property in the name of his wife i.e., defendant No.2 and defendant No.2 tried to mutate khatha into her name before Town Municipal Council, Kampli. Plaintiff objected for the same. Thus, with the apprehension he has filed suit against defendant Nos.1 and 2 and against Town



Municipal Counsel, Kampli for the relief of permanent injunction in OS No.114/2004 before Principal Civil Judge, Hospet. Defendant No.1 only to defraud the rights of plaintiff, has executed the gift deed in favour of defendant No.2. Plaintiff has issued legal notice to defendants. Even though, plaintiff was and is always ready and willing to perform his part of contract, defendants intended to sell suit schedule property to third parties only to defraud his rights. Hence, he has also filed criminal case against them and filed the present suit for appropriate reliefs.

5. After service of notice, defendant No.1 filed his written statement which is being adopted by defendant No. 2. In the written statement, defendant No.1 has denied the plaint averments in toto except admitting about Court proceedings. His contention is that he was in dire need of money of ₹.50,000/- as loan and as a security for said loan, defendant No.1 has executed the alleged sale agreement in favour of plaintiff and he never received ₹.1,10,000/- from plaintiff. Furthermore, plaintiff had no capacity to give



₹.1,10,000/- to defendant No.1. Even according to plaintiff, he was only a labourer. Defendant No.1 is an innocent person having no worldly knowledge and he does not know the consequences of execution of sale agreement. Only to protect his property, he has transferred the same into the name of his wife i.e. defendant No.2. Now, defendant No.2 is in possession of it. This property worth more than ₹.8,00,000/-. Even defendant No.1 has discharged loan of ₹.50,000/- to plaintiff. But, plaintiff told that he lost the agreement and believing his words, defendant No.1 kept quiet. Taking undue advantage of innocence of the defendants, plaintiff has filed the false suit. Hence, prayed for dismissal of suit with costs.

6. After impleading the alternative prayer of refund of earnest money, defendants have filed additional written statement wherein they have taken the same contention that they have not received ₹.1,10,000/- from plaintiff as alleged in the plaint. Hence, prayed for dismissal of even the alternative prayer.



7. From the above facts, the trial Court has framed the following issues:

ISSUES

1. *Whether the plaintiff proves that, on 23-4-04 the Defendant has entered into an Agreement of Sale in respect of the suit property for Rs. 1,50,000/-?*
2. *Whether the plaintiff proves that, he has paid Rs. 1,10,000/- as part, consideration amount to the Defendants?*
3. *Whether the Defendants proves that, they have executed the document as a security to the loan of Rs.50,000/- and repaid the same?*
4. *Whether the plaintiff proves that, he always has been ready and willing to perform his part of Contract?*
5. *Whether the Defendants proves that, the plaintiff has no capacity to purchase the property?*
6. *Whether the plaintiff is entitled for the reliefs as prayed for?*
7. *What Decree or Order?*



8. After recording evidence of both sides and hearing arguments of both sides, the trial Court came to the conclusion that plaintiff has proved the due execution of sale agreement by defendant No.1 and plaintiff is entitled for the relief of specific performance of the agreement as prayed in the plaint and directed defendants to execute sale deed by receiving balance sale consideration of ₹.40,000/- within 3 months.

9. Aggrieved by the said judgment and decree of trial Court, defendant Nos.1 and 2 have filed the appeal before First Appellate Court.

10. After hearing arguments of both sides, the First Appellate Court has confirmed the judgment and decree of the trial Court. Aggrieved by the same, appellants-defendants have filed the present appeal.

11. After hearing the appellants, the appeal was admitted and following substantial question of law was framed as per order dated 09.01.2014.



"Whether the trial Court as well as the First Appellate Court have seriously erred in exercising the discretion of granting the equitable relief of specific performance without looking to the hardship of the defendant as per Section 20 of the Specific Relief Act?"

12. During pendency of this appeal, appellant has filed IA No.1/2023 under Order XLI Rule 27 CPC with some documents to show that plaintiff is money lender and he entered into money transaction with several other persons. In this regard, a criminal case was initiated against the plaintiff/respondent. In this regard, learned counsel for appellants intends to rely upon eight documents i.e. Search Warrant and Seizure of some Promissory notes and blank cheques etc. allegedly from the house of plaintiff in the criminal case.

13. It is to be noted here that these documents were produced in CC No.715/2015.



14. In the affidavit annexed to IA No.1/2023, the appellant No.1 has stated that it is his specific defense that alleged transaction between plaintiff and defendant No.1 is only a money transaction, i.e., only as a security for the loan, defendant No.1 has executed the agreement in favour of plaintiff. Now, appellant got some documents which he could not produce before trial Court, as they were not available at that time. Hence, prayed for allowing IA No.1/2023.

15. Learned counsel for respondents has filed objections to IA No.1/2023 that the alleged documents produced along with this IA are not relevant to decide the present appeal. Appellant has given evidence against respondent No.1 in criminal case registered against respondent No.1 and respondent No.1 is acquitted in that case. Hence, appellant was fully aware about the said criminal proceedings and documents and he has not stated why they were not produced before trial Court or before the



First Appellate Court. Hence, prayed for rejection of IA with exemplary costs.

16. Learned counsel for appellant Sri.C.S.Shettar would submit that the suit schedule property is the only house property for defendant Nos.1 and 2 and if Specific Performance as ordered by trial Court confirmed by the Appellate Court, it would cause relatively more hardship to appellants/defendants rather than plaintiffs.

17. In this regard, learned counsel for appellant relied on the judgment of Hon'ble Apex Court in the case of **Parakunnan Veetill Joseph's son Mathew Vs. Nedumbara Kuruvila's son and others** reported in **1987 (Supp) SCC 340** wherein at paragraph No.14, it is held as follows:

"14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of courts as to decreeing specific performance. The court should meticulously consider all facts and circumstances of the case. The court is not



bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. The High Court has failed to consider the motive with which Varghese instituted the suit. It was instituted because Kuruvila could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit by Varghese is the agreement for sale Ex. A-1. Since Chettiar had waived his rights thereunder, Varghese as an assignee could not get a better right to enforce that agreement. He is, therefore, not entitled to a decree for specific performance."

He would further submit that now appellants able to get some documents to show that plaintiff is money-lender. He produced them along with IA No.1/2023. Hence, prayed for allowing the appeal and IA No.1/2023.

18. Learned counsel for respondents Sri.Hanumantha Reddy Sahukar would submit that the discretionary relief



under Section 20 of the Specific Relief Act, 1963 can be exercised in favour of defendants i.e. Vendor only if there is some unforeseen unavoidable circumstance that happened subsequent to the agreement. In the instant case knowing fully well that the defendant No.1 would part with the suit schedule house property which is the only property available for him, he entered into an agreement with plaintiff. The conduct and attitude of defendants are also very important. Instead of executing the sale deed in favour of plaintiff, defendant No.1 tried to change its khata into the name of defendant No.2 by executing the gift deed in a ₹.10 stamp paper and when the Town Municipal Corporation has not changed the khata into the name of defendant No. 2 based on said agreement, defendant No.1 has executed registered gift deed in favour of defendant No.2 and got mutated suit schedule property into the name of defendant No.2. Furthermore, defendants have taken plea of loan transaction. But, it is not established before trial Court and also before First Appellate Court. Thus, this agreement is



not an agreement for security of the loan. Thus, defendants are estopped from claiming discretionary relief under Section 20 of the Specific Relief Act, 1963. He would further submit that plaintiff is already acquitted in the criminal case, in which these alleged documents produced along with IA No.1/2023. Hence, they have no relevancy to decide the present appeal. Hence, prayed for dismissal of appeal and IA No.1/2023 with costs.

19. After hearing arguments of both sides and verifying the records of this Court, TCR of both Courts, the following points arise for consideration in respect of IA No.1/2023:-

1) Whether appellant be permitted to adduce additional evidence?

2) Whether appellants fulfill any of the ingredients of Order XLI Rule 27 CPC to permit to adduce additional evidence?



20. Under Order XLI Rule 27 CPC, party to the appeal may be permitted to adduce additional evidence if, the Court comes to the conclusion that from whose decree the appeal is preferred has refused to admit such evidence, if the party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not secure such evidence even after exercise of due diligence or the Appellate Court requires those documents or witnesses to be examined to enable it to pronounce judgment or for any other substantial cause.

21. Only for these reasons, the Appellate Court may permit the party to the appeal to adduce additional evidence.

22. In the instant case, the first circumstance does not exist because the appellant has not produced any of these documents before the trial Court; hence, there was no question of trial Court not accepting them; these



documents were not within his knowledge or ambit at the time of leading evidence before trial Court because they were seized in criminal case in the year 2015 i.e., not at the time of trial of present case. These documents were produced in criminal case during pendency of this second appeal. Hence, there was no occasion for defendant No.1 to secure these documents during trial or when the appeal was pending before First Appellate Court. They were secured only after filing this appeal.

23. The present appellant No.1 has given evidence in said criminal case as PW5. Thus, he was fully aware about the proceedings that have taken place in CC No.715/2015. The appellants intend to produce documents pertaining to said CC No.715/2015. The judgment is passed in the said CC No.715/2015 on 18.02.2021 acquitting present plaintiff in said case for the offences punishable under Sections 3 and 4 of Karnataka Prohibition of Charging Exorbitant Interest Act, 2004 and Sections 38 and 39 of Money Lenders Act, 1961 and also under Section 420 of IPC.



Definitely, prior to said date, the appellant No.1 was examined in the said case. But, these documents are produced in this case on 20.08.2023 i.e., two years after passing of the judgment in the said case.

24. The contention of defendant No.1 in his written statement is that plaintiff claims to be the coolie and thus is not capable to give ₹.1,10,000/- to defendant No.1 and thus questioned the financial capacity of plaintiff in his written statement itself. Now, he is intending to produce the certified copy of Search Warrant, Stamp paper, Promissory notes, blank cheques and some other documents alleged to be seized from the house of plaintiff. These documents are in no way connected to the present case. These documents do not involve the property of defendants or these documents do not disclose the name of defendants.

25. Under these circumstances, production of these documents by the appellant at this stage is not at all relevant to decide the present appeal. Even though,



appellants were not in possession of these documents at the time of trial before trial Court, these documents are not relevant to decide the present appeal. These documents are not required to decide the present appeal and no other substantial cause exist to accept these documents. Furthermore, already without relying upon those documents, the Criminal Court has acquitted the plaintiff. Hence, this Court holds that appellant cannot be permitted to produce these additional documents and thus IA No.1/2023 requires to be dismissed. Accordingly, point No.1 & 2 in respect of IA No.1/2023 are answered in **NEGATIVE.**

26. Before going into the merits of the case, reading of Section 20 of the Specific Relief Act, 1963 (old Act) before amendment is very much required, 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.*

Explanation 1. *Mere inadequacy of consideration, or the mere fact that the contract is*



onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2. *The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.*

(3) The COURT may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party."

27. Thus, the jurisdiction to decree Specific Performance is discretionary and Court is not bound to grant relief only because it is lawful to do so. With this



background, the facts of the present case are to be analyzed.

28. During pendency of the First appeal, plaintiff has filed Execution Petition No.205/2008 and in that execution petition, Court Commissioner was appointed and during pendency of this appeal, sale deed was executed in favour of plaintiff and it was registered on 03.07.2011 and then possession was also handed over to ****plaintiff***.

29. The only ground urged in the appeal memo is relative hardship that will be caused to the appellant as required under Section 20 of the Specific Relief Act, 1963. The execution of the agreement is not disputed in the grounds of appeal.

30. In this regard, this Court relies on the judgment of Hon'ble Apex Court in the case of ***Parswanath Saha Vs. Bandhana Modak (DAS) and ANR.*** in ***Civil Appeal No.14804/2024(arising out of SLP (C)***

*corrected vide court order dated 10.04.2026

Sd/-
Judge



No.18743/2022), wherein, at paragraph No.29, it is held as under:

"29. Then again, it is necessary to remember that mere rise in price subsequent to the date of the contract or inadequacy of price is not to be treated as a hardship entailing refusal of specific performance of the contract. Further, the hardship involved 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 plaintiff contended that he is the agreement holder from defendant No.1, wherein defendant No.1 agreed to sell suit schedule property in favour of plaintiff for a sum of ₹.1,50,000/- by receiving earnest money of ₹.1,10,000/-. Thus, according to plaintiff, he has paid substantial amount as earnest money to defendant No.1.



32. Immediately after such execution of the sale agreement, defendant No.1 intended to transfer this property into the name of defendant No.2 by executing gift deed only on a stamp paper of ₹.10/- which is clearly admitted by defendant DW.2 in her cross-examination. When the Municipal authorities were not agreed to mutate the property into the name of defendant No.2, based on said agreement, defendant No.1 with no option has executed registered gift deed in favour of defendant No.2. In the written statement defendant No.1 has taken specific contention that only to save the property in the family, he has executed the gift deed in favour of defendant No.2.

33. The above averments in the written statement and conduct of defendant Nos.1 and 2 made it very clear that knowing fully well that they will part with the suit schedule property, they have entered into sale agreement with plaintiff by receiving substantial sale consideration amount. But, immediately they have changed version and fraudulently, defendant No.1 executed gift deed in favour of



defendant No.2 only to avoid the execution of sale agreement. This is more evident from the conduct of defendant Nos. 1 and 2 that they have taken the plea that only loan of ₹. 50,000/- from plaintiff and not ₹.1,10,000/- as an earnest money as alleged in the plaint. However, defendant Nos.1 and 2 failed to establish this fact as there is concurrent finding on this fact by the trial Court and First Appellate Court that plaintiff has established the due execution of sale agreement by defendant No.1 and also established that defendant No.1 received earnest amount of ₹.1,10,000/- as on the date of agreement.

34. The contention of learned counsel for appellant that the grant of decree of Specific Performance will create relative hardship to defendants rather than plaintiff cannot be accepted for the simple reason that defendant Nos.1 and 2 knowing fully well that they will part with suit schedule property, entered into sale agreement with the plaintiff and even then defendant No.1 only to defraud plaintiff has executed gift deed in favour of defendant No.2 and they



have taken the plea of loan and security for the loan, this suit agreement was executed. But, failed to establish said plea. Furthermore, they have taken contention in the written statement that the value of suit schedule property is ₹.8,00,000/- but, not established the same. There is no unfair advantage created in favour of plaintiff and the relative hardship was foreseen at the time of agreement itself. Hence, the citation relied by the appellant's counsel in the case of ***Parakunnan Veetill Joseph's son Mathew*** stated supra is not applicable to the facts of the present case.

35. Hence, this Court pass the following:

ORDER

- i) The Regular Second Appeal filed under Section 100 of the CPC is hereby dismissed, by confirming the judgment and decree dated 11.02.2010 passed in R.A.No.147/2008 on the file of Fast Track Court-III, Hospet and



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confirming the judgment and decree dated
18.06.2008, passed in O.S. No.61/2005, on the
file of Additional Civil Judge (Senior Division)
Hospet.

- ii) Draw decree accordingly.

**Sd/-
(GEETHA K.B.)
JUDGE**

HMB
CT-MCK
LIST NO.: 1 SL NO.: 31



IN THE HIGH COURT OF KARNATAKA AT DHARWAD

[MUKTUR SIDDAPPA S/O BASAPPA M VS. V THIPPESWAMY S/O
HULUGAPPA AND ANOTHER]

10.04.2026

(VIDEO CONFERENCING / PHYSICAL HEARING)

CORAM: HON'BLE MRS JUSTICE GEETHA K.B.

ORAL ORDER
ON I.A.NO.1/2026

1. Heard on I.A.No.1/2026 filed under Section 152 of CPC seeking corrections in the judgment dated 24.03.2026.
2. Learned counsel for the appellant submitted no objection for consideration of I.A.No.1/2026.
3. Respondent No.1 has filed this application seeking correction of the name of the appellant in the appeal memo cause title as "Mutkur" instead of "Muktur." However, in the appeal memo cause title, it is mentioned as "Muktur" and not "Mutkur." As there is mistake in the appeal memo, without amending the appeal memo cause title, the judgment cause title



cannot be amended. Hence, the said correction does not fall within the purview of Section 152 CPC.

4. Learned counsel for the appellant has also sought correction in paragraph No.28 of the judgment, by substituting the last word "plaintiff" in place of "defendant No.1." On perusal of the said paragraph, it is evident that it is a typographical error, where "defendant No.1" has been mentioned instead of "plaintiff" and the same requires rectification.
5. Accordingly, I.A.No.1/2026 filed under Section 152 CPC is partly allowed. The word "defendant No.1" appearing in the last line at paragraph No. 28 of the judgment dated 24.03.2026 is to be corrected as "plaintiff."
6. Registry is directed to carry out necessary correction and upload the corrected judgment accordingly.

Sd/-
(GEETHA K.B.)
JUDGE