



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 19TH DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

REGULAR FIRST APPEAL NO. 100188 OF 2018 (SP-)

BETWEEN:

M/S. KARIGANUR MINERAL
MINING INDUSTRY (100% EOU),
A REGISTERED PARTNERSHIP FIRM,
WAS HAVING ITS REGISTERED OFFICE
AT WAHAB TOWERS, 3RD FLOOR, NO.185,
INFANTRY ROAD, CANTONMENT, BALLARI-583104,
PRESENTLY HAVING ITS REGISTERED
OFFICE AT NEAR PENSION BADA MASJID,
COWL BAZAAR, BANDIHATTI MAIN ROAD,
BALLARI-583102,
REP. BY ITS PARTNER., (ARUN KUMAR).

...APPELLANT

(BY SRIYUTHS. K. RAGHAVENDRA RAO AND V. VIDYA IYER, ADVS)

AND:

1. H. SIRAJUDDIN S/O H. ABDULLAH
AGED: 46 YEARS, R/AT: DOOR NO.29/30,
MALLAIAH COLONY, CANTONMENT,
INFANTRY ROAD, BALLARI-583104.
2. IZHAR AHMED
S/O LATE GULAM NABI AHMED,
AGED: 53 YEARS, R/AT: DOOR NO.59K,
OLD MARKET ROAD, ADARSHA COLONY,
CANTONMENT, BALLARI-583104.

...RESPONDENTS

(BY SRI. MRUTYUNJAYA S. HALLIKERI, ADV FOR R1,
SRI. SANTOSH B. MALLIGWAD, ADV FOR R2)

THIS RFA IS FILED U/O.41 RULE 1 READ WITH SEC.96 OF
CPC., 1908, AGAINST THE JUDGMENT AND DECREE DTD:31.01.2018
PASSED IN O.S.NO.207/2011 ON THE FILE OF THE I ADDITIONAL
SENIOR CIVIL JUDGE, BALLARI, DISMISSING THE SUIT FILED FOR
SPECIFIC PERFORMANCE OF CONTRACT AND DECLARATION.

MOHANKUMAR
B SHEELAR


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

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

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

This Regular First Appeal is filed by the appellant,
challenging the judgment and the decree dated
31.01.2018 passed in O.S.No.207/2011 by the learned I
Additional Senior Civil Judge, Ballari.

2. For convenience, the parties are referred to
based on their rankings before the trial Court. The
appellant was the plaintiff and the respondents were the
defendants.

3. Brief facts, leading rise to the filing of this
regular first appeal, are as follows:

4. The plaintiff filed a suit against the defendants
for the relief of a specific performance of the contract, and
declaration, etc., It is the case of the plaintiff that
defendant No.1 is the absolute owner of the suit schedule



properties, and he agreed to sell the suit schedule properties for consideration of Rs.5,75,000/- regarding 'A' schedule property, Rs.1,50,000/- regarding 'B' schedule property and Rs.3,75,000/- regarding 'C' schedule property, and executed the sale agreements on 20.01.2009. The plaintiff had paid a substantial portion of the sale consideration amount of Rs.3,00,000/- regarding the 'A' schedule property, Rs.80,000/- regarding the 'B' schedule property and Rs.1,50,000/- regarding the 'C' schedule property under the agreements vide cheques Nos.168568, 168569 and 168570 respectively. The said cheques were encashed by defendant No.1. It was agreed that the balance sale consideration amount to be paid on or before 31.06.2009, subject to defendant No.1 obtaining the requisite permissions/sanctions. The plaintiff was awaiting the permission to be obtained by the Power of Attorney holder of defendant No.1. Defendant No.1 revoked the GPA executed in favour of one Sri.A.Ibrahim vide letter dated 21.09.2010 by making false allegations.



Since defendant No.1 failed to obtain permission or sanction, the plaintiff was constrained to apply to the Deputy Commissioner, Ballari, seeking permission to purchase the agricultural land for industrial purpose under Section 79-B of the Karnataka Land Reforms Act. It is contended that the plaintiff was/is ever ready and willing to perform its part of the contract. Defendant No.1 was not willing to perform his part of the contract, and defendant No.1 committed the breach of the conditions of the sale agreement. It is contended that during 2011, on enquiry the plaintiff came to know that defendant No.1 had entered into an agreement of sale with his friend, i.e., defendant No.2 on 05.01.2007 for sale consideration of Rs.9,75,000/-. Further, contended that, colluding with defendant No.1, defendant No.2 filed a suit in O.S.No.135/2010 for specific performance of the contract. In the said suit, the defendants entered into a compromise, and a compromise petition was filed before the court on 10.12.2010, and the said suit was decreed. It



is the case of the plaintiff that the sale agreement executed by defendant No.1 on 05.01.2007 is on the stamp paper bearing Nos.777308 and 777309 and the sale agreement could not have been entered into between the defendants on 05.01.2007, since the stamp papers were issued on 17.12.2008. The sale agreement executed by defendant No.1 in favour of defendant No.2 is created document, and obtained by playing fraud on the plaintiff. In view of the sale agreement executed by defendant No.1 in favour of defendant No.2, a cause of action arose for the plaintiff to file a suit for the relief of specific performance of the contract. Accordingly, prays to decree the suit.

5. Defendant No.1 filed a written statement denying the averments made in the plaint. It is contended that the suit filed by the plaintiff is not maintainable, as the suit has been filed on behalf of M/s Kariganur Mineral Mining Industry represented by its authorised signatory, without any authorization. Hence, in the absence of the



documents of registration of KMMI under the Companies Act, the suit of the plaintiff is not maintainable, and barred by law of limitation. It is also denied that defendant No.1 executed the sale agreements in favour of the plaintiff, and received part consideration amount through cheques bearing Nos.168568, 168569 and 168570 on 16.01.2009. It is also denied that the said cheques were issued towards the sale consideration amount. It is contended that the said cheques were issued towards the business transaction and not towards a sale consideration. It is also contended that defendant No.1 was having a transportation business and he stopped the transportation business in 2008, and he was transporting the mines. Defendant No.1 agreed to sell the suit schedule property in favour of defendant No.2 for the purpose of securing money for improvement of his transport business, and also to meet his urgent needs, and hence, entered into an agreement of sale on 05.01.2007. Since defendant No.2 postponed the matter of getting registered the sale deed in his favour, defendant No.1



executed the GPA in favour of A.Ibrahim on 20.01.2009, and refused to execute the registered sale deed in favour of defendant No.2. Defendant No.2 filed a suit in O.S.No.135/2010 against defendant No.1 for the relief of specific performance of the contract. During the pendency of the suit, the parties have entered into a compromise, and the compromise decree was drawn in O.S.No.135/2010. It is contended that defendant No.1 revoked the GPA executed in favour of A.Ibrahim and the said A.Ibrahim shown the hostile attitude to defendant No.1 by colluding with the plaintiff. Thus, a legal notice was issued to the said Ibrahim to return the GPA dated 20.01.2009, and instead of returning the said GPA, the said Ibrahim gave evasive reply. The plaintiff got issued three legal notices calling upon defendant No.1 to execute the registered sale deed on 07.03.2011. Defendant No.1 also issued three replies dated 17.03.2011 calling upon the plaintiff to furnish the copies of the alleged sale agreements. The plaintiff did not furnish the copies of the



said sale agreements. It is contended that defendant No.2 is a bonafide purchaser of the suit properties for valid consideration and possession was delivered in favour of defendant No.2, and he is in possession and enjoyment of the suit schedule properties. Hence, prays to dismiss the suit against defendant No.1.

6. Defendant No.2 filed a written statement denying the averments made in the plaint. It is contended that the sale agreements alleged to have been executed by defendant No.1 are not enforceable under Section 23 of the Indian Contract Act, and are against the public policy. Defendant No.2 is a bonafide purchaser for value without notice. Hence, prays to dismiss the suit against defendant No.2.

7. The trial Court, based on the pleadings of the parties, framed the issues as follows:

- 1) *Whether the plaintiff proves that the defendant No.1 agreed to sell the suit schedule A property in favour of the plaintiff for sale consideration of Rs.5,75,000/-*



on 20.1.2009 by executing agreement of sale dated 20.1.2009 by receiving the advance sale consideration of Rs.3,00,000/- vide cheque No.168568 dated 16.1.2009 of State Bank of India, Ballari agreeing to execute the sale deed by receiving the balance sale consideration of Rs.2,75,000/- on or before 31.6.2009 agreeing to terms and conditions therein? (Recasted on 14.12.2017)

- 2) Whether the plaintiff proves that the defendant No.2 in collusion with defendant No.1 obtained a decree of specific performance in O.S.No.135 of 2010 in order to defraud him?*
- 3) Whether the plaintiff proves that the judgment and decree passed in O.S.No.135 of 2010 on the file of Second Additional Senior Civil Judge, Bellary is obtained by playing fraud on him and the court?*
- 4) Whether the plaintiff proves that the defendant No.1 is liable to be execute registered sale deed in accordance with agreement of sale dated 20.1.2009?*
- 5) Whether the plaintiff proves that he was always ready and willing to perform his part of contract ?*
- 6) Whether the defendant No.2 proves that the transaction between the defendant No.1 and the plaintiff is hit under the provisions of Karnataka Land Reforms Act ?*



- 7) *Whether the plaintiff is entitled to the relief of setting aside the judgment and decree passed in O.S.No.135 of 2010 on the file of Second Additional Senior Civil Judge, Bellary ?*
- 8) *Whether the plaintiff is entitled to the relief of declaration of the sale deed dated 23.3.2011 is void abinitio?*
- 9) *Whether the plaintiff is entitled to the relief of specific performance of contract ?*
- 10) *What Order or Decree?*

ADDITIONAL ISSUES DATED 14.12.2017

1. *Whether the plaintiff proves that the defendant No.1 agreed to sell the suit schedule B property in favour of the plaintiff for sale consideration of Rs.1,50,000/- on 20.1.2009 by executing agreement of sale dated 20.1.2009 by receiving the advance sale consideration of Rs.80,000/- vide cheque No.168569 dated 16.1.2009 of State Bank of India, Ballari agreeing to execute the sale deed by receiving the balance sale consideration of Rs.70,000/- on or before 31.6.2009 agreeing to terms and conditions therein?*
2. *Whether the plaintiff proves that the defendant No.1 agreed to sell the suit schedule C property in favour*



of the plaintiff for sale consideration of Rs.3,75,000/- on 20.1.2009 by executing agreement of sale dated 20.1.2009 by receiving the advance sale consideration of Rs.1,50,000/- vide cheque No.168570 dated 16.1.2009 of State Bank of India, Ballari agreeing to execute the sale deed by receiving the balance sale consideration of Rs.2,25,000/- on or before 31.6.2009 agreeing to terms and conditions therein?

3. *Whether the defendant No.1 proves that the defendant No.1 never executed the 3 agreement of sales In respect of suit schedule A to C properties on 20.1.2009 and the said sale agreements are created documents for the purpose of filing of instant suit?*

8. To substantiate its case, authorised representative of the plaintiff's firm was examined as P.W.1, and one witness was examined as P.W.2 and marked 49 documents as Exs.P1 to Ex.P49. In rebuttal, defendant Nos.1 and 2 were examined as D.Ws.1 and 2 and marked 25 documents as Ex.D1 to D25.

9. The trial court, after hearing both sides and assessing the verbal and the documentary evidence, answered issue Nos.1 to 5, 7 to 9 and additional issue



Nos.1 and 2 in the negative, issue No.6 does not survive for consideration, additional issue No.3 in the affirmative, and issue No.10 as per the final order. Consequently, the suit of the plaintiff was dismissed vide judgment dated 31.01.2018.

10. The plaintiff, aggrieved by the judgment and the decree passed in O.S.No.207/2011 by the learned I Additional Senior Civil Judge, Ballari, filed this Regular First Appeal.

11. Heard the arguments of the learned counsel for the plaintiff, and the learned counsel for the defendants.

12. Learned counsel for the plaintiff submits that defendant No.1 is the absolute owner of the suit schedule properties, and he had agreed to sell the suit schedule properties by executing a sale agreements in favour of the plaintiff for valid sale consideration. Accordingly, the plaintiff had paid substantial sale consideration amount to defendant No.1, and defendant No.1 executed the sale



agreements marked as Exs.P2 to P4. It was agreed that the balance sale consideration amount to be paid within six months. She submits that defendant No.1 to deprive the legitimate right of the plaintiff got, executed the sale agreement in favour of defendant No.2, and filed a suit for specific performance of the contract in O.S.No.135/2010, and got decreed the suit behind the back of the plaintiff. The compromise decree passed in O.S.No.135/2010 is not binding on the plaintiff. She submits that the plaintiff was/is always ready and willing to perform its part of the contract. She submits that defendant No.1 executed the GPA in favour of A.Ibrahim, and without any reason, defendant No.1 revoked the GPA. She submits that the plaintiff to prove the execution of the sale agreements examined the attesting witness to Exs.P2 to P4. She submits that the trial court has not properly appreciated the material placed on record. She also submits that the stamp paper used in the sale agreement vide Ex.P7 was purchased subsequently and the agreement came to be



executed much prior to the purchase of the stamp paper. It creates doubt regarding genuineness of Ex.P7. The said aspect was not properly considered by the trial court in O.S.No.135/2010. Hence, she submits that the trial court has committed an error in dismissing the suit of the plaintiff. Hence, on these grounds, she prays to allow the appeal.

13. Per contra, learned counsel for defendant No.1 submits that defendant No.1 never agreed to sell the suit schedule properties in favour of the plaintiff at any point of time. He submits that defendant No.1 never executed Exs.P2 to P4, and he denied his signature on Exs.P2 to P4. He submits that the transaction between the plaintiff and defendant No.1 is not a sale consideration, but it pertains to a business transaction, as defendant No.1 having a transportation business. He was transporting the iron ore of plaintiff's firm and the plaintiff has paid the amount of Rs.5,75,000/- towards the transportation charges, and not towards the alleged sale consideration amount. He submits



that the plaintiff got created Exs.P2 to P4. He also submits that sale agreements were executed in 2009, and as per the terms and conditions of the alleged sale agreements, the sale to be concluded within six months. He submits that the plaintiff has not issued any legal notice calling upon defendant No.1 to receive the balance sale consideration amount and execute the registered sale deeds. He submits that the plaintiff has not complied the provisions of the Section 66(c) of the Specific Relief Act, and the suit filed by the plaintiff is barred by limitation. He further submits that since defendant No.1 was in dire need of money, he has agreed to sell the suit schedule property in favour of defendant No.2 and executed a sale agreement in 2007. Defendant No.2 did not perform his part of the contract. Subsequently, defendant No.2 filed a suit in O.S.No.135/2010 for the relief of specific performance of the contract. Hence, executed a GPA in favour of one A.Ibrahim in 2009, and refused to execute the registered sale deed in favour of defendant No.2. The



said suit was ended in a compromise. As per the compromise decree, defendant No.1 has executed a registered sale deed in favour of defendant No.2. He submits that defendant No.2 is a bonafide purchaser, and is in possession of the suit schedule properties. He also submits that the plaintiff being a partnership firm, there is bar under Section 79B of the Karnataka Land Reforms Act to purchase an agricultural land. The said alleged agreements are in violation of Section 23 of the Indian Contract Act. Hence, the suit filed by the plaintiff is not maintainable. He submits that the trial court has rightly recorded its finding that the plaintiff has failed to prove the sale agreements, i.e., Exs.P2 to P4 alleged to have been executed by defendant No.1 in favour of the plaintiff. He submits that the trial court has rightly dismissed the suit. Hence, on these grounds, he prays to dismiss the appeal.

14. Learned counsel for defendant No.2 adopts the arguments advanced by the learned counsel for defendant



No.1, and prays to dismiss the suit against defendant No.2.

15. Perused the records and considered the submissions of the learned counsel for the parties.

16. The points that would arise for consideration are;

- 1) *Whether the plaintiff proves that defendant No.1 agreed to sell the suit schedule properties by executing sale agreements dated 20.01.2009 and defendant No.1 received the part consideration amount as earnest money?*
- 2) *Whether the plaintiff proves that it was/is always ready and willing to perform its part of the contract?*
- 3) *Whether the plaintiff proves that the judgment and the decree passed by the trial court is perverse, arbitrary and erroneous?*
- 4) *What order or decree?*

Point No.1.

17. To substantiate the case of the plaintiff, the authorised representative of the plaintiff firm was



examined as P.W.1. He deposed that defendant No.1 is the owner of the suit schedule properties, and he agreed to sell the suit schedule properties in favour of the plaintiff for valid consideration. Accordingly, the plaintiff paid substantial portion of the consideration amount through cheques dated 16.01.2009. Defendant No.1 got encashed the said cheques on 17.01.2009, and after encashing the said cheques, defendant No.1 executed sale agreement dated 20.01.2009. It was agreed that the plaintiff shall pay the balance sale consideration amount within six months from the date of execution of the sale agreements. Defendant No.1 went on receiving the consideration amount and did not execute the registered sale deed. Defendant No.1 to deprive the legitimate right of the plaintiff in getting the registered sale deed, got created sale agreement as per Ex.P7 in favour of defendant No.2.

18. He further deposed that the defendants colluding with each other, got filed a suit in O.S.No.135/2010 and managed to get a compromise



decree passed. The said compromise decree is not binding on the plaintiff. The plaintiff was/is always ready and willing to perform its part of the contract. It is stated that the defendants have purchased the stamp paper on 17.12.2008 wherein the agreement was executed on 05.01.2007, i.e., much prior to purchasing of the stamp paper. The plaintiff to substantiate its case produced the documents. Ex.P1 is the authorization letter, which discloses that the Hothur Abdul Wahab, the partner of plaintiff's firm authorizes A.Ibrahim- P.W.1 to sign, submit and give a statement, and to file a vakalath and other documents of the plaintiff's firm to represent it before the statutory authorities in a civil and criminal cases. Ex.P2 is the sale agreement dated 20.01.2009, which discloses that defendant No.1 executed a sale agreement in favour of M/s Kariganur Mineral Mining Industry (100% EOU), wherein defendant No.1 has agreed to sell 'A' schedule property for a sale consideration of Rs.5,75,000/-, and accordingly, the plaintiff paid a sum of Rs.3,00,000/-



towards the advance sale consideration amount through cheque No.168568 dated 16.01.2009. It was agreed that the remaining balance sale consideration amount to be paid on or before 31.06.2009 or whenever the plaintiff called upon defendant No.1 to execute a registered sale deed in favour of the plaintiff. It was agreed to deliver the possession of the suit schedule property in favour of the plaintiff as of the date of execution of the registered sale deed. Ex.P3 is the sale agreement dated 20.01.2009, which discloses that defendant No.1 was agreed to sell 'B' schedule property for a sale consideration of Rs.1,50,000/- , and accordingly, the plaintiff paid a sum of Rs.80,000/- towards the advance sale consideration amount. It was agreed that the balance sale consideration amount to be paid on or before 31.06.2009 or whenever the plaintiff called upon defendant No.1 to execute a registered sale deed in favour of the plaintiff. Ex.P4 is the original sale agreement dated 20.01.2009, which discloses that defendant No.1 was agreed to sell 'C' schedule property



for a sale consideration of Rs.3,75,000/-. Out of which, the plaintiff has paid a sum of Rs.1,50,000/- as of the date of execution of the sale agreement. It was agreed that the balance sale consideration amount to be paid on or before 31.06.2009. Ex.P5 is the communication issue by the Manager of the State Bank of Mysore to M/s KMMI (100% EOU) on 13.09.2011, which discloses that the plaintiff has sought information from the bank, and the Manager has given an endorsement stating that, officials of the bank have verified the records, and they have not issued the stamp papers bearing Nos.777308 and 777309 each worth Rs.100/- on 05.01.2007. Ex.P6 is the communication issued by the Manager of SBM to M/s KMMI (100% EOU) on 04.10.2011, which discloses that they have verified and as per the records, they have issued the stamp papers bearing Nos.777308 and 777309 in the name of Izhar Ahmed on 17.12.2008 of Rs.100/- each. Ex.P7 is the certified copy of the sale agreement dated 05.01.2007 executed by defendant No.1 in favour of defendant No.2



wherein defendant No.1 has agreed to sell the suit schedule property in favour of defendant No.2 for a sale consideration of Rs.9,75,000/-. From the perusal of Ex.P7, it discloses that the stamp paper was sold on 05.01.2007. Ex.P8 is the certified copy of the plaint in O.S.No.135/2010, which discloses that defendant No.2 filed a suit against defendant No.1 for specific performance of the contract. Ex.P9 is the compromise petition filed by the defendants in O.S.No.135/2010. Ex.P10 is the compromise decree passed in O.S.No.135/2010. Ex.P11 is the order sheet of O.S.No.135/2010. Ex.P12 is the certified copy of the registered sale deed executed by defendant No.1 in favour of defendant No.2 on 23.05.2011. Ex.P13 is the encumbrance certificate pertaining to the suit schedule property. Ex.P14 is the GPA executed by defendant No.1 in favour of one A.Ibrahim. Ex.P15 is the certified copy of the FIR, which discloses that A.Ibramim, Power of Attorney holder of defendant No.1 lodged a complaint on 20.09.2014. Based on the



complaint, FIR was registered in Crime No.231/2014 on 20.09.2014 for the offences punishable under Sections 107, 209, 465, 120B, 418, 406, 420, 467, 468, 470, 471, 472, 474, 475, 255, 463 and 464 of the IPC. Ex.P16 is the complaint wherein the plaintiff has lodged the complaint before the concerned police station on 20.09.2014. Ex.P17 is Form-A, which discloses that the M/s KMMI (100% EOU) was registered under the Partnership Act, 1932. Ex.P18 is the certified copy of the registration of the firm of the M/s KMMI (100% EOU). Ex.P19 is the statement of account of M/s KMMI (100% EOU), which discloses that defendant No.1 got encashed three cheques issued in his favour. Exs.P20 to P49 are the cash payment vouchers, which discloses that defendant No.1 received the amount from the M/s KMMI (100% EOU), Ballari towards the sale of the suit schedule properties.

19. During the cross-examination, P.W.1 admits that the suit schedule properties are the agricultural properties, and as per paragraph 7 of the plaint, the



plaintiff was aware that the permission from the Deputy Commissioner is required to purchase the agricultural land. It is contended that he has already submitted an application before the Deputy Commissioner. He admits that three sale agreements executed by defendant No.1 are unregistered agreements. He admits that defendant No.1 executed a sale agreement in favour of defendant No.2. As of the date of filing of the suit, Abdul Wahab and Shadab Wahab the partnership firm, and he was aware of running of Moti Theatre by Abdul Wahab and Shadab Wahab. He does not know that defendant No.1 working in the Moti Theatre as an employee, and defendant No.1 is the relative of Abdul Wahab. He admits that Ex.P2, stamp paper was purchased in the name of plaintiff's firm prior to the execution of sale agreement, and additional sheet was purchased for writing the sale agreement. There is no mention of the date on the additional sheet. In 2008, the stamp papers have been purchased in the Treasury office. He admits that the signature on Ex.P2 and his signature is



marked as Ex.P2(c). In 2008, the stamp papers have been purchased by the plaintiff's firm, and he has not assisted to purchase the stamp papers. All the three sale agreements are mentions the date as 20.01.2009. In Ex.P4, there is an alteration regarding the year, which is mentioned as 2008, he did not know when and on which date the said alteration was made. He admits that Ex.P4 does not bear the signature of defendant No.1 regarding the alteration of the year. Exs.P2 to P4 were purchased on different dates and signed by one T.V.Raghu as a second witness. T.V.Raghu is an employee of the plaintiff's firm. He admits that the plaintiff has not given any notice to defendant No.2, but filed a suit against defendant Nos.1 and 2. He admits that in Exs.P2 to P4, there is a reference regarding payment of remaining balance sale consideration amount to be paid on or before 31.06.2009. It is suggested that defendant No.1 has not at all executed the sale agreements regarding the suit schedule properties in favour of the plaintiff's firm. The said suggestion was



denied by P.W.1. He admits that defendant No.1 issued a notice to P.W.1 regarding cancellation of GPA as per Ex.P14. He admits that, unless the property is converted, the plaintiff cannot be proceeded to get the execution of the registered sale deed.

20. The plaintiff also examined one Malladi Surya Prakash as P.W.2. He deposed that he is working as a Assistant General Manager in the Commercial Branch in SBI, Ballari, and he knows that the plaintiff's firm got an account in their branch since 8 years, and as per the records, the said account was closed. The cheque bearing No.168570 dated 16.01.2009 for Rs.1,50,000/-, another cheque bearing No.168568 dated 16.01.2009 for a sum of Rs.3,00,000/-, and cheque bearing No.168569 dated 16.01.2009 for a sum of Rs.80,000/- were issued by the plaintiff's firm in favour of defendant No.1, and the said cheques were encashed on 17.01.2009. He has produced the extract of the statement of account pertaining to three cheques issued in favour of defendant No.1, and the said



statement of account is marked as Ex.P19. In the cross-examination. It is admitted that the name of Mr.Sirajuddin is not mentioned in Ex.P19. It is elicited that he does not know personally who is Mr.Sirajuddin, and he cannot say whether the said Sirajuddin had an account in their branch.

21. In rebuttal, defendant No.1 was examined as D.W.1., He deposed that the suit was filed on behalf of M/s KMMI, Ballari represented by its authorised signatory Sri.A.Ibrahim, and he has not produced the authorisation or GPA to file the suit. He has denied the execution of the alleged sale agreements in favour of the plaintiff regarding the suit schedule properties. The alleged sale transactions are in violation of the Section 79-B of the Karnataka Land Reforms Act. Defendant No.1 was doing the transportation business of supplying iron ore, and the transportation charges have been duly paid under various bills. The plaintiff's firm has issued cheques on 16.01.2009 towards transportation bills and not towards the alleged sale



consideration amount. He deposed that, since defendant No.1 was in need of money, he had agreed to sell the suit schedule property in favour of defendant No.2, and executed a sale agreement on 05.01.2007. Since defendant No.1 refused to execute the registered sale deed in favour of defendant No.2, defendant No.2 filed a suit in O.S.No.135/2010 on the file of the II Additional Senior Civil Judge, Ballari. On the advice of the elders and the friends, the matter was settled. Accordingly, the compromise petition was filed, and the compromise decree was drawn. Defendant No.1 revoked the GPA executed in favour of A.Ibrahim. The said A.Ibrahim has shown hostile attitude towards defendant No.1 by colluding with the plaintiff. Hence, defendant No.1 by issuing a legal notice to A.Ibrahim on 21.09.2010, requested him to return the original GPA dated 20.01.2009. The said A.Ibrahim instead of returning the GPA gave evasive reply. Defendant No.1 taken paper advertisement regarding the GPA executed by him in favour of A.Ibrahim, revoking the GPA executed on



20.01.2009. D.W.1 deposed that, defendant No.1 never executed the alleged sale agreements dated 20.01.2009. The plaintiff got issued three legal notices dated 07.03.2011 to defendant No.1 to execute the registered sale deed, and defendant No.1 issued three reply notices dated 17.03.2011, calling upon the plaintiff to furnish the copy of the alleged GPA. The plaintiff did not furnish the copy of the alleged GPA dated 20.01.2009. Defendant No.2 is a bonafide purchaser for a valid consideration. Defendant No.1 executed the registered sale deed in favour of defendant No.2 on 23.03.2011. Since from the date of purchase, defendant No.2 is in possession of the suit schedule properties. D.W.1 also deposed that the plaintiff is also having another firm running under the name and style of Embitee Iron and Steel Ltd., and as well as KMMI. Both offices are situated in Embitee Towers, Infantry Road, Ballari. It is deposed that the plaintiff is in the habit of deceiving the persons after supply of iron ore materials on many occasions. One of the traders by name



R.M.D.S. Mustafa had also lodged a complaint against the plaintiff's firm, and the police have registered a case in crime No.156/2010 on 15.08.2010 for the offences punishable under Sections 506, 420 r/w Section 34 of the IPC. The plaintiff has concocted the agreements dated 20.01.2009, and the said agreements are unenforceable.

22. To substantiate his defence, defendant No.1 produced the documents. Ex.D1 is the certified copy of the deposition of P.W.1 in O.S.No.8/2009, wherein A.Ibrahim was examined as P.W.1. wherein Embitee Iron Steel Pvt. Ltd. filed a suit against Metric Tradelink and another. The Emtee Iron & Steel Pvt. Ltd., is the sister concern of the plaintiff herein. The plaintiff has also filed similar suit for recovery of money against Metric Tradelink and another. Ex.D2 is the certified copy of the deposition of A.Ibrahim in O.S.No.8/2009, which discloses that A.Ibrahim further cross-examined as P.W.1. Ex.D3 is the authorisation letter, which discloses that A.Ibrahim was authorised to depose on behalf of the company therein. Ex.D4 is the



certified copy of the legal notice issued by defendant No.1 to A.Ibrahim on 21.09.2010 wherein defendant No.1 revoked the GPA executed by him on 20.01.2009 with immediate effect, and called upon him to return the original GPA. Ex.D5 is the reply notice dated 27.09.2010, given by A.Ibrahim. Counsel for defendant No.1 sought for clarification to the reply notice dated 27.09.2010 as per Ex.P6 date 28.09.2010 wherein defendant No.1 has sought for clarification regarding description of the properties mentioned in the schedule in location as Kurugodu instead of Kuditini. Exs.D7 to D9 are the notices issued by the plaintiff to defendant No.1 on 24.02.2011, 07.03.2011 and 17.03.2011 respectively showing that the plaintiff is ready and willing to perform its part of the contract, and called upon defendant No.1 to receive the balance sale consideration amount and execute the registered sale deeds. Exs.D10 to D12 are the reply given by defendant No.1. Ex.D13 is the notarized copy of the PAN card. Ex.P14 is the original copy of Form No.16-A. Ex.D15 is the



invoice bill submitted by defendant No.1 to the plaintiff's firm regarding the statement towards transportation of iron ore. Ex.D16 is the communication dated 10.07.2007 wherein defendant No.1 has produced the Xerox copy of the missing trip sheet as per the statement for the period from 26.09.2006 to 31.05.2007. Exs.D17 and D18 are the newspaper cuttings issued by defendant wherein he revoked the GPA executed by him in favour of A.Ibrahim regarding the suit schedule properties. Exs.D19 and D20 are the bills submitted by N.N.Traders to the plaintiff's firm and defendant No.1 is the proprietor of N.N.Traders. Ex.D21 is the statement pertaining to N.N.Traders issued by the Canara Bank. Ex.D22 is the letter issued by the plaintiff to the N.N.Traders requesting for copy of DMG permits, DMG trip sheets and forest passes for having purchased the iron ore from N.N.Traders. Ex.D23 is the Income Tax returns verification form pertaining to 2009-10. Ex.D24 is the statement of account of defendant No.1, which discloses that defendant No.1 having an account in



Canara bank. Ex.D25 is the record of rights, which discloses that the name of defendant No.2 is shown to be the owner of the land bearing Sy.No.716/2/A2.

23. In the cross-examination, it was elicited that D.W.1 has studied upto PUC and he has passed PUC. He never worked under Abdul Wahab Sab and he has got a business relationship with Abdul Wahab Sab since from 10 years. Abdul Wahab Sab has got firms namely, KMMI, MBT, KMMI (100%)(EOU). He admits that KMMI and KMMI (100% EOU) are different firms. He does not know who are the partners of the said firm. He does not know whether the KMMI is running or stopped. It is elicited that Shadab Wahab instructed him to raise the bill in the name of KMMI firm, therefore, the said bill was raised in the name of KMMI firm. It is also elicited that he is running N.N.Traders since 2008-09 and it is a proprietorship firm. He was having business with KMMI and thereafter, he was having business with KMMI (100%) (EOU) from 2008-09, and after 2009, defendant No.1 had no business



transactions with the said two firms. Exs.P2 to P4 were confronted to D.W.1, and he admits his signature on Exs.P2 to P4 and his signatures were marked as Exs.P2(a) to P4(a). He denied that he had executed three sale agreements in favour of the plaintiff on 20.01.2009 as per Exs.P2 to P4. It is elicited that he used to transport iron ore of KMMI, but he has not purchased iron ore of KMMI. He denied the execution of the sale agreements, but he has contended that his signatures have been taken on an empty bond papers. Defendant No.1 had purchased total land measuring 15 acres 66 cents under three different sale deeds for total sale consideration of Rs.9,44,000/-. Ex.P2 to P4 were confronted to D.W.1 and he admits his signatures and his signatures were marked as Exs.P2(a) to P4(a). It is elicited that he had closed the transportation business in 2008-09 with all the firms, and there is no transaction regarding the transportation business after 2008-09.



24. Defendant No.2 was examined as D.W.2. He deposed that defendant No.1 was the absolute owner of the suit schedule properties, and he agreed to sell the suit schedule properties in favour of defendant No.2, and executed a sale agreement on 05.01.2007. Since defendant No.1 did not performed his part of the contract, defendant No.2 filed a suit for specific performance of the contract in O.S.No.135/2010. Due to intervention of the elders, the defendants have settled their dispute, and filed a compromise petition was filed in O.S.No.135/2010, and compromise decree was drawn. Pursuant to the compromise decree, defendant No.1 executed a registered sale deed in favour of defendant No.2, and based on the registered sale deed, the name of defendant No.2 was entered in the revenue records. Defendant No.2 has produced the record of rights of the suit schedule properties marked as Ex.D25. In the cross-examination, it is elicited that defendant No.2 has purchased the stamp paper in Ex.P7 through a person in his name, and he do



not remember the name of the person through whom he has purchased those stamp paper. It is denied that the stamp papers were purchased on 17.12.2008. The witnesses volunteers that they had purchased the stamp papers on 05.01.2007, and the stamp papers bears the number 777308 and 777309. It is suggested that defendant No.2 got created Ex.P7 to defeat the rights of the plaintiff. Said suggestion was denied.

25. From the perusal of the entire evidence on record, it is clear that though the plaintiff claims that defendant No.1 had executed three sale agreements dated 20.01.2009, defendant No.1 denied the execution of the sale agreements in favour of the plaintiff. Exs.P2 to P4 disclose that the sale agreements were executed in favour of M/s KMMI (100% EOU). From the perusal of the cause title in the plaint, it discloses that the suit has been filed by M/s KMMI and not by the M/s KMMI (100% EOU). The plaintiff in paragraph 2 of the plaint has stated that the plaintiff's firm is a 100% Export Oriented Unit, engaged in



the business of trading and exporting iron ore to suit the specific needs. P.W.1 himself has admitted that both the firms are different. Exs.P2 to P4 were executed in the name of KMMI (100% EOU) and not with the plaintiff. There is no privity of a contract between the plaintiff and defendant No.1 regarding the suit schedule properties. Further, defendant No.1 has specifically denied the execution of a sale agreements dated 20.01.2009 as per Exs.P2 to P4. The plaintiff has not taken any steps to prove the contents of Exs.P2 to P4. Further, it is not the case of the plaintiff that as of the date of the execution of the sale agreements dated 29.01.2009, the plaintiff and defendant No.1 had a sale talks. Further, the plaintiff has not stated when the sale talks were taken place between the plaintiff and defendant No.1. Admittedly, three cheques were issued in favour of defendant No.1 on 16.01.2009. There is no explanation forthcoming from the plaintiff why the plaintiff got issued three cheques before the execution of the alleged sale agreements. From the



perusal of the recitals of Exs.P2 to P4, it does not disclose that sale talks were taken place prior to 20.01.2009. Defendant No.1 has contended that there was a business transaction with the KMMI (100% EOU), and he has raised a bill regarding the transportation of the iron ore and the said amount was paid by the plaintiff towards the invoices raised by defendant No.1. The plaintiff has not explained why the said cheques were issued four days before the execution of the alleged sale agreements, marked as Exs.P2 to P4. Further, from the perusal of Exs.P2 to P4, it discloses that the sale agreements alleged to have been executed on 20.01.2009, but page Nos.1 and 2 of Ex.P2 discloses that the date of purchase of the stamp paper is 20.11.2008 bearing Nos.779071 and 779070 respectively. Ex.P3 also discloses that the stamp papers have been purchased on 17.12.2008 bearing Nos.777321 and 777322, and Ex.P4 also discloses that the stamp papers were purchased on 22.12.2009 bearing Nos.676080 and 676081. However, the sale agreements were executed on



20.01.2009. If really there was a sale transaction between the plaintiff and defendant No.1, the plaintiff ought to have purchased the stamp paper on 20.01.2009 or one day earlier. From the perusal of Exs.P2 to P4, there is a long gap between the date of purchase of the stamp papers and the execution of the alleged sale agreements dated 20.01.2009. The plaintiff has not explained why the plaintiff's firm had purchased Exs.P2 to P4 on 20.11.2008, 17.12.2008 and 22.12.2009. From the perusal of the date of purchase of the stamp papers as per Exs.P2 to P4, they were purchased on 22.12.2009, wherein the sale agreements were executed on 20.01.2009. This creates doubt in the mind of the court regarding the validity of execution of the sale agreements as per Exs.P2 to P4. Further, plaintiff has lodged a complaint against defendant No.1. The FIR was registered against defendant No.1 as per Exs.P15 and P16. The police have filed a 'B' report. The said fact was admitted by P.W.1 in the cross-examination. Though defendant No.1 has taken a specific



defence that the transaction between the plaintiff and defendant No.1 is a business transaction and not a sale transaction. As could be seen from the records produced by defendant No.1 regarding the invoices submitted by defendant No.1 to the plaintiff's firm. The plaintiff has not seriously disputed invoices produced by defendant No.1. Thus, the plaintiff has failed to establish that defendant No.1 executed a sale agreements dated 20.01.2009 marked as Exs.P2 to P4. The trial court was justified in recording a finding that the plaintiff has failed to prove the execution of Exs.P2 to P4 by defendant No.1 in favour of the plaintiff. The plaintiff has also failed to prove that the plaintiff had paid substantial portion of the sale consideration amount. On the other hand, defendant No.1 has proved that the transaction between the plaintiff and defendant No.1 is a business transaction and not a sale transaction. In view of the above discussion, I answer point No.1 in the negative.



Point No.2.

26. As this court has already observed in point No.1 that the plaintiff has failed to prove the execution of the sale agreements dated 20.01.2009 as per Exs.P2 to P4. Even assuming for the sake of arguments, the sale agreements were executed on 20.01.2009, as per the recitals of the agreements, the plaintiff shall pay the entire sale consideration amount on or before 31.06.2009. Admittedly, the plaintiff did not pay the balance sale consideration amount on or before 31.06.2009. The plaintiff has not produced any records to show that the plaintiff was/is always ready and willing to perform its part of the contract. On the other hand, the plaintiff has also not pleaded in the plaint regarding the issuance of notice within reasonable time/stipulated time. Thus, the plaintiff has failed to comply with Section 16(c) of the Specific Relief Act, 1963. The trial court was justified in recording a finding that the plaintiff has failed to prove that it is/was always ready and willing to perform its part of the



contract. In view of the above discussion, I answer point No.2 in the negative.

Point No.3.

27. The trial court considering the entire evidence on record has opined that Exs.P2 to P4 are surrounded by suspicious circumstances. The stamp paper as per Ex.P2 was purchased in the month of November, 2008, Ex.P3 was purchased in the month of December, 2008, and Ex.P4 was purchased in the month of December, 2009. Hence, the trial court held that the transaction between the plaintiff and defendant No.1 is a business transaction and not a sale transaction, and rightly held that defendant No.1 is not liable to execute the registered sale deed in accordance with the sale agreements dated 20.01.2009. The trial court further held that the plaintiff has failed to prove that it is/was always ready and willing to perform its part of the contract. Defendant No.1 executed a registered sale deed in favour of defendant No.2, and defendant No.2



is in possession of the suit schedule properties. The plaintiff has filed a suit for specific performance of the contract, the plaintiff must establish that defendant No.1 executed a sale agreements in favour of the plaintiff. As observed above, the plaintiff has failed to prove the execution of the sale agreements dated 20.01.2009.

28. In view of the proposition of law laid down by the Hon'ble Apex Court in the case of ***UNION OF INDIA AND OTHERS VS VASAVI CO-OP HOUSING SOCIETY LTD., AND OTHERS*** reported in ***2014 (2) SCC 269***, the plaintiff must succeed his case independently, and cannot depend upon the weaknesses of the defendants. The trial court was justified in dismissing the suit of the plaintiff. I do not find any error in the impugned judgment and decree. In view of the above discussion, I answer point No.3 in the negative.

Point No.4.

29. In view of the above discussion, I proceed to pass the following;



ORDER

- i) The Regular First Appeal is dismissed.
- ii) The judgment and decree dated 31.01.2018 passed in O.S.No.207/2011 by the learned I Additional Senior Civil Judge, Ballari is hereby confirmed.
- iii) No order as to the cost.
- iv) In view of the dismissal of the appeal, pending IA's, if any, does not survive for consideration.

Sd/-
(ASHOK S. KINAGI)
JUDGE