HC-KAR

NC: 2026:KHC-D:1423
RSA No. 100915 of 2025

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 02ND DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

REGULAR SECOND APPEAL NO.100915 OF 2025 (SP)

BETWEEN:

KRISHNA S/O. HEGGAPPA INAPUR,
AGE: 72 YEARS, OCC: PENSIONER,
R/O. "GODAVARI" 3RD CROSS, SRINAGAR,
HALIYAL ROAD, DHARWAD-580001.

...APPELLANT

(BY SRI SHRIKANT T. PATIL AND SRI SHIVANAND M. TELI, AND SRI ROHIT S. PATIL, ADVOCATES)

AND:

1. RAMACHANDRA
S/O. GURURAJ HUYILAGOL @ TOLAMATTI,
AGE: ABOUT 49 YEARS, OCC: PRIVATE SERVICE,
R/O. SRINAGAR, HALIYAL ROAD, DHARWAD-580007.

2. KRISHNA
S/O. GURURAJ HUYILAGOL @ TOLAMATTI,
AGE ABOUT 51 YEARS, OCC: PRIVATE SERVICE,
R/O. SRINAGAR, HALIYAL ROAD, DHARWAD-580007.

...RESPONDENTS

(BY SRI SHIVASAI M. PATIL, ADVOCATE.)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO ADMIT THE APPEAL AND SET ASIDE THE JUDGMENT AND DECREE DATED 03/11/2025 IN R.A.NO.53/2024, PASSED BY THE I ADDITIONAL SENIOR CIVIL JUDGE AND CJM, DHARWAD AND RESTORE THE JUDGMENT AND DECREE DATED 05.06.2024

IN O.S.NO.230/2020, PASSED BY THE III ADDITIONAL CIVIL JUDGE AND J.M.F.C., DHARWAD, AT DHARWAD AND ETC.,.

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

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR)

This Regular Second Appeal is filed by the plaintiff calling in question the judgment and decree dated 03.11.2025 passed in R.A.No.53/2024 by the I Additional Senior Civil Judge and CJM, Dharwad (First Appellate Court), which set aside the judgment and decree dated 05.06.2024, passed in O.S.No.230/2020, by the III Additional Civil Judge and JMFC, Dharwad (Trial Court) and consequently dismissed the suit of the plaintiff.

2. The Trial Court has granted the relief of specific performance directing the defendants to execute the sale deed but it is reversed by the First Appellate Court. Therefore, upon this divergent finding of fact, the plaintiff is before this Court in this second appeal.

3. Brief facts of the case are that, the father of defendants No.1 and 2 was the owner of suit schedule property. The suit schedule property is 10 guntas of land out of 06 acres 38 guntas of land as described in the schedule of the plaint. There was an agreement of sale dated 09.05.1994 between the plaintiff and the father of defendants No.1 and 2 for a total sale consideration of Rs.50,000/- out of which Rs.25,000/- was paid as advance amount on that day. Further it is pleaded that on 19.09.1995, a supplementary agreement was executed and the plaintiff has paid the entire remaining balance amount of Rs.25,000/-. Therefore, it is the case of plaintiff that he has paid the entire amount to the defendants. It is the case of plaintiff that since there was necessity for taking permission from the competent authorities to execute the sale deed, therefore, sale deed was not executed. Thereafterwards defendants No.1 and 2 denied execution of sale deed; hence, after issuing legal notice, the plaintiff has

filed suit for specific performance of contract on 30.06.2020.

4. The defendants No.1 and 2 who are children of original owner of property have appeared and filed the written statement and denied that they have never entered into an agreement of sale and therefore denied the entire case of the plaintiff. Further pleaded that the suit is barred by limitation. Therefore, prays to dismiss the suit.

5. Upon considering the evidence on record, the Trial Court has decreed the suit in full, thereby directing the defendants to execute registered sale deed in favour of the plaintiff. The Trial Court held that agreement of sale is proved and the plaintiff proves that he had paid entire sale consideration amount of Rs.50,000/- and was ready and willing to perform his part of contract and also held that the suit is not barred by limitation. Thus, decreed the suit in full directing the defendants to execute the registered sale deed.

6. Being aggrieved, the defendants have filed Regular Appeal before the First Appellate Court and the First Appellate Court has held that the plaintiff has failed to prove that he was ready and willing to perform his part of contract and held that the suit is barred by limitation. Further, the First Appellate Court held that the Trial Court did not exercise the discretion correctly and properly while granting the discretionary relief of grant of decree for specific performance. Thus, interfered with the judgment and decree passed by the Trial Court. Hence, reversed the judgment and decree passed by the Trial Court and thus, dismissed the suit.

7. Being aggrieved by the dismissal of suit by the First Appellate Court, the plaintiff has preferred this Regular Second appeal by raising various grounds and also contending that the appeal involves substantial questions of law. Therefore, prays to admit the appeal and consider the case on merits and allow this appeal.

8. Upon considering the pleadings of both the parties i.e., plaint and written statement and also considering the evidence adduced by both the parties, the admitted facts are that there was registered agreement of sale on 09.05.1994 for selling 10 guntas of land out of 06 acres 38 guntas of land as more fully described in the plaint schedule. The total sale consideration amount is Rs.50,000/- and accordingly the plaintiff has paid Rs.25,000/- to the owner of the land on that day and subsequently supplementary agreement was executed on 19.09.1995 and remaining amount of Rs.25,000/- was paid. Thus, it is the case of plaintiff that he has paid the entire sale consideration amount. But as per the plaintiff, the defendants have to obtain necessary permission from the concerned authorities to sell the land. But the father of defendants did not obtain permission and in the meantime father of defendants died on 14.07.2009, but the suit is filed on 30.06.2020.

9. Learned counsel appearing for the appellant placed reliance on the judgment of the Hon'ble Supreme Court in ***Gunwantbhai Mulchand Shah and Others Vs. Anton Elis Farel and Others***[1]. In the said decision, the Hon'ble Supreme Court has held that the question of limitation under Article 54 of the Limitation Act, 1963, is a mixed question of law and fact. The second limb of Article 54 of the Limitation Act, 1963, provides when the plaintiff has notice that performance is refused, the suit for specific performance ought to be filed within a period of three years.

10. In the present case, upon considering the evidence on record, there is no material to show that permission was required to be obtained from the competent authority for sale of the suit schedule property. Merely on such a ground, the limitation period for filing the suit cannot be extended. The plaintiff was required to exercise his right within a reasonable period of time and could not have waited for long 25 years to file the suit. Therefore, the

[1] (2006) 3 SCC 634

question of law arising in the present case is required to be examined in the light of the admitted facts and evidence on record.

11. Learned counsel for the appellant further submitted that the appellant is in possession over the suit schedule property by virtue of the registered agreement of sale dated 09.05.1994. It is further submitted that the defendants had filed a suit in O.S.No.537/2018 against the appellant herein for permanent injunction, which came to be dismissed, and the said judgment and decree have attained finality. Therefore, it is submitted that the appellant/plaintiff is in possession of the suit schedule property. Hence, submitted that the defendants cannot dispossess the plaintiff except by due process of law and, in the event of dispossession, the same must be only in accordance with law.

12. There is no evidence produced by the plaintiff to establish what permission was required to be obtained by

the father of defendants, so as to sell the suit schedule property. Admittedly, the suit came to be filed on 30.06.2020, resulting in a delay of 25 years from the date of the agreement of sale. The Trial Court has wrongly observed and held that the suit is not barred by limitation. Though there is no stipulation in the agreement of sale that time is the essence of the contract, the contract is required to be performed within a reasonable period and cannot be kept alive for decades, as in the present case.

13. It is further noted that the defendants' father died in the year 2009. There is no evidence on record to show that the plaintiff had taken any steps during lifetime of the defendants' father to get the sale deed executed. Even after the death of the defendants' father, the plaintiff waited for nearly nine years to file the suit. Therefore, the suit is clearly barred by limitation.

14. In this regard, the Trial Court has committed error and it is rightly rectified by the First Appellate Court by

holding that the suit is barred by limitation. Furthermore, the relief of specific performance is discretionary one, as contemplated under Section 20 of the Specific Relief Act, 1963. In this regard I place reliance on the principles of law laid down by the Hon'ble Supreme Court in the cases of ***Jayakantham and Others vs. Abaykumar*** ((2017) 5 SCC 178); ***Parakunnan Veetill Joseph's Son Mathew vs. Nedumbara Kuruvila's Son*** ((1987) Supp SCC 340); ***Sardar Singh vs. Krishna Devi*** ((1994) 4 SCC 18); ***K. Narendra vs. Riviera Apartments (P) Ltd.,*** ((1999) 5 SCC 77); ***A.C. Arulappan vs. Ahalya Naik*** ((2001) 6 SCC 600); ***U.N. Krishnamurthy (Since Deceased) and Others Lrs. Vs. A.M. Krishnamurthy*** ((2023) 11 SCC 175); ***P. Daivasigamani vs. S. Sambandan*** ((2022) 14 SCC 793); ***J.P.Builders and Another vs. A.Ramdas Rao and Another*** ((2011) 1 SCC 429); ***Zarina Siddiqui vs. A. Ramalingam Alias R.Amarnathan*** ((2015) 1 SCC 705) ; ***R.Shama Naik vs. G.Srinivasaiah*** (2024 SCC ONLINE 3586) and ***Sri T.N.Arun Kumar and Others vs.***

Sri Shivanna, S/o. Late Basappa and Another ((2012) 3 KCCR 1757 (DB)).

15. Considering the date of the agreements, namely 09.05.1994 and 19.09.1995, and the fact that the suit was filed in the year 2020, therefore, granting decree for specific performance after twenty-five years would result in unfair advantage over the defendant by the plaintiff and furthermore, it would become arbitrary and certainly causes hardship to defendants No.1 and 2.

16. Further the alleged agreement is dated 09.05.1994. For ten guntas of land the sale consideration amount is Rs.50,000/-. The suit is filed in the year 2020. Therefore, if the schedule land is compelled to sell to the consideration amount of Rs.50,000/- in the year 2020 as on the date of filing the suit certainly defendants No.1 and 2 are facing hardship and deprived of getting benefit of escalated price. Therefore, this is also one of the factors to be considered. Due to inflation, the price of immovable

property is escalated and if the property is sold for the same sale consideration of Rs.50,000/- after 25 years, then certainly hardship would be caused to the owners of the property. In this regard, I place reliance on the judgment of the Hon'ble Supreme Court in the case of ***Saradamani Kandappan vs. S. Rajalakshmi and others***[2], wherein at paragraphs No.36, 37, 38, 39, 41, 42 and 43, it is held as under:

> *"36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market value of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor-defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little*

[2] (2011) 12 SCC 18

inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and `non-readiness'. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping *increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten Thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.*

38. It is now well settled that laws, which may be reasonable and valid when made, can, with passage of time and consequential change in circumstances, become arbitrary and unreasonable. In Rattan Arya v. State of T.N. [(1986) 3 SCC 385] this Court held: (SCC pp. 389-90, para 4)

> *"4…We must also observe here that whatever justification there may have been in 1973 when Section 30(ii) was amended by imposing a ceiling of Rs.400 on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents throughout the country, particularly in*

> *urban areas. It is common knowledge today that the accommodation which one could have possible got for Rs.400 per month in 1973 will today cost at least five times more. In these days of universal day to day escalation of rentals any ceiling such as that imposed by Section 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today. As held by this court in Motor General Traders v. State of A.P. [(1984)1 SCC 222] a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, become discriminatory and liable to challenge on the ground of its being violative of Article 14."*

(emphasis supplied)

39. In Malpe Vishwanath Acharya v. State of Maharashtra [(1998)2 SCC 1] a three-Judge Bench of this Court considered the validity of determination of standard rent by freezing or pegging down the rent as on 1.9.1940 or as on the date of first letting, under sections 5(10)(B), 7, 9(2)(b) and 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Ac, 1947. This court held that the said process of determination under the Act, which was reasonable when the law was made, became arbitrary and unreasonable in view of constant escalation of prices due to inflation and corresponding rise (sic fall) in money value with *the passage of time. This Court held: (SCC pp. 22-23, paras 29 & 31)*

> *"29. Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants......*
>
> *31. Taking all the facts and circumstances into consideration, we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable......"*

41. A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this court in K.S. Vidyanadam vs. Vairavan [(1997) 3 SCC 1] (by Jeevan Reddy J. who incidentally was a member of the Constitution Bench in Chand Rani v. Kamal

Rani, (1993) 1 SCC 519). This Court observed: (SCC pp. 7 & 9, paras 10-11)

> *"10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. …in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades - particularly after 1973. ....*
>
> *11….We cannot be oblivious to the reality-and the reality is constant and continuous rise in the values of urban properties-fuelled by large scale migration of people from rural areas to urban centres and by inflation….Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties - evolved in times when prices and values were stable and inflation was unknown - requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so."*
>
> *(emphasis supplied)*

42. Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable *properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to larger Bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in Chand Rani v. Kamal Rani, (1993) 1 SCC 519. Be that as it may.*

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam vs. Vairavan, (1997) 3 SCC 1:

> *(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.*
>
> *(ii) The Courts will apply greater scrutiny and strictness when considering whether the purchaser was `ready and willing' to perform his part of the contract.*
>
> *(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the*

> *agreement. Courts will also `frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.”*

17. Therefore, when price of immovable property escalates, selling the property for the old rate of consideration amount that is Rs.50,000/- agreed before 25 years ago on the guise of decree, certainly would amount to unfair advantage over the defendant by the plaintiff causing hardship to defendants No.1 and 2.

18. However, without considering these, the Trial Court has wrongly decreed the suit, which has been rightly rectified by the First Appellate Court. Therefore, there is no fault found with the judgment and decree passed by the

First Appellate Court and same deserves to be upheld. Considering the above reasonings, there is no substantial question of law arises for consideration in this appeal, also no good grounds are made out to entertain the second appeal. Therefore, the appeal is liable to be dismissed at the admission stage itself.

19. Accordingly, the appeal is ***dismissed***.

20. No order as to costs.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

MRK-para 1 to 8.
PMP-para 9 to end.
CT-AN
List No.: 1 Sl No.: 36