IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF APRIL, 2024

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

MISCELLANEOUS SECOND APPEAL NO. 95 OF 2023 (RO)

BETWEEN:

M.H. SANAULLA,
SON OF MOHD. HANEEF,
AGED ABOUT 67 YEARS,
OCC: AGRICULTURIST,
RESIDENT OF BASAVESHWARA NAGARA,
NALLUR-VILLAGE, CHANNAGIRI-TALUK,
DAVANAGERE-DISTRICT - 577 213.

...APPELLANT

(BY SRI. RAMAKRISHNA N, ADVOCATE)

AND:

S. BASAVARAJAPPA,
SON OF LATE SHIVAPPA,
AGED ABOUT 63 YEARS,
OCC: AGRICULTURIST,
RESIDENT OF BASAVESHWARA NAGARA,
NALLUR-VILLAGE, CHANNAGIRI-TALUK,
DAVANAGERE-DISTRICT - 577 213.

...RESPONDENT

(BY SRI. SANATHKUMAR SHETTY K, ADVOCATE)

Digitally signed by SUVARNA T
Location: HIGH COURT OF KARNATAKA

THIS MSA IS FILED UNDER SECTION 43 RULE (1)(u) OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 13.06.2023 PASSED IN RA No. 23/2020 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, DAVANAGERE,

ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 30.01.2020 PASSED ON IA No. II IN OS No.66/2018 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, CHANNAGIRI, ALLOWING THE IA No. II FILED UNDER ORDER 7 RULE 11(d) R/W 151 OF CPC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The miscellaneous second appeal is filed aggrieved by the order passed in R.A.No.23/2020 dated 13.06.2023 on the file of II Addl. District and Sessions Judge, Davanagere.

2. The suit was filed seeking recovery of money basing on an agreement of sale. The defendant has filed an application under Order 7 Rule 11(d) read with Section 151 of CPC seeking a prayer to reject the plaint. As the plaintiff failed to place original documents and the plaintiff has not at all sought permission to produce original documents from the Court, the suit is not maintainable and also barred by limitation. The learned trial Judge by

order dated 30.01.2020, had allowed that application and rejected the plaint and consequently, the suit was dismissed.

3. Aggrieved thereby, the plaintiff has filed R.A.No.23/2020 before the II Addl. District and Sessions Judge, Davanagere. The appellate Court allowed the appeal on 13.06.2023 setting aside the judgment and decree passed by the Senior Civil Judge and JMFC, Channagiri in O.S.No.66/2018 on 30.01.2020 and remanded the matter to the Trial Court.

4. The present MSA came to be filed stating that as the matter is remanded back to the Court below, the learned counsel for the respondent submits against the judgment and decree passed in R.A.No.23/2020,he has to file regular second appeal but not miscellaneous second appeal.

5. Learned counsel appearing for the appellant submits that when the matter came up before this Court,

this Court had granted an interim order and the same is subsisting till today. Learned counsel further submits that, he may be permitted to convert the same into regular second appeal and till such time, the interim order, granted earlier in this MSA shall be continued.

6. The same was opposed by the learned counsel for the respondent and he submits that when the appeal is not maintainable, then the question of continuing the interim order would not arise.

7. Considering the fact that the MSA was initially entertained and an interim order was granted and the appellant was enjoying interim order till now. Balancing the interest of both the parties, this Court deems it appropriate to permit the appellant to convert this MSA into RSA.

8. When it comes to the interim order, the appellant shall convert this appeal into RSA and he shall

file the same by 28.05.2024, only till then, the interim order granted earlier in this MSA shall be in force. If the appeal is not preferred by the said date, the interim order will stand vacated automatically.

For all practical and statistical purpose, this MSA is disposed of.

In view of disposal of the main appeal, pending I.A.s do not survive for consideration.

SD/-
JUDGE

JS
List No.: 1 Sl No.: 26
CT: BHK