IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 1599 OF 2023 (INJ)

BETWEEN:

1 . HANUMANTHAPPA
S/O CHOWDAPPA
AGED ABOUT 62 YEARS
AGRICULTURIST

2 . ANILKUMAR
S/O HANUMANTHAPPA
AGED ABOUT 29 YEARS
AGRICULTURIST

3 . ASHA
D/O HANUMANTHAPPA
AGED ABOUT 27 YEARS
HOUSE WIFE

4 . ASHWINI
D/O HANUMANTHAPPA
AGED ABOUT 25 YEARS
HOUSEWIFE

ALL ARE R/O VIDYANAGARA
HOLEHONNURU
BHADRAVATHI TALUK
SHIVAMOGGA DISTRICT-577302

DEFENDANT NO.2 DIED ON 22.01.2023 AND
APPELLANTS ARE THE LRS

...APPELLANTS

(BY SRI. SARVAMANGALA CHIKKANAGOUDAR, ADVOCATE)

AND:

1 . B. RUDRAPPA
S/O BASAPPA
AGED ABOUT 62 YEARS
R/O MUDALAVITALAPURA VILLAGE
HOLEHONNURU
BHADRAVATHI TALUK
SHIVAMOGGA DISTRICT-577302.

…RESPONDENT

(BY SRI. CHIDANANDAYYA, ADVOCATE)

THIS APPEAL IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 18.04.2023 PASSED IN OS.NO.51/2019 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND JMFC, BHADRAVATHI, DECREEING THE SUIT FOR INJUNCTION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.07.2025, THIS DAY ORDER WAS PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

C.A.V. JUDGMENT

The captioned appeal is by an unsuccessful defendants challenging the judgment and decree for specific performance of contract granted in O.S.51/2019.

2. For the sake of convenience the parties are referred to as per their rank before the trial Court.

3. The facts of the case are as under:

The plaintiff and the defendants entered into an agreement to sell dated 11.05.2016 in respect of the suit schedule property for a total sale consideration of Rs.11,14,000/-. The plaintiff has specifically averred that a substantial portion of the sale consideration, amounting to Rs.11,00,000/-, was paid by him to the defendants. It is further pleaded that, as per the terms of the agreement, the defendants had agreed to execute a registered sale deed within a period of three years from the date of the agreement.

4. The plaintiff has clearly stated that a sum of Rs.8,00,000/- was paid on the very date of execution of the agreement. Subsequently, at the request of the defendants,

the plaintiff paid an additional amount of Rs.2,00,000/- by way of cheque dated 20.04.2017 and a further sum of Rs.1,00,000/- in cash, towards the balance sale consideration. According to the plaintiff, only a negligible amount of Rs.14,000/- remained due under the agreement. Despite several requests and reminders, including issuance of a legal notice, the defendants failed to perform their part of the contract. The plaintiff asserts that he was always ready and willing to pay the balance amount of Rs.14,000/- and demanded execution of the sale deed. However, instead of complying, the defendants issued a legal notice dated 11.12.2018, wherein they falsely alleged that the sum of Rs.8,00,000/- received from the plaintiff was merely a hand loan and denied the existence of any agreement to sell dated 11.05.2016. Aggrieved by the defendants' conduct and failure to perform their contractual obligations, the plaintiff has filed the present suit for specific performance, after issuing a legal notice.

5. Pursuant to service of summons, the defendants entered appearance and filed their written statement. In their defence, the defendants have categorically denied the execution of the agreement to sell. They have contended that the transaction was purely in the nature of a hand loan of Rs.8,00,000/- borrowed from the plaintiff. The defendants have stoutly denied the plaintiff's claim of having paid any further sum of Rs.3,00,000/- and have disputed the payment made through cheque as well as cash. The defendants thus deny the very foundation of the plaintiff's claim and assert that no agreement to sell was ever entered into between the parties.

6. Both the parties led oral and documentary evidence in support of their respective claims.

7. Trial Court on appraisal of the oral and documentary evidence decreed the suit. The said judgment and decree is under challenge.

8. The learned counsel appearing for the defendants vehemently contended that while the defendants admit having borrowed a sum of Rs.8,00,000/- from the plaintiff, the said transaction was purely in the nature of a loan and there was never any intention to sell the suit schedule property. He submitted that the suit property is the only immovable asset available to the defendants and constitutes their sole source of livelihood. In this background, he urged that the decree for specific performance passed by the trial Court has resulted in grave hardship to the defendants. Emphasizing the financial vulnerability of the defendants and their lack of any alternative means of sustenance, the learned counsel sought to persuade this Court that restitution of the amount received from the plaintiff, along with appropriate interest, would meet the ends of justice and therefore the decree deserves to be set aside on equitable grounds.

9. Per contra, the learned counsel appearing for the plaintiff submitted that the defendants have unequivocally admitted the execution of the agreement and the receipt of substantial consideration. He contended that the plea of comparative hardship, not having been specifically pleaded in the written statement, cannot be raised for the first time in appeal. He further submitted that a substantial sum was paid to the defendants as far back as in the year 2016 and the plaintiff has continuously expressed his readiness and willingness to perform his part of the contract. Therefore, any leniency shown at this stage would cause serious injustice to the plaintiff and defeat the legitimate contractual rights accrued in his favour.

10. I have carefully heard the learned counsel for both parties. I have meticulously examined the pleadings, as well as the oral and documentary evidence placed on record by the plaintiff and the defendants.

11. In view of the rival contentions, the following points arise for consideration in this appeal:

(i) Whether the decree for specific performance passed by the trial Court suffers from perversity or legal infirmity warranting interference in appeal?

(ii) Whether the plea of comparative hardship can be entertained at the appellate stage in the absence of specific pleadings and supporting evidence before the trial Court?

(iii) What order?

FINDING ON Point No.(i):

12. The plaintiff has instituted the present suit seeking specific performance of the contract of sale based on the agreement dated 11.05.2016. Out of the total sale consideration of Rs.11,14,000/-, the plaintiff has pleaded and proved payment of Rs.11,00,000/-. In order to substantiate his case, the plaintiff entered the witness box and examined himself, in addition to examining attesting

witnesses to the agreement. The plaintiff's testimony is consistent and corroborated by documentary evidence. During cross-examination, the defendants have not been able to elicit any material to discredit the plaintiff's version or to establish their defence that the transaction was, in fact, a loan transaction and not an agreement to sell.

13. On the contrary, during the course of trial, the plaintiff succeeded in demonstrating that the defendants had previously entered into a similar agreement with one Ganesh for sale of the same property for a lesser amount of Rs.9,50,000/-, which did not culminate in a sale. The defendants thereafter entered into the present agreement with the plaintiff for a higher consideration, thereby indicating that the intention was clearly to sell the property. Despite their claim that the transaction was in the nature of a hand loan, the defendants have failed to produce any documentary or corroborative evidence to support this plea. There is not even a promissory note, receipt, or

acknowledgement that would suggest a loan arrangement. Thus, the defendants' assertion in the written statement that the transaction was a mere loan is completely unsupported and stands rebutted by the plaintiff's consistent and cogent evidence.

14. For the first time in this appeal, the defendants have raised a plea of comparative hardship, urging that specific performance would result in undue hardship as the property is their only source of income. However, this plea was never raised in the written statement nor was any evidence led on this aspect before the trial Court. It is a well-settled principle of law that the grant of specific performance under Section 20 (now Section 20 to 23 of the amended Act) of the Specific Relief Act, 1963, is a discretionary relief. Nonetheless, such discretion is governed by judicial principles and is not arbitrary. Once the plaintiff demonstrates due performance or readiness and willingness to perform his part of the contract and

establishes that the defendant has received substantial consideration, the burden shifts heavily on the defendant to prove that enforcement of the contract would result in inequity or hardship.

15. In the present case, the plaintiff has paid an overwhelming portion of Rs.11,00,000/- out of Rs.11,14,000/- way back in 2016. The defendants' subsequent refusal to execute the sale deed, despite repeated demands and issuance of legal notice, is clearly an act of evasion. The plaintiff has also elicited in the cross-examination of D.W.1 that the defendants had earlier agreed to sell the same property to Ganesh for a lesser price. Thus, the subsequent agreement with the plaintiff for higher consideration further weakens the plea that the defendants never intended to sell the property. The defendants' conduct reveals an attempt to renege from a concluded contract, likely influenced by the increased

market value of the property. Equity does not favour such conduct.

16. This Court is unable to accept the submission that refund of the amount received from the plaintiff would constitute a just and equitable outcome. The defendants, having received almost the entire sale consideration, cannot now seek to avoid performance merely by offering restitution. There is no indication of any financial incapacity or legal impediment to execute the sale deed. Rather, the conduct of the defendants in denying the agreement and subsequently offering to refund the amount suggests that they have identified an alternate buyer willing to pay a higher price. Such conduct smacks of opportunism and lacks bona fides.

17. It is true that specific performance is not a matter of right and lies within the discretionary domain of the Court. However, once the trial Court, after due

consideration of pleadings and evidence, has exercised its discretion in favour of the plaintiff, such discretion ought not to be interfered with lightly unless there is a manifest error or miscarriage of justice. No such infirmity is demonstrated in the present case. The trial Court has meticulously considered the evidence on record and rightly concluded that the plaintiff has performed his part of the contract and the defendants are unjustly seeking to resile from their obligation.

18. The discretion under Section 20 of the Specific Relief Act must necessarily be exercised in favour of the party who has acted fairly, diligently, and in good faith. The plaintiff has clearly demonstrated his readiness and willingness to perform his part of the contract and has paid substantial sale consideration. In contrast, the defendants, after receiving the major portion of the consideration, are now attempting to evade their obligations on untenable

grounds. Equity, therefore, strongly tilts in favour of the plaintiff.

19. The findings recorded by the trial Court are based on sound appreciation of both oral and documentary evidence. In the absence of any cogent rebuttal or evidence to the contrary, this Court finds no reason to interfere with the well-reasoned judgment and decree passed by the trial Court. Granting indulgence to the defendants at this appellate stage would result in grave injustice to the plaintiff who has been diligently pursuing enforcement of a valid agreement for nearly a decade.

Accordingly, points (i) and (ii) formulated above are answered in the negative.

20. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

The appeal is ***dismissed***.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

ALB