



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO. 838 OF 2021 (SP)

BETWEEN:

1. SMT. M. NAGARATHNA
W/O MAHADEVAPPA
AGED ABOUT 55 YEARS
R/O MUDLUPURA VILLAGE
KASABA HOBLI
CHAMARAJANAGAR TALUK
AND DISTRICT-571 313.

...APPELLANT

(BY SRI. K.N.NITHISH, ADVOCATE FOR
SRI. K.V. NARASIMHAN, ADVOCATE)

AND:

1. SMT. PUSHPAMMA
W/O LATE SIDDAPPA
AGED ABOUT 60 YEARS
R/O SANTHEMARAHALLI VILLAGE
CHAMARAJANAGAR TALUK
AND DISTRICT-571 313.

...RESPONDENT

(BY SRI. KUMAR J.C., ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 21.04.2021
PASSED IN R.A.NO.5071/2018 ON THE FILE OF THE
ADDITIONAL DISTRICT AND SESSIONS JUDGE,
CHAMARAJANAGARA (SITTING AT KOLLEGAL), DISMISSING THE
APPEAL AND CONFIRMING THE JUDGMENT AND DECREE





DATED 30.07.2018 PASSED IN O.S.NO.111/2006 ON THE FILE OF THE SENIOR CIVIL JUDGE AND CJM, CHAMARAJANAGAR.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL JUDGMENT

This matter is listed for admission and I have heard the learned counsel appearing for the appellant and learned counsel appearing for the respondent.

2. This appeal is filed against the concurrent finding and the Trial Court granted the alternative relief directing the defendant to refund the earnest money of Rs.7,00,000/- to the plaintiff within two months from the date of the order and in default, the defendant shall pay interest on Rs.7,00,000/- at the rate of 10% per annum compounded half yearly from the date of the order till realization of the amount and declined to grant the relief of specific performance, though comes to the conclusion that agreement is proved by answering issue No.1. The Trial Court also comes to the conclusion that the defendant has received the amount of Rs.7,00,000 while answering issue No.2 and the plaintiff was always ready in answering issue No.3



as 'affirmative'. But, while answering issue No.4 whether the plaintiff is entitled for the relief of specific performance of agreement, considered the factual aspects that there was an earlier agreement prior to the sale agreement i.e., in favour of one Mr. K. Chandru from whom, the defendant also taken the amount of Rs.3,50,000/-. Apart from that, the Trial Court also taken note of the circumstances under which she was forced to take the money which has been extracted in paragraph Nos.16, 17, 18 and 19. The Trial Court also relied upon the judgment in ***RANGANAYAKAMMA VS. N. GOVINDARAJAN*** reported in ***1982 (1) KLJ 385.***

3. Being aggrieved by the said judgment granting alternative relief of refund of money, an appeal is filed before the First Appellate Court in R.A.No.5071/2018. The First Appellate Court also having reassessed both oral and documentary evidence as well as question of fact and question of law, answered the points for consideration which have been framed whether plaintiff is entitled for the relief of specific performance and whether an application filed under Order XLI Rule 27 CPC deserved to be allowed. Both the points are



answered as 'negative' and confirmed the judgment of the Trial Court rejecting the application filed under Order XLI Rule 27 CPC. Being aggrieved by the concurrent finding, present second appeal is filed before this Court.

4. The main contention of learned counsel appearing for the appellant before this Court is that the very appreciation of evidence of D.W.3 by the Courts below is perverse. It is also contented that both the Courts failed to take note of legislative mandate under Sections 91 and 92 of the Indian Evidence Act and ratio laid down by the Apex Court in the case of **V. ANANTHA RAJU & ANR. VS. T.M. NARASIMHAN & ORS.** in **CIVIL APPEAL NO.6469/2021** and also contend that First Appellate Court has erred in not allowing the application filed under Order XLI Rule 27 CPC. Hence, matter requires interference of this Court. The learned counsel appearing for the appellant during the course of argument brought to notice of this Court observation made by the Trial Court and contend that the Trial Court not extracted the entire recitals of the document at Ex.P3 and only a portion was extracted in paragraph No.17, however in the document at Ex.P3 there is a



recital as regards execution of earlier document in favour of one Mr. K. Chandru is admitted and not stated the same, since the transaction is a loan transaction and the finding of the Trial Court in paragraph No.18 is against the said recital. The counsel also brought to notice of this Court that it is not a case for consideration of hardship.

5. Learned counsel appearing for the appellant, in support of his argument relied upon the judgment of the Apex Court in **BEEMANENI MAHA LAKSHMI VS. GANGUMALLA APPA RAO (SINCE DEAD) BY L.Rs.** decided on **09.05.2019** in **CIVIL APPEAL NOS.4537-4538/2017** and brought to notice of this Court paragraph No.11, wherein a discussion was made with regard to no specific defence was taken in the written statement with regard to hardship is concerned.

6. The counsel also relied upon the judgment of this Court in **LALITHAMMA AND ORS. VS. A.D. GOVINDAIAH** decided on **01.07.2024** in **R.S.A.NO.681/2023**, wherein this Court also in paragraph Nos.18, 19 and 20 taken note of payment of more than 95% of the sale consideration and



contend that in the case on hand also, as against Rs.7,50,000/- an amount of Rs.7,00,000 was paid.

7. The counsel also brought to notice of this Court the judgment of this Court in **VISHNU VS. ABDULGANI** decided on **03.08.2012** in **R.S.A. CROB. NO.53/2009 AND R.S.A.NO.3198/2006** and brought to notice of this Court paragraph No.20, wherein an observation is made with regard to conduct of the defendant, wherein specifically denied the agreement, receipt of consideration and goes to the extent of denying even the signatures. Hence, the judgment is aptly applicable to the case on hand.

8. Per contra, learned counsel appearing for the respondent would submit that it is not in dispute that first son of the defendant died on 06.12.2013 and husband of the defendant also died on 20.12.2013 and immediately, she entered into an agreement of sale with Mr. K. Chandru on 30.10.2014 and availed an amount of Rs.3,50,000/- and when the said Mr. K. Chandru insisted for repayment of amount and when the defendant was under financial constraints, she entered into present sale agreement and the same was taken



note by the Trial Court while considering issue No.4, whether the plaintiff is entitled for the relief of specific performance and in detail discussed in paragraph Nos.16, 17, 18 and 19 and declined to grant the relief of specific performance. The First Appellate Court also taken note of the same while re-appreciating the material available on record and rightly answered point Nos.1 and 2 as 'negative', in coming to the conclusion that the plaintiff is not entitled for the relief of specific performance. Hence, question of admitting the appeal and framing substantial questions of law does not arise.

9. Having heard learned counsel appearing for the appellant, learned counsel appearing for the respondent and considering the material available on record, no doubt, the Trial Court considering the case of the plaintiff answered issue Nos.1 to 3 as 'affirmative' with regard to execution of sale agreement on 16.07.2015 and answered issue No.2 as 'affirmative' that an amount of Rs.7,00,000/- was paid and the plaintiff was always ready and willing to perform her part of contract, however, considering the factual aspects of the case, particularly in paragraph No.16, 17, 18 and 19, taken note of the admission



on the part of P.W.1 in paragraph No.16 and not disputed the fact that husband and first son died and the defendant entered into an agreement with one Mr. K. Chandru on 30.10.2014 and the present agreement came into existence on 16.07.2015 and prior to that, there was an agreement in favour of one Mr. K. Chandru on 30.10.2014. These are the materials which clearly disclose that the defendant was under the financial constraints to meet the medical expenses of her husband as well as son. The counsel appearing for the respondent would submit that even the other son also died subsequent to entering into sale agreement and the Trial Court also in detail discussed the same in paragraph Nos.16 to 19, particularly in paragraph Nos.18 and 19, taken note of the circumstances under which she entered into an agreement and even taken note of the judgment in **RANGANAYAKAMMA VS. N. GOVINDARAJAN** reported in **1982 (1) KLJ 385**.

10. No doubt, counsel appearing for the appellant brought to notice of this Court the judgment of the Apex Court in **BEEMANENI MAHA LAKSHMI'S** case and brought to notice of this Court paragraph No.11, wherein the Apex Court made



an observation with regard to not raising the defence of hardship and for the first time, the said hardship was raised before the Apex Court and the same will not come to the aid of the appellant and the same is not the case of the appellant herein. But, in the case on hand, the defendant specifically pleaded in the written statement the circumstances under which an agreement was entered into between the plaintiff and defendant. The said aspect is also taken note of by the Trial Court and in paragraph No.3, in detail discussion was made by the Trial Court. The defendant even categorically admitted that she has taken the amount of Rs.7,00,000/- for interest at the rate of 1.50% per month and never intended to sell the suit schedule property at any point of time. It is also submitted that the plaintiff with malafide intention has got executed the agreement of sale stating that it is a hypothecation deed. When such specific defence was taken in the written statement and pleaded the same, the said judgment will not come to the aid of the appellant.

11. The counsel also relied upon the judgment of this Court in **LALITHAMMA'S** case. No doubt, this Court granted



the relief of specific performance taking into consideration the fact that 95% of sale consideration has been paid and factual aspects of the case on hand is different from the case which has been relied upon by the counsel. No doubt, in the case on hand an amount of Rs.7,00,000/- was paid as against Rs.7,50,000/- and the circumstances under which the defendant was forced to enter into an agreement of sale has to be taken note of. Hence, the said judgment also will not come to the aid of appellant.

12. The counsel appearing for the appellant also relied upon the judgment passed in ***VISHNU VS. ABDULGANI*** decided on ***03.08.2012*** in ***R.S.A. CROB. NO.53/2009 AND R.S.A.NO.3198/2006***. No doubt, the Court has to take note of conduct while granting the relief of specific performance, this Court has taken note of the same, wherein the defence is not open to the person, who denies the agreement, receipt of consideration and even goes to the extent of denying the signatures. But, in the case on hand, the defendant herself contend that an agreement came into existence and also narrated the circumstances under which the agreement came



into existence. It is also contented that though sale agreement is executed, but it was a loan transaction. Hence this judgment also will not come to the aid of the appellant.

13. Having considered the factual aspects of the case and also the reasoning given by the Trial Court, the Trial Court in detail passed an order considering the factual aspects, particularly the admission in paragraph No.16 as well as paragraph Nos.17, 18 and 19 and declined to grant the relief of specific performance, in coming to the conclusion that it is not a case for granting the relief of specific performance and taken note of Section 20 while granting the relief and also the circumstances under which she entered into an agreement.

14. The counsel appearing for the appellant also brought to notice of this Court that even prior to execution of sale agreement, other property was sold and borrowed an amount of Rs.2,00,000/- from other person and the same has not been considered by the First Appellate Court. Even that argument was also canvassed before the First Appellate Court and the First Appellate Court rejected the same and taken note of the circumstances under which the present agreement came



into existence. Even prior to execution of sale agreement, it is clear that the defendant was under financial constraints, in order to meet the medical expenses of her son as well as husband, who have also lost their breath and under such circumstances, she entered into an agreement. Hence, I do not find any force in the contention of learned counsel appearing for the appellant that it is a case for granting the relief of specific performance and no ground is made out to admit the appeal and frame any substantive question of law.

15. The Trial Court and the First Appellate Court taken note of the factual aspects and the circumstances under which the defendant entered into an agreement and rightly declined to grant the relief of specific performance. But, the Trial Court failed to take note of the very admission on the part of the defendant, who categorically took the defence that she will pay the interest at 1.50% per month and the same comes to 18% per annum. The Trial Court, while granting the relief of refund of money, only awarded interest at 10% per annum and the same is against the pleadings of the defendant. When such being the case, even without admitting the appeal, considering



the admission on the part of the defendant-respondent, this Court can modify the order of the Trial Court granting the interest at the rate of 18% per annum.

With these observations, the regular second appeal is disposed of.

Sd/-
(H.P.SANDESH)
JUDGE

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List No.: 1 Sl No.: 31