

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 29<sup>TH</sup> DAY OF APRIL, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE V SRISHANANDA**

**REGULAR SECOND APPEAL NO.317 OF 2010 (SP)**

**BETWEEN:**

SRI M KOTRESH  
S/O M. BASAPPA  
AGED ABOUT 44 YEARS  
WORKING AS TEACHER  
MEGALAPETE  
HARAPANAHALLI-583 131  
DAVANAGERE DISTRICT

...APPELLANT

(BY SRI B M SIDDAPPA, ADVOCATE)

**AND:**

1. SRI P SUBHASH  
S/O P. VITTAL RAO  
AGED ABOUT 40 YEARS,  
OCC: BUSINESS, DOOR NO. 853,  
BANGARPET,  
HARAPANAHALLI-583 131  
DAVANAGERE DISTRICT
2. SRI. N. IBRAHIM  
S/O SRI BUDEN SAB  
AGED ABOUT 54 YEARS  
JUNIOR ENGINEER,  
KPTCL C/O  
M/S. SANGEETHA ELECTRICALS  
NAILAR ROAD, HARAPANAHALLI-583 131  
DAVANAGERE DISTRICT
3. THE MANAGER  
ADARSHAPATTANA SAHAHARI BANK,  
BANGARPET,  
HARAPANAHALLI-583 131



DAVANAGERE DISTRICT

...RESPONDENTS

(BY SRI H.R.SREEPADA, ADVOCATE FOR R1;  
R2 AND R3 ARE SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE AGAINST THE JUDGMENT AND DECREE DATED 15.9.2009 PASSED IN R.A.NO.38/2008 ON THE FILE OF THE II ADDL. DISTRICT & SESSIONS JUDGE, DAVANGERE, ALLOWING THE APPEAL AND MODIFYING THE JUDGMENT AND DECREE DATED 9.4.2008 PASSED IN O.S.NO.62/2005 ON THE FILE OF THE CIVIL JUDGE (SR.DN) HARIHAR.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

### **CAV JUDGMENT**

Heard Sri B.M. Siddappa, learned counsel for the appellant and Sri H.R. Sreepada, learned counsel for the respondent No.1,

2. Defendant No.3 has filed the present second appeal with the following prayer:

*"WHEREFORE, it is respectfully prayed that this Hon'ble Court may kindly be pleased to set aside the judgment and decree passed by the learned II Addl.*

*District & Sessions Judge, Davangere in RA 38 of 2008 dated 15.09.2009 and further be pleased to confirm the judgment and decree passed by the learned Civil Judge (Sr.Dn.) Harihar in OS 62 of 2005 dated 09.04.2008 by allowing this appeal with costs in the interest of justice and equity."*

3. Appeal came to be admitted by this Court on the following substantial question of law:

- (i) *Whether the learned Appellate Judge was justified in reversing the judgment and decree passed by the Trial Court without meeting the reasoning given by it for non-suiting the plaintiff?*

4. Facts of the case for disposal of the present appeal are as under:

5. Parties are referred to as plaintiff and defendant as per their original ranking before the Trial Court.

6. The suit came to be filed by the plaintiff (respondent No.1 herein) against defendant Nos.1 to 3 contending that on 13.06.2003 defendant No.1 being the owner of the suit property which is vacant site measuring 60X30 feet entered into an agreement of sale in a sum of Rs.49,000/-. Morefully described as under and hereinafter referred to as schedule property:

*"Property situated at Harapanahalli town, 12<sup>th</sup> ward in Mailor road bearing Old D.No.2329/E, new D.No.787, vacant site measuring east, west 60 feet, North, South 30 feet and bounded by :-*

*East – Site belonging to P.Ningappa*

*West – House belonging to P.Veeranna and passage*

*North –P.Kallappas house*

*South – Site belonging to Guddappa and others"*

7. On the date of agreement, sum of Rs.40,000/- has been paid as advance sale consideration and defendant No.1 executed a registered sale agreement before the Sub Registrar, Harihar. It was also agreed that within one year regular sale deed would be executed receiving balance sum of Rs.9,000/-.

8. It is further contented that subsequently plaintiff paid sum of Rs.9,000/- on 12.06.2003 which also finds place by way of an endorsement in the sale agreement and first defendant took further time to execute the sale deed as the land was required to be surveyed.

9. However, suppressing the registered sale agreement clandestinely defendant No.1 sold the property to defendant No.3 on 16.08.2003 in a sum of Rs.81,000/-. On coming to know of the said sale, a legal notice was issued to

the defendants. Same is served on defendant Nos.2 and 3 on 26.04.2004. Since there was no compliance to the callings of notice, suit for specific enforcement of the agreement of sale came to be filed by the plaintiff.

10. Defendant No.2 is a formal party as the land was mortgaged to the defendant No.2 and defendant No.1 had borrowed loan on the said property.

11. The suit was contested before the Trial Court based on the written statement filed by defendant Nos.2 and 3.

12. Defendant No.2 agreed that there was a registered mortgage deed executed by defendant No.1 on 22.01.2002 in a sum of Rs.50,000/- and matter was referred to the Arbitrator in Dispute No.2/04-05 and award was passed on 29.05.2004.

13. The defendant No.3 on the contrary, denied all the plaint averments and he maintained that he is a *bona fide* purchaser for value without notice of the earlier sale agreement and therefore, sought for dismissal of the suit.

14. Learned Trial Judge based on the rival contentions of the parties raised following issues and dismissed the suit of the plaintiff:

- (1) *Whether the plaintiff proves that the 1<sup>st</sup> defendant had agreed to sell the suit property for a*

*consideration of Rs.49.000-00 and thus executed & registered a sale agreement on 13-6-02 ?*

- (2) *Whether the plaintiff proves that the 1<sup>st</sup> defendant has received the entire consideration amount as pleaded in para 4 of written statement?*
- (3) *Whether the plaintiff was and is ready to perform his part of contract?*
- (4) *Whether the plaintiff proves that the 1<sup>st</sup> defendant clandestinely mortgaged the suit property in favour of the 2<sup>nd</sup> defendant and thereafter sold it in favour of 3<sup>rd</sup> defendant?*
- (5) *Whether the 2<sup>nd</sup> defendant proves that the suit is not maintainable as the property was already mortgaged to it?*
- (6) *Whether the 3<sup>rd</sup> defendant proves that he is a bonafide purchaser of the suit property for value without notice?*
- (7) *Whether the plaintiff is entitled for the reliefs?*
- (8) *What Order or Decree?"*

15. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in R.A.No.38/2008.

16. Learned Judge in the First Appellate Court after hearing the arguments of the parties allowed the appeal and set aside order of the learned Trial judge and decreed the suit of the plaintiff.

17. Operative portion of the order of the First Appellate Court reads as under:

*"Appeal is allowed in modification of the impugned judgment and decree of the learned trial Court in O.S.No.62/05, dated 09-04-08 in the following terms:-*

*On the basis of the agreement as per Ex.P.1 dated 13-06-02 defendant No.1 is hereby directed to execute the sale deed in respect of the suit schedule property in favour of plaintiff at his costs within two months from the date of decree. In case of his failure to do so, the plaintiff is at liberty to have the sale deed executed through Court process. Since the mortgage charge of defendant No.2 on suit property is earlier to the agreement dated 13-06-02 the same shall continue with the suit property.*

*Consequently the sale deed executed by the defendant No.1 in favour of defendant No.3 sale deed No.1416/03-04 dated 16-08-03 at Sub-Registrar Office, Harapanahalli shall stands cancelled.*

*Defendant No.3 is at liberty to recover sale consideration amount of Ex. P.4 with costs and damages if any from defendant No.1 as per law.*

*Since there is no prayer by the plaintiff regarding possession of the suit property in the plaint, as such no order is passed thereon.*

*Accordingly impugned judgment and decree of the learned trial court, dated 09-04-08 is modified. By looking into the facts of the case parties shall bear their respective costs.*

*Office to draw decree and return L.C.R with copy of the judgment for information to the learned trial court."*

18. Being aggrieved by the same, defendant No.3 is before this Court.

19. Sri B.M. Siddappa, learned for the petitioner, reiterating the grounds urged in the appeal memorandum, in pursuance to the substantial question of law addressed his arguments.

20. However, during the course of arguments, he filed an application vide I.A.No.1/2026 for framing of additional substantial questions of law. After hearing the parties following additional substantial questions of law were raised:

- (i) *"Whether first appellant is right in law in holding that the plaintiff always ready and willing to perform his part of the contract though there is no evidence on record to show that the plaintiff is always ready and willing to perform his part of contract ?*
- (ii) *Whether first appellate court is right in law in holding that defendant No.3 is not the bonafide purchaser of the suit schedule property though evidence on record goes to show that defendant No.3 is a bonafide purchaser ?"*

21. Sri B.M. Siddappa, contended that defendant No.3 is a bona fide purchaser for value without notice of the earlier agreement and therefore sale in his favour need to be confirmed and defendant No.1 directed to pay the sale consideration said to has been paid by the plaintiff with interest.

22. He would further contend that learned Trial Judge has specifically taken note of the rival contentions of the parties and rightly dismissed the suit of the plaintiff as he failed to prove the necessary ingredients which has been mechanically set aside by the learned judge in the First Appellate Court without assigning proper reasons and thus, sought for allowing the revision to petition.

23. In support of his contentions, he placed on record the following judgments of the Hon'ble Apex Court, wherein it has been held as under:

(i) ***N. Hanumantharaya v. Mariyamma,***  
**2007 SCC OnLine Kar 482**

*"40. On the contention of the learned Counsel for defendants 1 to 4 that the suit is not in consonance with Forms 47 and 48 and the plaintiff has not pleaded his readiness and willingness to perform his part of contract, it is necessary to notice two circumstances,*

*one is that the payment of entire sale consideration, second is that the contract is partly performed by putting the plaintiff in possession. If the contract is partly performed and the sale consideration has been fully paid, there remains nothing for the plaintiff to do anything in furtherance of the contract. Ex. P. 2 also stipulates that defendants 1 to 4 have received the entire sale consideration and they were required to execute the sale deed. In my view, if the entire sale consideration has been paid by the plaintiff, the question of their performance of the contract does not arise. As far as demand for execution of the sale deed in terms of Form 48 of the Schedule to the CPC is concerned, it may not be necessary to demand by issuing notice. Plaintiff has shown his readiness and willingness and has filed the suit in time. Plaintiff has also stated in his pleading that, he had made demands to the defendants and the same is not denied by defendants 1 to 4 by entering into witness-box. Except filing the written statement, the defendants 1 to 4 have not led evidence. Non-denial of the case of the plaintiff by defendants 1 to 4, it has to be taken that the plaintiff not only has proved the agreement of sale and he has paid the entire sale consideration as found by the Trial Court, and is always ready and willing to accept the registered sale deed.*

(ii) **P. Ramasubamma v. V. Vijayalakshmi,  
(2022) 7 SCC 384**

**9.** *Considering the fact that original Defendant 1— vendor original owner admitted the execution of agreement to sell dated 12-4-2005 and even admitted*

*the receipt of substantial advance sale consideration, the learned trial court decreed the suit for specific performance of agreement to sell dated 12-4-2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff vendee. Therefore, as such the learned trial court rightly decreed the suit for specific performance of agreement to sell. The High Court was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required.*

24. Per contra, learned counsel for the respondent/plaintiff supports the order of the First Appellate Court.

25. He would further contend that the finding recorded by the learned Trial Judge that plaintiff was not ready and willing to perform his portion of the contract is totally baseless as the agreement is a registered agreement and there is a payment of the entire sale consideration on two dates, namely, 13.06.2002 and 12.06.2003, which is found from the very

document marked at Ex.P1. Therefore, sought for dismissal of the appeal.

26. Having heard the arguments of both sides, this Court perused the material on record meticulously.

27. On such perusal of the material on record, defendant No.1 being the owner of the suit property as referred to supra is not in dispute. Admittedly, he has executed an agreement of sale on 13.06.2002 as per Ex.P1.

28. Pertinently, it is a registered agreement, wherein not only the photograph of the defendant No.1 is found, but also thumb impression is found. Nowhere in the Ex.P1 it is mentioned that the suit property was mortgaged to the defendant No.2.

29. It is further pertinent to note that the mortgage was executed on 16.02.2003 in a sum of Rs.50,000/-. In the encumbrance certificate, the registered agreement is reflected. In fact, defendant No.2 categorically filed a written statement about the mortgage of the suit property in favour of the defendant No.2, which is not disputed by defendant No.1.

30. Defendant No.1 remained absent before the Trial Court for obvious reasons. Suppressing the agreement of sale vide Ex.P1 and the mortgage executed by defendant No.1 in

favour of defendant No.2, a sale deed came to be executed in favour of defendant No.3 on 16.08.2003 in a sum of Rs.81,000/-.

31. In the said sale deed, there is no mention that defendant No.3 has verified the title to the property. What has been mentioned in the sale deed executed in favour of defendant No.3 by defendant No.1 marked at Ex.P4 is that suit property is his self-acquired property and to meet the legal necessities and to clear the dues he has sold the suit property to defendant No.3.

32. In this regard, the learned Judge in the First Appellate Court has discussed in detail in the impugned judgment as to what are the precautions to be taken by the purchaser who claims that he is the *bona fide* purchaser of the property for value without notice of earlier transaction in paragraphs 17 and 18 of the impugned judgment which reads as under.

*"17. Defendant No.3 has contended that he is a bonafide purchaser of the suit property for valuable consideration. In his pleading as well as evidence he has not stated anything about the efforts made by him on the suit property to call himself as a bonafide purchaser. In page 4 of his evidence at ending para D.W.1 M.Kotresh has stated that at the time of the sale talks*

*with defendant No.1 he has shown encumbrance certificate of the year 2000, mutation copy, khata extract of suit property. He has also stated that he has verified all those documents about the suit property. In the same page in beginning two lines of the cross examination he has further stated that on 16-08-03 he has got the sale deed from defendant No.1 and earlier to 3 months of the same there were sale talks. The said evidence goes to show that earlier to 3 months on 16-08-03 there were sale talks between defendant No.1 and 2 and during the said talks, defendant No.3 has verified the encumbrance certificate of the year 2000 with mutation copy. The E.C of the year 2000 stated to have been verified by the defendant No.3 pertains to the undisputed period of the year 2000 and he has not produced any such documents before the Court. Ex. P.8 is the E.C of 10 years from 0-4-93 to 5-2-03. In the same sale deed in favour of the plaintiff dated 07-08-2000, mortgage created by defendant No.1 in favour of defendant No.2 on 22-01-01 and disputed sale agreement between plaintiff and defendant No.1 have been shown, E.C marked at Ex. P.8 pertaining to the earlier period of 10 years of the disputed transactions between defendant No.1 and defendant No. 3. As on the date of purchase by defendant No.3 on 16/08/03 the above referred 3 entries were available in E.C of suit property. As stated by D.W.1 in page 4 of his evidence if at all he had verified the E.C of suit schedule property, definitely the entries made in Ex.P.8 will be within his knowledge. Thus, it is seen that having knowledge of the earlier registered sale agreement between plaintiff and defendant No.1 and registered mortgage deed between*

*defendant No.1 and defendant No.2, defendant No.3 has purchased the suit schedule property on 16-08-03. When he has knowledge about the earlier transaction between plaintiff and defendant No.1, defendant Nos. 1 and 2 as a prudent purchaser defendant No. 3 ought to have made further enquired about the such transaction either with the plaintiff or with the defendant No.2 or else he could have verified all the records of suit property in public offices. Admittedly, defendant No.3 has not done so. Therefore, now he cannot contend that he is the bonafide purchaser of the suit property for valuable consideration. If the defendant No.3 has not verified the E.C of the suit schedule property, then it can be observed here that he has not discharged his duties as a bonafide purchaser. On that count, also he cannot be treated as purchaser in the Court of law.*

*18. Bonafide purchaser is one who makes all his sincere efforts by way of searching all the records in respect of property to be purchased and in such process he is required ascertain the E.C of more than 10 years before his purchase with other documents of the property. Ex.P.1 is a registered agreement. By the reasons of its registration one has to take public notice about the existence of such a registered document as per law. As mentioned in Ex.P.8 there is entry of all the 3 transactions in the same. As a prudent purchaser if defendant No.3 had verified the E.C of 10 years of the suit property like Ex.P.8 truth would have been revealed to him about the suit agreement dated 13-06-02. If he had not verified the same then it can be observed here that he has not discharged his duties by exercising due diligence before his purchase, as such in the opinion of*

*this Court he cannot claim the benefit as a bonafide purchaser. For the reasons stated above on any event defendant No.3 cannot contend himself as a bonafide purchaser. On the other hand it appears that having knowledge about the suit agreement dated 13-06-02 between plaintiff and defendant No.1 he has taken risk of purchasing the suit property on 16-08-03. Therefore, in the humble opinion of this Court, defendant No.3 is not entitled for benefit of protection as a bonafide purchaser. In view of such observation the facts of the case on hand are entirely different to the facts of the two decisions as referred in the written arguments filed for defendant No.3 in AIR 1959, Calcutta, page 302 and AIR 1986 S.C, page 2150. As such ratio held in both the decisions are in no way helpful to the defendant No.3."*

33. Further, when defendant No.3 has not made any enquiries as to the title to the suit property as is found from his cross-examination especially when he has received the encumbrance certificate, mutation register extract, khatha extract from defendant No.1 which has been shown to him by defendant No.1, it should not lie in the mouth of defendant No.3 that he is a *bona fide* purchaser for value without notice of earlier registered agreement to sell executed by defendant No.1 in favour of plaintiff.

34. He also admits that before initiation of the suit by the plaintiff, there was a legal notice and he did not choose to

reply the notice though his Advocate has assured to issue reply.

But, no such reply is issued by defendant No.3.

35. He further admits that after he received the summons in the suit, he did not choose to meet defendant No.1 and enquire about the title of the suit property.

36. In the light of the undisputed fact that the suit property was subject matter of a registered agreement to sell which is reflected in encumbrance certificate, contentions urged on behalf of the appellant that he is a *bona fide* purchaser for value without notice of the earlier sale deed cannot be countenanced in law.

37. It is also pertinent to note that the learned Judge in the First Appellate Court has noted that since entire sale consideration has been paid by the plaintiff in favour of defendant No.1 as could be seen from Ex.P.1 which is not in dispute, the finding of the learned Trial Judge that the plaintiff was not ready and willing to perform his portion of the contract cannot be countenanced in law.

38. Thus, the substantial questions of law raised at the time of admission dated 20.10.2011 and subsequently by order dated 07.04.2026 will have to be invariably answered against the appellant and accordingly they are answered.

39. Consequently, the following:

**ORDER**

(i) Appeal is meritless and hereby dismissed.

**Sd/-  
(V SRISHANANDA)  
JUDGE**

MR