

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

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

REGULAR SECOND APPEAL NO.239/2010 (SP)

C/W

REGULAR SECOND APPEAL NO.528/2010 (SP)

R

REGULAR SECOND APPEAL NO.239/2010:

BETWEEN:

MR. V. CHANDRASHEKAR,
AGED ABOUT 53 YEARS,
S/O R. VENKATARAMANA REDDY,
RESIDING AT NO.102/1,
5TH MAIN, 8TH CROSS,
B.T.M 1ST STAGE,
BENGALURU-560068.

... APPELLANT

(BY SRI. RAJESH MAHALE, SENIOR COUNSEL FOR
SRI. M. JAGADEESH, ADVOCATE)

AND:

1. MR. MUNITHIMMA REDDY @ SUBBARAYAPPA,
S/O LATE MUNI REDDY,
RESIDENT OF KAGGALIPURA VILLAGE,
SARJAPURA HOBLI, ANEKAL TALUK,
BENGALURU DISTRICT-562106.

SINCE DECEASED BY LRS OF
MR. MUNITHIMMA REDDY



- 1(a) MRS. JYOTHI,
W/O LATE MUNITHIMMA REDDY,
AGED ABOUT 49 YEARS,
R/O. KAGGALIPURA VILLAGE,
SARJAPURA HOBLI,
ANEKAL TALUK,
BENGALURU DISTRICT.
- 1(b) MR. HEMANTH,
S/O LATE MUNITHIMMA REDDY,
AGED ABOUT 29 YEARS,
R/O. KAGGALIPURA VILLAGE,
SARJAPURA HOBLI,
ANEKAL TALUK,
BENGALURU DISTRICT.
- 1(c) MRS. LIKITHA,
D/O LATE MUNITHIMMA REDDY,
AGED ABOUT 26 YEARS,
W/O SHASHIDHAR,
R/O. KITHAGANAHALLI VILLAGE,
ATTIBELE HOBLI,
ANEKAL TALUK,
BENGALURU DISTRICT.
2. SMT. NANJAMMA,
AGED ABOUT 71 YEARS,
W/O LATE MUNI REDDY
RESIDENT OF KAGGALIPURA VILLAGE,
SARJAPURA HOBLI,
ANEKAL TALUK,
BENGALURU DISTRICT.
- SINCE DECEASED BY LRS OF SMT. NANJAMMA.
- 2(a) MRS. YELLAMMA,
AGE: MAJOR,
W/O MR. KRISHNA REDDY,
D/O SMT. NANJAMMA

RESIDING AT KITHAGANAHALLI
VILLAGE AND POST, ANEKAL TALUK,
BENGALURU URBAN DISTRICT-560099.

(R1(a) TO R1(c) ARE THE LRS OF DECEASED R2
AS PER ORDER DATED 28.01.2025)

3. MR. M. JAIRAM REDDY,
AGED ABOUT 44 YEARS,
S/O LATE MIDDEMANE MUNISHAMI REDDY,
RESIDENT OF CHINTALA HOBLI,
ANEKAL TALUK,
BENGALURU DISTRICT. ... RESPONDENTS

(BY SRI. S.K.V.CHALAPATHY, SENIOR COUNSEL FOR
M/S. CHALAPATHY & SRINIVAS, ADVOCATE FOR R3;
SRI. SUNDARA SWAMY RAMADAS, SENIOR COUNSEL FOR
SRI. R. VIJAYKUMAR, ADVOCATE FOR R1(a to c);
SRI. S. PRASANNA KUMAR, ADVOCATE FOR R2(a)
VIDE ORDER DATED 28.01.2025, R1(a to c) ARE
THE LRS OF DECEASED R2

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 13.11.2009
PASSED IN R.A.199/2008 ON THE FILE OF THE PRINCIPAL
DISTRICT JUDGE, BENGALURU RURAL DISTRICT, BENGALURU,
ALLOWEING THE APPEAL FILED AGAINST JUDGEMENT AND
DECREE DATED 17.09.2008 PASSED IN O.S.NO.937/2006 ON
THE FILE OF THE CIVIL JUDGE (JR. DN.) AND JMFC, ANEKAL.

IN REGULAR SECOND APPEAL NO.528/2010:

BETWEEN:

MR. CHANDRASHEKHAR V.,
AGED ABOUT 53 YEARS
S/O. R. VENKATARAMANA REDDY
RESIDING AT NO.102/1, 5TH MAIN,

8TH CROSS, BTM 1ST STAGE,
BENGALURU-560 068.

... APPELLANT

(BY SRI. RAJESH MAHALE, SENIOR COUNSEL FOR
SRI. M. JAGADEESH, ADVOCATE)

AND:

1. MR. M. JAIRAM REDDY,
AGED ABOUT 44 YEARS,
S/O. LATE MIDDEMANE MUNISHAMI REDDY,
RESIDENT OF CHINTALA HOBLI,
ANEKAL TALUK,
BENGALURU DISTRICT.
2. MR. MUNITHIMMA REDDY @ SUBBARAYAPPA
S/O. LATE MUNI REDDY

SINCE DECEASED BY LRS OF
MR. MUNITHIMMA REDDY
- 2(a) MRS. JYOTHI,
W/O LATE MUNITHIMMA REDDY,
AGED ABOUT 49 YEARS,
R/O. KAGGALIPURA VILLAGE,
SARJAPURA HOBLI,
ANEKAL TALUK,
BENGALURU DISTRICT.
- 2(b) MR. HEMANTH,
S/O LATE MUNITHIMMA REDDY,
AGED ABOUT 29 YEARS,
R/O. KAGGALIPURA VILLAGE,
SARJAPURA HOBLI,
ANEKAL TALUK,
BENGALURU DISTRICT.
- 2(c) MRS. LIKITHA,
D/O LATE MUNITHIMMA REDDY,

AGED ABOUT 26 YEARS,
W/O SHASHIDHAR,
R/O. KITHAGANAHALLI VILLAGE,
ATTIBELE HOBLI, ANEKAL TALUK,
BENGALURU DISTRICT.

3. SMT. NANJAMMA,
AGED ABOUT 71 YEARS,
W/O LATE MUNI REDDY

BOTH ARE RESIDENT OF
KAGGALIPURA VILLAGE,
SARJAPURA HOBLI,
ANEKAL TALUK,
BENGALURU DISTRICT.

SINCE DECEASED BY LRS OF SMT. NANJAMMA.

- 3(a) MRS. YELLAMMA,
AGE: MAJOR,
W/O MR. KRISHNA REDDY,
D/O SMT. NANJAMMA
RESIDING AT KITHAGANAHALLI
VILLAGE AND POST, ANEKAL TALUK,
BENGALURU URBAN DISTRICT-560099.

(R2(a) TO R2(c) ARE THE LRS OF DECEASED R3
AS PER ORDER DATED 28.01.2025)

... RESPONDENTS

(BY SRI. S.K.V. CHALAPATHY, SENIOR COUNSEL FOR
M/S. CHALAPATHY & SRINIVAS, ADVOCATE FOR R1;
SRI. S. PRASANNA KUMAR, ADVOCATE FOR R3(a);
SRI. SUNDARA SWAMY RAMADAS, SENIOR COUNSEL FOR
SRI. R. VIJAYKUMAR, ADVOCATE FOR R2(a to c);
VIDE ORDER DATED 08.08.2023,
APPEAL AGAINST R2 IS ABATED
VIDE ORDER DATED 28.01.2025, R2(a to c) ARE
THE LRS OF DECEASED R3)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 13.11.2009 PASSED IN R.A.NO.188/2008 ON THE FILE OF THE PRL. DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 17.9.2008 PASSED IN O.S.NO.937/2006 (OLD NO.1530/2004) ON THE FILE OF THE CIVIL JUDGE (SR.DN) AND JMFC, ANEKAL.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.06.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

These two second appeals are filed praying this Court to set aside the judgment and decree dated 13.11.2009 passed by the Court of the Principal District Judge, Bengaluru Rural District, Bengaluru in R.A.No.199/2008 and R.A.No.188/2008 setting aside the judgment and decree dated 17.09.2008 passed by the Court of the Civil Judge (Sr.Dn.), and JMFC, Anekal in O.S.No.937/2006 and directing respondent No.1 herein to pay Rs.77,500/- with interest at 15% from 28.08.2000 till payment by allowing these appeals with costs.

2. The factual matrix of the case of the appellant/plaintiff before the Trial Court while seeking the relief

for specific performance is that there was an agreement of sale dated 11.07.1999 in respect of the property bearing Sy.No.75/2 measuring 35 guntas in Huskur Village, Sarjapur Hobli, Anekal Taluk and he has been in possession of the same. It is his case that he is also the owner in possession of land in Sy.Nos.31, 32/1 and 83 of Kaggalipura Village. It is contended by the plaintiff that all these lands are adjoining to each other. It is his case that there is a borewell in Sy.No.83 of Huskur village. The plaintiff was cultivating the lands with the assistance of the borewell water. The land in Sy.No.75/2 of Huskur village measuring 35 guntas is adjoining to Sy.No.83 and the same belongs to defendant Nos.1 and 2. There is no irrigation facility to Sy.No.75/2. The defendant Nos.1 and 2 were depending on the rain and they requested the plaintiff to allow water for irrigation. The plaintiff permitted to take water without any charges. With this permission, defendant Nos.1 and 2 utilized the water for irrigating their lands during 1996-1997.

3. It is the further case of the plaintiff that during the year 1998, defendant Nos.1 and 2 allowed the plaintiff to

cultivate the land in Sy.No.75/2 considering the fact that they were permitted to take water from the bore well freely for 2 years. Accordingly, the plaintiff cultivated the land of defendant Nos.1 and 2 along with his lands. Thereafter, it is the case of the plaintiff that defendant Nos.1 and 2 offered to sell the plaint schedule property and the plaintiff accepted the offer and negotiation took place between them. Sale consideration was fixed at Rs.1,22,500/-. This agreement reached between the parties is reduced into writing on 11.07.1999. On the date of entering into the agreement, defendant Nos.1 and 2 have received Rs.25,000/- as earnest money. The khatha in respect of the plaint schedule property was not in the name of defendant Nos.1 and 2 and it had to be transferred in their names and they agreed to do so. The defendant Nos.1 and 2 were demanding additional amounts to meet their family necessities, thereby they have received the entire sale consideration from the plaintiff. Subsequent payments are narrated in the plaint. It is the case of the plaintiff that he was always ready and willing to pay the balance sale consideration to get the sale deed executed, but defendant Nos.1 and 2 were postponing the same.

4. It is the case of the plaintiff that prior to the transaction between the plaintiff and defendant Nos.1 and 2, defendant Nos.1 and 2 had entered into an agreement with one Sri Dayananda Reddy. The plaintiff learnt about this earlier agreement only after sometime. So he contacted Dayananda Reddy and Dayanand Reddy expressed his intention that if he receives Rs.45,000/- paid by him, it is sufficient. Hence, the plaintiff claims to have taken the consent of defendant Nos.1 and 2 and paid Rs.45,000/- in the form of cheque in favour of Dayananda Reddy. Thereafter, defendant Nos.1 and 2 applied for change of khatha. It being not persuaded, it was rejected on account of there was postponement in registering of the sale deed. Thereafter, the plaintiff persuaded, showed interest and got the change of khatha on 23.08.2004. In spite of change of khatha, there was an evasive attitude by defendant Nos.1 and 2. On further enquiry by the plaintiff, it was revealed that defendant No.1 along with his wife and children have executed a sale deed in favour of defendant No.3 on 05.10.2004. The defendant No.3 was aware of the transaction between the plaintiff and defendant Nos.1 and 2. The defendant No.3 had to

execute the document in favour of the plaintiff. The defendant Nos.1 and 2 having committed breach of agreement, the plaintiff is obliged to file the suit seeking for specific performance.

5. In pursuance of the suit summons, defendant Nos.1 and 2 appeared and filed their written statement and admitted about the topography. However, denied the very sale agreement dated 11.07.1999 and also denied the further payment asserted by the plaintiff. It is contended that agreement in question is created and the plaintiff was collecting money for having supplied water and the plaintiff obtained signatures on the blank papers for the money paid by the defendants. Using such a document, the plaintiff has created the agreement. But admitted that they have executed the sale deed in favour of defendant No.3 on 05.10.2004 as per the market value of the property and delivered the possession of the property and hence, prayed the Court to dismiss the suit.

6. In pursuance of the suit summons, defendant No.3 filed the written statement denying the case of the plaintiff and contended that he has purchased the property on 05.10.2004 by

paying sale consideration of Rs.5,25,000/-. He is not aware of any transaction as the one pleaded by the plaintiff between the plaintiff and defendant Nos.1 and 2. It is contended that he is a bonafide purchaser for the value of the property and prayed the Court to dismiss the suit.

7. The Trial Court having considered the evidence available on record, passed the judgment in favour of the plaintiff. In respect of the issue for having made the payment of Rs.45,000/- to the said Dayananda Reddy with the consent of defendant Nos.1 and 2 is concerned, the Appellate Court framed two additional issues and they were referred to the lower Court for giving a finding. The Trial Judge permitted the parties to lead evidence. The plaintiff in order to prove his case examined himself as P.W.1 and got examined P.W.2 to P.W.4 and got marked the documents at Exs.P.1 to 4. The defendants examined D.W.1 to D.W.4 and got marked the documents at Exs.D1 to 6. The Trial Court having considered the evidence available on record, answered additional issue Nos.1 and 2 in the negative in coming to the conclusion that defendant Nos.1 and 2

never agreed to sell the plaint schedule property in favour of Dayananda Reddy and the plaintiff fails to prove the same and also the plaintiff fails to prove that he paid Rs.45,000/- to Dayananda Reddy with the consent of defendant Nos.1 and 2.

8. The Appellate Court having received the said finding, considered the matter afresh and comes to the conclusion that the plaintiff is not entitled for the relief of specific performance. However, comes to the conclusion that there was an agreement of sale in favour of the plaintiff and defendant Nos.1 and 2 and allowed R.A.Nos.188/2008 and 199/2008 filed by the appellants and dismissed R.A.Nos.158/2008 and 159/2008 and the judgment and decree of the Trial Court passed in O.S.No.937/2006 was set aside. However, directed defendant No.1 to pay a sum of Rs.77,500/- with interest at 15% from 28.08.2000 till payment.

9. Being aggrieved by the divergent finding of dismissal of the suit of the plaintiff, the second appeal is filed before this Court.

10. The learned counsel for the appellant in his arguments would vehemently contend that the agriculture property bearing Sy.No.75/2 measuring 35 guntas belongs to defendant Nos.1 and 2 is not in dispute. The learned counsel also would submit that the plaintiff is having adjacent property bearing Sy.No.83 is not in dispute and also he dug the borewell in Sy.No.83 is also not in dispute. The defendant Nos.1 and 2 are using the very same water for cultivation of the subject matter of property in Sy.No.75/2. However, the counsel would contend that defendant Nos.1 and 2 gave the possession to the plaintiff to cultivate the said land and also they agreed to sell the property to the plaintiff on 11.07.1999 for sale consideration of Rs.1,22,500/- and on the date of the sale agreement, advance amount of Rs.25,000/- was paid. The counsel brought to the notice of this Court the averments made in the plaint with regard to the payment of entire sale consideration and the same was acknowledged by defendant Nos.1 and 2 making an endorsement. The counsel also contended that at the first instance, the suit was decreed by the Trial Court by giving the reasons, though defendant Nos.1 and 2 have denied the very

sale agreement and comes to the conclusion that there was a sale agreement between the plaintiff and defendant Nos.1 and 2 and entire sale consideration was paid. The counsel would submit that the same was challenged before the Appellate Court and the Appellate Court framed two additional issues and remitted back the same to the Trial Court to answer the same. The counsel would vehemently contend that after recording the evidence of P.W.5, the Trial Judge committed an error in answering those two issues in the negative. The counsel would contend that it was not within the knowledge of the plaintiff that defendant Nos.1 and 2 had earlier agreed to sell the property to one Sri Dayananda Reddy, who has been examined before the Trial Court as P.W.5 and the said earnest money of Rs.45,000/- received from Dayananda Reddy was paid by the plaintiff with the consent of defendant Nos.1 and 2. The counsel would vehemently contend that defendant Nos.1 and 2 in collusion with defendant No.3 set up an earlier sale agreement dated 03.02.1999 and in order to substantiate the same, nothing is placed on record. The counsel brought to the notice of this Court that the agreement between defendant Nos.1 and 2 and

defendant No.3 on 03.02.1999 was not proved. The counsel would vehemently contend that the agreement between defendant Nos.1 and 2 and P.W.5 was not controverted.

11. The learned counsel for the appellant would vehemently contend that the endorsement made on Ex.P.1 for having received the entire sale consideration cannot be ignored. But, the Appellate Court committed an error in coming to the conclusion that except endorsement 'L' which is marked, others have been admitted and erroneously comes to the conclusion with regard to the endorsement 'L' in Ex.P.1. The counsel would contend that the evidence of D.W.1 is very clear that there are material contradictions with regard to the execution of said agreement in favour of D.W.3 and those material contradictions were taken note of by the Trial Court and not believed the earlier agreement. The counsel also vehemently contend that there was a sale agreement in the year 1999 in favour of the plaintiff/appellant. But sale deed was executed in the year 2004 in favour of defendant No.3 as per Ex.D.2. The counsel also brought to the notice of this Court that in the year 1999, alleged

sale agreement dated 03.02.1999, sale consideration was only Rs.1,00,000/-. But while executing the sale deed in the year 2004 within a span of 5 years, sale consideration is for Rs.5,25,000/- and the same cannot be believed. The counsel also would submit that in order to prove the agreement Ex.P.1, the appellant/plaintiff relies upon the evidence of P.W.2 attesting witness so also the evidence of P.W.3 regarding further payment and so also the evidence of scribe of the document P.W.4. The counsel also would submit that with regard to the payment in favour of Dayananda Reddy, witness is also examined as P.W.5 and his evidence is consistent. The counsel would vehemently contend that part of endorsement was considered, but remaining part of endorsement was not considered. The counsel would vehemently contend that when the Appellate Court comes to the conclusion that there was a payment and ordered to repay the money with interest, ought not to have set aside the judgment of the Trial Court.

12. The learned counsel appearing for respondent Nos.1(a) to (c) i.e., defendant No.1, in his argument would

vehemently contend that there is no dispute that the Trial Court granted the relief of specific performance, but the same is erroneous and when the plaintiff set up the contention that prior to his agreement, there was an agreement between Dayananda Reddy and defendant Nos.1 and 2, additional issues were framed and evidence was recorded by the Trial Court and answered the same in the negative. The counsel would contend that there was an agreement between defendant Nos.1 and 2 and defendant No.3 dated 03.02.1999. To that effect, document Ex.D.1 was executed. In pursuance of the said agreement, the sale deed was executed in favour of defendant No.3 in terms of Ex.D.2 and there was no any sale agreement in favour of the plaintiff. The counsel would vehemently contend that in the written statement specifically denied the sale transaction between the plaintiff and defendant Nos.1 and 2. The counsel brought to the notice of this Court paragraph Nos.5 and 6 of the plaint. The counsel would contend that when the sale deed was executed in favour of defendant No.3, the plaintiff has not sought for any relief to set aside the sale deed. The counsel also vehemently contend that no possession was given in favour of

the plaintiff at any point of time and hence, the Trial Court answered the additional issues in the negative and the Appellate Court while considering the appeal, taken note of all these factors into consideration and set aside the judgment of the Trial Court by allowing the appeal. Hence, it does not require any interference if this Court.

13. The learned counsel for respondent Nos.1(a) to (c) in support of his arguments relies upon the judgment of the Apex Court in the case of **KONDIBA DAGADU KADAM v. SAVITRIBAI SOPAN GUJAR AND OTHERS** reported in **(1999) 3 SCC 722** and brought to the notice of this Court paragraph No.5, wherein the Apex Court held that the High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower Appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.

14. The learned counsel also relies upon the judgment of the Apex Court in the case of **GOVINDARAJU v. MARIAMMAN** reported in **(2005) 2 SCC 500** and brought to the notice of this Court, the scope of second appeal referring to paragraph No.18, wherein it is held that the High Court on re-appreciation of evidence recorded a finding to the contrary and held that the marriage between Thayarammal and Sengamalai Moopanar had not been dissolved. It further held that Ganapathy Moopanar was the son of Sengamalai Moopanar from his previous wife. That the sale executed by Veeramuthu Moopanar dated 01.07.1940 in favour of his two daughters was not a nominal and sham transaction. That it conveyed a valid title of the suit property to his two daughters. This was done on re-appropriation of evidence present on record. Questions of law which had been framed at the time of admission and were referred to and reproduced in the judgment were not adverted to while deciding the appeal. No finding was recorded on those questions. After reproducing the questions of law, the learned Single Judge did not advert to either of them are record findings of them. The learned Single Judge proceeded to decide the appeal thereafter

as if after framing the questions of law the High Court gets the jurisdiction to re-appreciate the evidence and come to a conclusion other than the one recorded by the Court of fact. The counsel referring this judgment would vehemently contend that when the First Appellate Court considered the question of fact and question of law, there cannot be any interference in the second appeal.

15. The learned counsel also relied upon the judgment of the Apex Court in the case of **B.VIJAYA BHARATHI v. P. SAVITRI AND OTHERS** reported in **(2018) 11 SCC 761** and brought to the notice of this Court the discussion made in paragraph Nos.10 and 17, wherein in paragraph No.17 it is held that it must also be noted that though aware of two conveyances of the same property, the plaintiff did not ask for their cancellation. This again, would stand in the way of a decree of specific performance for unless the sale made by defendant No.1 to defendant No.2, and thereafter by defendant No.2 to defendant No.3 are set aside, no decree for specific performance could possibly follow. The counsel referring this judgment would

contend that unless the sale made in favour of defendant No.3 is set aside, the question of granting any relief does not arise and no such relief is sought and hence, there cannot be any decree in favour of the plaintiff.

16. The learned counsel appearing for respondent No.3/defendant No.3 i.e., purchaser, in his arguments would vehemently contend that there is a concurrent finding with regard to the fact that there was no agreement between defendant Nos.1 and 2 and Dayananda Reddy. The said concurrent finding cannot be overturned in the second appeal, unless there is any perversity. The counsel also vehemently contend that other family members were not the parties to the alleged sale agreement in favour of the plaintiff. The counsel also brought to the notice of this court paragraph No.5 of the plaint as brought by defendant Nos.1 and 2. The counsel would vehemently contend that it is pleaded by the plaintiff that he made the payment in favour of Dayananda Reddy by way of Cheque, but the evidence of P.W.5 is contrary to that. The counsel would contend that when the contention is taken that

payment was made through cheque to Dayananda Reddy by the plaintiff, the same has not been substantiated and the same was taken note of by the Trial Court while answering the additional issues and the Appellate Court also taken note of the said fact. The counsel would contend that at the first instance, the suit was filed in Bangalore and the same was transferred to Anekal and re-numbered and material on record was also taken note of. When the issues were not framed by the Trial Court with regard to an agreement between Dayananda Reddy and defendant Nos.1 and 2 and payment is concerned, additional issues were framed by the Appellate Court and the same were answered in the negative and the Appellate Court also confirmed the same and hence, the question of interfering in this second appeal does not arise. The counsel also submits that there is a finding against the plaintiff by answering the additional issues and there is no any cross-appeal against the judgment of R.A.Nos.158/2009 and 159/2009 and in the absence of cross appeal, this Court cannot consider the grounds, which have been urged in this second appeal.

17. The learned counsel would vehemently contend that there was no any agreement between the plaintiff and defendant Nos.1 and 2 and defendant Nos.1 and 2 have categorically denied the said agreement. The learned counsel also contend that if Section 16(c) of the Specific Relief Act, 1963 is not complied, then the plaintiff is not entitled for any relief of specific performance, even if the Court comes to the conclusion that there was an agreement. The counsel would contend that Yellamma and Gowramma are not the parties to the sale agreement and both of them are also entitled for 1/3rd share. Mere attestation by both not creates any right in favour of the plaintiff. The counsel would contend that the Trial Court has not committed any error.

18. The learned counsel for respondent No.3 in respect of readiness and willingness and failure to pay sale consideration, relies upon the judgment of the Apex Court in the case of **RAM KUMAR AGARWAL AND ANOTHER v. THAWAR DAS (DEAD) THROUGH LRS.** reported in **(1999) 7 SCC 303** and brought to the notice of this Court paragraph No.7, wherein

it is held that a person who falsely alleges to have paid sale consideration and attempts at proving the plea at the stage of trial cannot be said to have ever been ready and willing.

19. The learned counsel also relied upon the judgment of the Andhra Pradesh High Court in the case of **KOMMISETTI VENKATASUBBAYYA v. KARAMSETTI VENKATESWARLU AND OTHERS** reported in **AIR 1971 AP 279** and brought to the notice of this Court paragraph No.4, wherein it is held that where plaintiff asserts that he has paid advance sale consideration and that he is willing to pay the balance sale consideration but it is found that he has not paid the advance sale consideration, he is disentitled to the discretionary relief of specific performance.

20. The learned counsel in respect of his argument that agreement to sell is not executed by all co-sharers relied upon the judgment of the Apex Court in the case of **PEMMADA PRABHAKAR AND OTHERS v. YOUNGMEN'S VYSYA ASSOCIATION AND OTHERS** reported in **(2015) 5 SCC 355** and brought to the notice of this court paragraph Nos.29 and 30,

wherein it is held that agreement to sell not executed by all persons who have a right in the property in question cannot confer any right whatsoever upon the plaintiff for grant of decree of specific performance in their favour.

21. The counsel in respect of scope of interference in a second appeal, relied upon the judgment of the Apex Court in the case of **R.RAMACHANDRAN AYYAR v. RAMALINGAM CHETTIAR** reported in **AIR 1963 SC 302** and brought to the notice of this Court paragraph No.12, wherein it is held that High Court cannot interfere with the conclusions of fact recorded by the lower Appellate Court however erroneous the said conclusions may appear, however gross or inexcusable the error may seem to be, there is no jurisdiction under Section 100, CPC to correct the error.

22. The learned counsel in support of his arguments with regard to the knowledge of the contents, cannot be attributed to the attestors, relied upon the judgment of the Apex Court in the case of **BANGA CHANDRA DHUR BISWAS AND OTHERS v. JAGAT KISHORE CHOWDHURI AND OTHERS** reported in

(2015) 5 SCC 355 and referring to paragraph No.13 brought to notice of this Court the principal laid down in the judgment that attestation proves no more than the signature of an executing party to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed nor affect him with notice of its provisions.

23. The learned counsel also relies upon the judgment of the Apex Court in the case of **SMT.CHANDRAKANTABEN v. VADILAL BAPALAL MODI AND OTHERS** reported in **(1989) 2 SCC 630** and brought to notice of this Court paragraph No.15, wherein it is held that there is no presumption that an attesting witness of document must be presumed to be aware of its contents.

24. The learned counsel also in support of his argument with regard to execution of documents by illiterate persons, relies upon the judgment of the Apex Court in the case of **BADRI NARYANAN AND OTHERS v. RAJABAGYATHAMMAL AND OTHERS** reported in **(1996) 7 SCC 101** and brought to the notice of this Court paragraph No.6, wherein it is held that

mere execution of a document by an illiterate person does not imply assent to its recitals unless those recitals were read over and explained to the person.

25. The learned counsel with regard to the exercising of power under Order XLI Rule 33 of CPC i.e. powers of the Court under the provisions of CPC, brought to notice of this Court, the judgment of the Apex Court in the case of **VAIBHAV JAIN v. HINDUSTAN MOTORS PRIVATE LIMITED** reported in **(2025) 2 SCC 208**, wherein the Apex Court held that a party cannot seek relief under Order XLI Rule 33 CPC to obtain relief against a decree or award that it failed to challenge by filing an appeal or cross-objection and permitted to attain finality.

26. The counsel in support of his arguments that other family members are not made as parties, relies upon paragraph No.137.4 of the judgment of the Apex Court in the case of **VINEETA SHARMA v. RAKESH SHARMA** reported in **(2020) 9 SCC 1**, wherein it is held that daughters are to be given equal coparcenary share to that of a son in pending proceedings for final decree or in an appeal. The counsel referring this judgment

would vehemently contend that the plaintiff/appellant is not entitled for any relief, particularly for the relief of specific performance.

27. In reply to these arguments, the learned counsel appearing for the appellant/plaintiff would vehemently contend that even Yellamma and Gowramma have not signed the sale deed executed in favour of defendant No.3. When such being the case, defendant No.3 cannot contend that they have not signed the documents of agreement of sale. They cannot blow hot and cold against the plaintiff that they are not the parties. But in respect of defendant No.3 sale deed also, they are not the parties. The counsel also vehemently contend that the First Appellate Court comes to the conclusion that there was an agreement and ordered to pay an amount of Rs.77,500/- with interest. Once the Appellate Court comes to the conclusion that there was an agreement and the entire sale consideration was paid, but erroneously comes to the conclusion with regard to the payment of Rs.45,000/- in favour of Dayananda Reddy is concerned as not proved and the said approach is erroneous.

Once part of the endorsement was accepted, there cannot be rejection of remaining part of the endorsement, particularly which is marked as endorsement 'L'. The learned counsel would vehemently contend that Section 22 of the Specific Relief Act covers the same. The counsel also vehemently contend that defendant Nos.1 and 2 have not cross-examined P.W.1 disputing the document of Ex.P.1 and also the endorsements. When there is no such denial by defendant Nos.1 and 2 and adopts the cross-examination of defendant No.3, the Appellate Court ought not to have come to the conclusion that the plaintiff is not entitled for the relief of specific performance and erroneously committed an error in granting the refund of amount with interest.

28. Keeping in view the principles laid down in the judgments referred (supra) and also the contentions of the respective counsels during the course of arguments, this Court has to consider the material available on record, since this matter is admitted and substantial questions of law are framed. This Court would like to refer to the substantial questions of law

framed by this Court at the time of admission vide order dated 23.02.2012:

- "1. *Whether the Lower Appellate Court was justified in reversing the findings recorded by the Trial Court so as to dismiss the suit for specific performance, more appropriately in the light of the vacillatory statements made by DWs.1, 2 and 4 over the genuineness of Ex.D.1 dated 03.02.1999, said to be a prior agreement of sale in favour of 3rd defendant executed by 1st defendant?*
2. *Whether the Lower Appellate Court was justified in eschewing the conduct of 2nd defendant for having not come to the witness box and subject herself to cross-examination, thus leading to drawing of adverse inference over her pleadings in the written statement?*
3. *Whether the discretion exercised by the Lower Appellate Court is contrary to law?"*

29. This Court having heard the matter, reserved the matter for orders. After going through the records, this Court

framed the additional substantial question of law on 28.02.2014, which reads as follows:

"When the Courts below accepted the endorsement signed under Ex.P.1(k) in part and held that a sum of Rs.2,000/- was accepted by the first defendant towards the earnest money, whether it committed an error in rejecting the remaining part of such endorsement relating to the payment of Rs.45,000/- under Cheque No.821547 dated 03.04.2002 and committed an illegality in accepting the part of said endorsement and rejecting the remaining part?"

30. This Court has to consider all the substantial questions of law framed at the time of admission and subsequently and also to take note of the issue before this Court in respect of the substantial question of law that whether the Lower Appellate Court was justified in reversing the findings recorded by the Trial Court so as to dismiss the suit for specific performance, more appropriately in the light of the vacillatory statements made by DWs.1, 2 and 4 over the genuineness of Ex.D.1 dated 03.02.1999, said to be a prior agreement of sale in

favour of 3rd defendant executed by 1st defendant. This Court also has to take note of the second substantial question of law whether the Lower Appellate Court was justified in eschewing the conduct of 2nd defendant for having not come to the witness box and subject herself to cross-examination, thus leading to drawing of adverse inference over her pleadings in the written statement and also the additional substantial question of law when the Courts below accepted the endorsement signed under Ex.P.1(k) in part and held that a sum of Rs.2,000/- was accepted by the first defendant towards the earnest money, whether it committed an error in rejecting the remaining part of such endorsement relating to the payment of Rs.45,000/- under Cheque No.821547 dated 03.04.2002 and committed an illegality in accepting the part of said endorsement and rejecting the remaining part.

31. Considering these substantial questions of law, this Court has to re-analyze the material available on record. All these substantial questions of law are interconnected with each other with regard to the evidence of D.W.1, D.W.2 and D.W.4

over the genuineness of Ex.D.1 so also when defendant No.2 did not subject for cross-examination and all these materials to be considered together while answering all the substantial questions of law. Hence, keeping in view the substantial questions of law and also the grounds urged above as well as the principles laid down in the judgments referred (supra), this Court has to consider the same.

32. Having considered the pleadings and the documentary evidence available on record, it discloses that the plaintiff relies upon document of Ex.P1 to prove that there was a sale agreement dated 11.07.1999 and the same was executed by defendant No.1 and his mother. The document Ex.P1 discloses that it bears the signatures of both of them and no dispute to that effect as the same is admitted though denied the very execution of sale agreement. It is also discloses that the sisters of defendant No.1 have also signed the said Ex.P1 as witnesses Nos.1 and 2.

33. It is important to note that defendant Nos.1 and 2 denies the sale agreement at Ex.P1 saying that no such

agreement was executed and only defence was taken that signature of defendant No.1 was taken in the blank paper. But on perusal of the contents and recitals of Ex.P1, it is clear that the entire contents of the document are with regard to the execution of the said document agreeing to sell the property. It is also clear that sale consideration was Rs.1,22,500/- and an advance amount of Rs.25,000/- was paid at the time of the agreement itself. Only RTC stands in the name of defendant Nos.1 and 2 and there is no mutation and katha in the name of defendant Nos.1 and 2 and the same is evident in the document of Ex.P1 and to that effect also there is a recital in the said document stating that mutation and katha not stands in their name and having obtained the same, they are going to execute the sale deed in favour of the plaintiff receiving the balance amount of Rs.97,500/-. In Ex.P1, it is also clear that if any need of money in future and the same would be paid, the same must be endorsed in the agreement itself.

34. It is also the case of the plaintiff that subsequent to the execution of the sale agreement, additional amounts were

paid and there were endorsements to that effect in the agreement. Thus, it is clear that defendant No.1 had received the amount and also he categorically admitted during course of cross-examination that signatures were found on the document to that effect i.e., Ex.P1(d) to (h), but denies only the signature of last shara that is having made the payment of Rs.45,000/- by way of cheque in favour of Dayananda Reddy and accepted the payment of Rs.2,000/- on 03.04.2002. The Court has to take note of payment of Rs.45,000/- in favour of Dayananda Reddy that too through a cheque dated 20.01.2002 that is prior to the subsequent payment on 03.04.2002. When there was a clear admission except to the last shara and the defendant once denies the same, the same was not sent to the handwriting expert disputing the same. But the fact is that payment was made to the said Dayananda Reddy through a Cheque is not in dispute. But only, the Trial Court while answering the additional issues and also the Appellate Court while considering the appeal came to the conclusion that PW5 claims that defendant No.1 made the payment by way of cheque. But the fact is that the said cheque belongs to the plaintiff. It is also the fact that at the

time of making the payment when defendant No.1 handed over the cheque to the said Dayananda Reddy, the very plaintiff was present along with him. These factors were not taken note of by the Trial Court while answering the Additional Issue Nos.1 and 2 so also the Appellate Court while considering the appeal.

35. It has to be noted that there was a clear endorsement that total amount of Rs.1,22,500/- including the payment of Rs.45,000/- made through cheque was received by defendant Nos.1 and 2 and to that effect, endorsement was made. It is important to note that in the endorsement, it is very clear that in terms of the contract, mutation and katha still not transferred to the name of defendant Nos.1 and 2 and immediately after obtaining the same, going to register the document in favour of the plaintiff and also there was an endorsement with regard to already handing over the possession of the property and the same is in the cultivation of the plaintiff.

36. The other document produced at Ex.P2 is very clear that mutation was effected in favour of defendant No.1 on

23.08.2004 i.e., subsequent to the last endorsement both in column Nos.9 and 10 based on M.R.No.26/2003-04.

37. The other document of Ex.P3 also clear that application was given for mutation on 03.02.2004 and subsequently, it was transferred on 23.08.2004. Thus, as on the date of transfer of katha, mutation came into existence. The very case of the plaintiff also that katha and mutation came into existence subsequently in the year 2004. It has to be noted that when the plaintiff made an attempt to get the sale deed executed but clandestinely sale deed was executed in favour of defendant No.3 in terms of Ex.P4 by the defendants immediately after Exs.P2 and P3 came into existence.

38. Now, this Court has to take note of the evidence of DW1, DW2 and DW4 as this Court has framed the first substantial question of law with regard to reversing the findings recorded by the Trial Court so as to dismissal of the suit for the specific performance more appropriately in the light of the vacillatory statements made by DW1, DW2 and DW4. Defendant Nos.1 to 3 relies upon the document of Ex.P1 dated 11.07.1999

stating that prior to the agreement of the plaintiff, there was an agreement in favour of defendant No.3 on 03.02.1999. The Court has to take note of both oral and documentary evidence in the case on hand with regard to the second substantial question of law is concerned since this Court opined that there is a perversity in the finding. Apart from that there is a divergent finding by the Trial Court as well as the Appellate Court.

39. This Court has to take note of admission on the part of D.W.1 in the cross-examination with regard to the agreement dated 03.02.1999 wherein DW1 though claims that there was an earlier agreement in favour of defendant No.3 but categorically deposed that the plaintiff obtained signature of defendant No.1 and his mother on a blank paper that is only on one sheet. But once again deposed that plaintiff obtained total 4 signatures of defendant No.1 and his mother and categorical admission was given stating that each and every signatures were made by defendant No.1 for the execution of the document and the additional amount was acknowledged by him. Though it is contended by defendant No.1 that he was paying rent towards

using the water from the borewell of the plaintiff, but categorically admits that there was no agreement between him and the plaintiff with regard to letting of water to their land. In one breath, defendant No.1 says that he was making the payment towards the water charges and signatures were obtained and at the same time, in another breath, he says that the document of Ex.P1 was a security for letting the water to the defendant, thus, there are contra evidence. But categorically admits the signature shown to him when the document was confronted at E.P1 to P1(d), (e), (f), (g), (h) and also when the documents marked at Ex.P1(j) and (k) confronted to him, he admits the signature as well as his signatures on the endorsement as well Ex.P1(a) signature. Hence, it is clear that there was an agreement of sale in favour of the plaintiff. But in respect of agreement of sale in favour of defendant No.3 is concerned, categorical admission was given by DW1 that he himself, his wife and his mother were jointly executed an agreement in favour of defendant No.3, but he cannot say the date of the said agreement and even unable to say in which year they executed the said agreement in favour of defendant No.3.

Hence, this admission takes away the case of defendant Nos.1 and 2 in executing the sale agreement in favour of defendant No.3.

40. It is important to note that DW1 categorically admits that the sale agreement was written in Dommasandra Village and when the agreement was written, himself and defendant No.3-Jayarama Reddy were present and except themselves, no other persons were present at that time. This evidence takes away the case of the defendants. DW1 though examined DW2 and DW4, it is clear that they are the relatives of defendant No.1 and this admission is clear that they were not present. Even though they adduced their evidence, the same will not come to the aid of the defendants. It is further admitted that they put their signatures in the agreement in their house. But witness says that agreement was written in Dommasandra Village and also claims that defendant No.3 also put his signature to the said agreement in their house. Thereafter says that one Srinivasa Reddy was also present in their house and also deposes that in the said agreement, the sale consideration was fixed at

Rs.5,25,000/-. But on perusal of Ex.D1, it discloses that the sale consideration was only Rs.1,00,000/-. Thus, all these evidences falsifies the case of defendant Nos.1 to 3 with regard to the existence of Document at Ex.D1.

41. The Appellate Court also after considering the material on record comes to the conclusion that there was an agreement in favour of the plaintiff even though defendant Nos.1 and 2 have denied the same. But the fact is that when the sale deed was executed in favour of defendant No.3, though claims that sale agreement was existed and there was an reference in this regard, but no such reference was made and the said fact was taken note of by the Trial Court. But the defendants claim that one more witness - Gopala Reddy was also signed the said document. With regard to the presence of two witnesses to Ex.D1 and D2 is doubtful in view of the admission on the part of DW1 wherein he categorically says that except their family members and defendant No.3, no other persons were present. But in the cross-examination, he admits that based on Ex.D1 only, the sale deed was executed in favour of

Defendant No.3 but the very existence of Ex.D1 is doubtful in view of the answers elicited from the mouth of DW1, DW2 and DW4. Though DW2 was examined, he was not subjected to cross-examination. Thus, the Court has to take note of the conduct of defendant No.2 for having not come to the witness box and subject herself to cross-examination. It is very clear that the Court can draw an adverse inference, but the Appellate Court fails to take note of eschewing the conduct of defendant No.2. Hence, it is very clear that the Appellate Court is not justified in reversing the finding recorded by the Trial Court in dismissing the suit of the plaintiff for specific performance when there was a specific recitals made in the document at Ex.P1 itself that there was no katha in the name of defendant Nos.1 and 2 as on the date of entering into an agreement of sale and recitals of the document at Ex.P1 also very clear to that effect. So also, the endorsement was very clear that when the additional amounts were received, an endorsement was made that still katha was not changed. But Ex.P2 and P3 are very clear that subsequent payments were made and katha was changed in the month of August 2004 and immediately, the sale deed was

executed in favour of defendant No.3 with an intention to defeat the transaction of plaintiff.

42. The Court has to take note of the fact that sale consideration in terms of Ex.P1 is to the tune of Rs.1,22,500/-. But DW1 claims that at the time of executing the sale agreement dated 03.02.1999, sale consideration was Rs.5,25,000/-. But document at Ex.D1 is clear that the sale consideration was only Rs.1,00,000/-. Even considering the same also, this Court opined that both the Trial Court as well as Appellate Court committed an error in considering the Additional Issues Nos.1 and 2 which was framed by the Appellate Court and remitted the matter back to the Trial Court to give finding and only magnified with regard to the evidence of PW5 who claims that he has received the payment from defendant No.1. But the fact is that cheque belongs to the plaintiff. Though the same was received from defendant No.1, but the fact is that already there was a sale agreement executed by defendant No.1 in favour of one Dayananda Reddy. Hence, cheque was handed over by defendant No.1 and the said cheque belongs to the plaintiff. The

endorsement is also very clear while making the payment by defendant No.1 that cheque payment was made to the tune of Rs.45,000/- in favour of Dayananda Reddy who has been examined as PW5 and in the cross examination of PW5, nothing was elicited that there was no agreement. But his evidence is very clear that defendant No.1 accompanied the plaintiff at the time of handing over the cheque to him. It is not the case of defendant No.1 that the amount of Rs.45,000/- was not paid to the Dayananda Reddy through a cheque. Only PW5 says that he has received the cheque from defendant No.1. But the evidence is clear that plaintiff was present at that time. Hence, the Appellate Court also committed an error in appreciating the evidence available on record in respect of Additional Issues.

43. This Court also, when the matter was heard in part, framed the additional substantial question of law that when the Courts below accepted the endorsement signed under Ex.P1(k) in part and held that a sum of Rs.2,000/- was accepted by defendant No.1 towards the earnest money, whether it committed an error in rejecting the remaining part of such

endorsement relating to the payment of Rs.45,000/- under cheque dated 03.04.2002 and committed an illegality in accepting the part of said endorsement and rejecting the remaining part.

44. The Court has to take note of the fact that the signatures which were found was admitted and though last shara was denied, the same was not taken to the handwriting expert if the same was not endorsed by defendant No.1. The Appellate Court magnified that defendant No.2 has not signed. But the fact is that in terms of the agreement at Ex.P1, it was signed by both defendant Nos.1 as well as his mother and also the last shara discloses the LTM of defendant No.2. That means, payment of Rs.45,000/- was made to the Dayananda Reddy. When such being the case, both the Courts ought to have accepted even the last shara also and mere denial is not enough and the same is not proved that signatures are not belongs to defendant Nos.1 and 2 in the document at Ex.P1 regarding last shara. The plaintiff examined the witness to the said shara and proved the

said shara and nothing is elicited from the witness regarding making payment as well as endorsing the said shara.

45. No doubt, it is emerged during the course of evidence that defendant Nos.1 and 2 were availing water from the land of the plaintiff from the borewell located in Sy.No.83. The fact is that both the plaintiff and defendant Nos.1 and 2 are the adjacent owners of the property. The First Appellate Court in paragraph 31 held that the assertion of defendant Nos.1 and 2 being not in consonance with prudent man's approach admission of signatures itself is sufficient to prove the agreement. When the First Appellate Court comes to such a conclusion that there was an agreement in favour of the plaintiff, but in paragraph 41, while answering the Point No.3 comes to the conclusion that in view of the Court finding on Issue No.1, plaintiff has failed to prove the agreement of sale. Thus, the said observation is as against the finding given in paragraph 31 and comes to the contra conclusion that plaintiff is not entitled for specific performance. When the signatures are admitted by defendant No.1 in the categorical admission, the Appellate Court comes to

the conclusion that sale agreement was not proved and further comes to the conclusion that even if the argument of the advocate for the plaintiff's with regard to the signatures of defendant Nos.1 and 2 is accepted as proved that it is only defendant No.1 has received Rs.77,500/- as per the acknowledgment, hence, the plaintiff is entitled for this sum from defendant No.1 with interest and this observation is also erroneous when defendant No.2 was examined as DW2, but not subjected to the cross-examination as well as defendant No.1 categorically admitted his signature on Ex.P1 and the same is not one signature but voluminous.

46. The other observation of the Appellate Court that when six months period was fixed, why piece meal payments upto 2002 were made remains unsubstantiated. This observation is also erroneous. Having considered the document of Ex.P1, it discloses that there is a clear mentioning that katha and mutation not stands in the name of defendant Nos.1 and 2 and also it is an admitted fact that katha came into existence only in the year 2004 and mutation also came into existence in 2004.

Even in the recital of the document of Ex.P1 itself is very clear that if any additional payment is required to be made, the same has to be endorsed. Accordingly, the same was endorsed on subsequent payment. Defendant No.1 also admitted the signature regarding additional payment is concerned.

47. No doubt, the counsel appearing for respondent No.1(a) to (c) has relied upon the judgment of **KONDIBA DAGADU KADAM** referred supra regarding scope and ambit of Section 100 of CPC and contend that the High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable. But in the case on hand, the very principle laid down in paragraph 5 of the said judgment is not applicable to the facts of the case since the very reasoning of the First Appellate Court is perverse and not based on the documentary evidence and so also the finding of Trial Court on Additional Issues. The counsel also relies upon the judgment of **GOVINDARAJU** referred supra and brought to notice of this

Court paragraph 18 wherein also held that questions of law which had been framed at the time of admission and were referred to and reproduced in the judgment were not adverted to while deciding the appeal. But in the case on hand, taking into note of both oral and documentary evidence available on record, it discloses that this judgment also not comes to the aid of defendant Nos.1 and 2 since they have taken false defence that there was no such agreement but admission of DW1 takes away his case. But admitted the signature available in Ex.P1. The counsel also relied upon paragraphs 10 and 17 of **VIJAYA BHARATHI's** case referred supra regarding cancellation of the sale deed executed in favour of defendant No.3 and the said judgment is also will not comes to the aid of defendant No.3 since the very agreement in favour of defendant No.3 was not proved and the same is falsified. When the sale deed was executed in favour of defendant No.3 with an intention to avoid the sale agreement executed in favour of the plaintiff, the said judgment will not comes to the aid of defendant Nos.1 and 2.

48. On perusal of the records, it discloses that defendant Nos.1 and 2 have set false defence that there was no agreement and with regard to the endorsement is concerned, it is their case that signatures are obtained on the blank paper, but the same is not substantiated when each and every payment was acknowledged and executed an endorsement and the document of Ex.P1 does not disclose that the signatures were obtained on the blank paper.

49. The counsel appearing for the subsequent purchaser claims that he is a *bona fide* purchaser. In support of his contention, he relies upon the judgments of **RAM KUMAR AGARWAL** as well as **KOMMISSETTI VENKATASUBBAYYA** referred supra with regard to the readiness and willingness is concerned and hence, the said judgments will not come to the aid of the subsequent purchaser when the entire sale consideration was paid in terms of Ex.P1 - agreement as well as additional payments were made by the plaintiff.

50. The other contention of the said counsel is that agreement of sale was not executed by all co-sharers and in this

regard, relies upon the judgment of **PEMMADA PRABHAKAR'S** case. It is not in dispute that property was an ancestral property and also the fact that both the mother and son have executed the sale agreement and they are the co-sharers and others are not co-sharers. The main contention that Gowramma and Yellamma have not signed the document as vendors. But the fact is that they have signed the document as witnesses and as on the date of entering into the agreement, they are not the co-sharers but they are the family members and they have attested their signatures as witnesses to the document. Hence, the said contention cannot be accepted. In the subsequent sale deed executed in favour of defendant No.3, vendors and even defendant No.2 are not the signatories.

51. With regard to the scope of interference in a second appeal, the counsel for respondent No.3 relied upon the judgment of **RAMACHANDRA AYYAR** referred supra wherein held that High Court cannot interfere with the conclusions of fact recorded by the lower appellate court. However, erroneous the said conclusions may appear, however, gross or inexcusable the

error may seem to be, there is no jurisdiction under Section 100 of CPC. It is settled law that if any perversity in considering the evidence also, this Court can exercise the powers under Section 100 of CPC and so also if substantial question of law is not considered. With regard to the knowledge of the contents cannot be attributed to the attestors, will end up as per the judgment of **BANGA CHANDRA DHUR BISWAS** referred supra. It is very clear that other family members have also signed the document of Ex.P1 and they are not the co-sharers as on the date of agreement of sale and merely because they are witnesses, it does not involve the witness in any knowledge of the contents of the deed. But the fact is that mother and son have executed the sale agreement and they are the co-sharers. Hence, this judgment also will not come to the aid of the subsequent purchaser. So also, as per the judgment of **CHANDRAKANTABEN** referred supra there is no presumption that an attesting witness of document must be assumed to be aware of its contents. But the fact is that they signed as witnesses to the sale agreement and they were not having any right as on the date of execution of the sale agreement. The

counsel also contend that execution of documents is by illiterate persons relying upon **BADRI NARYANA's** case referred supra but the said contention cannot be accepted since only the mother was an illiterate and DW1 categorically admitted that he had studied upto 9th standard, thus, he cannot be termed as an illiterate and he only acted upon in terms of the agreement of Ex.P1 and received the balance sale consideration. So also the judgment of **VAIBHAV JAIN** referred supra regarding Order XLI Rule 33 of CPC and **VINEETA SHARMA's** case referred supra will not come to the aid of the subsequent purchaser also not comes to the aid of defendant No.3.

52. Having considered the material available on record, it discloses that it is a clear case of creation of document of Ex.D4 in favour of defendant No.3 only to avoid the agreement which was in existence in favour of the plaintiff as per Ex.P1. The recitals of document of Ex.P1 and also the averments made in paragraphs 5 and 6 of the plaint are very clear with regard to the payment made through a cheque and not by way of cash to the Dayananda Reddy when the same comes to the knowledge

of the plaintiff. When such payment was made in the year 2002 itself by way of cheque and the cheque belongs to the plaintiff though it was handed over by defendant No.1 and the same was also handed over in the presence of the plaintiff in favour of the said Dayanand Reddy, defendant Nos.1 and 2 have totally denied the very execution of the agreement and put forth the document of Ex.D1 saying that the same was prior existence of Ex.P1 and the same cannot be accepted in view of the admission of DW1. The discussions made above are very clear that the case of defendant Nos.1 to 3 is falsified in creation of document of Ex.D1 and executing the sale deed in favour of defendant No.3. The very approach of the Appellate Court and also the Trial Court while answering the Additional Issues Nos.1 and 2 is erroneous and the same is not based on the material available on record i.e., documentary evidence as well as oral evidence. The evidence of DW1, DW2 and DW4 regarding genuineness of document of Ex.D1 cannot be believed and their admissions takes away their case. Hence, it is clear that Ex.D1 was created for the purpose to knock off the property of the plaintiff which was entered based on the sale agreement of Ex.P1 and

defendant Nos.1 to 3 have colluded each other in defeating the claim of the plaintiff. Hence, I do not find the substance in the contention of the counsels appearing for respondent Nos.1 to 3. The Trial Court was not justified in eschewing the conduct of defendant No.2 who has been examined and not subjected for cross-examination and the admissions of DW1 takes away the case of defendants and material available on record not pursued properly. The lower Appellate Court also was not justified in reversing the finding recorded by the Trial Court regarding original issues. Hence, I answer the substantial questions of law 1 to 3 in favour of the plaintiff accordingly. The Courts below once accepted the endorsement for having made the payment of Rs.2,000/- ought not to have rejected the remaining part of such endorsement regarding payment of Rs.45,000/- when such payment was also made by way of cheque in favour of the Dayananda Reddy which shows that even the plaintiff has taken note of interest of the earlier agreement holder - PW5. PW5 categorically says that having received the advance amount what he has paid, he had torn the earlier agreement which was in existence in his favour. His evidence is also very clear that

defendant No.1 accompanied PW1 at the time of payment. Hence, the judgment of the Trial Court with regard to the finding on Additional Issues Nos.1 and 2 requires to be set aside and so also the finding of the Appellate Court that the plaintiff is entitled for refund of amount is also an erroneous approach since the document of Ex.P1 is proved and also the payment was proved by making an endorsement and the same was admitted by DW1 during the course of cross-examination and the Court has to take note of recitals of the document of Ex.P1 and pleading and evidence is clear regarding the document of Ex.P1. Hence, the plaintiff is entitled for the relief of specific performance as contented.

53. This Court would like to rely upon the recent judgment of the Apex Court in the case of **M S ANANTHAMURTHY AND ANOTHER vs MANJULA** reported in **2025 INSC 273** equivalent judgment reported in **2025 (3) Supreme 93** wherein it is held that in order to understand a document, a reader should not go by its title. It is the Courts responsibility to examine the documents contents and the intention of the

parties. The same can be gathered from the circumstances under which document was entered and the language used by the parties. In the case on hand, Ex.P1 recitals substantiates the case of the plaintiff that the defendants were not having katha and mutation as on the date of the agreement and also even at the time of receiving the balance amount and only after receiving the same, Ex.P2 and P3 came into existence.

54. The other contention of the counsel appearing for defendant No.3 that there was no any cross appeal as against the finding of Both the Courts. The material clearly discloses that when the additional issues were framed and the same were answered, there were four appeals before the Appellate Court and as against that, two appeals are filed before this Court by the plaintiff questioning the respective findings. When such being the case, the said contention also cannot be accepted. The other contention that the relief is not sought in respect of sale deed in favour of defendant No.3 also cannot be accepted for the reason that this Court already given finding that the said sale deed of

Ex.P4 is the collusive and sham document. Hence, no need to seek any relief on the said document.

55. In view of the discussions made above, I pass the following:

ORDER

The second appeals are allowed.

The judgment of the First Appellate Court in R.A No.199/2008 connected with cross-objection No.159/2009 dated 13.11.2009 are set aside; the judgment and decree dated 17.09.2008 passed by the Court of the Civil Judge (Senior Division), Anekal in O.S.No.937/2006 (old No. 1530/2004) is also set aside on the Additional Issue Nos.1 and 2 and the judgment of the Appellant Court to pay Rs.77,500/- with interest at 15% from 28.08.2000 till payment is also set aside.

Consequently, the suit filed by the plaintiff for the relief of specific performance based on the

agreement of sale at Ex.P1 is decreed. Defendant Nos.1 and 2 are directed to execute the sale deed in favour of the plaintiff. If the said defendants failed to execute the sale deed, the plaintiff is given liberty to enforce the agreement of sale in accordance with law.

**Sd/-
(H.P. SANDESH)
JUDGE**

MD/SN