



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 2195 OF 2023 (SP)

C/W

REGULAR SECOND APPEAL NO. 345 OF 2024 (SP)

IN RSA NO.2195/2023:

BETWEEN:

SMT.BELLAMMA
W/O GAVIYAPPA @ BELLAPPA,
AGED ABOUT 42 YEARS,
BELAVADI VILLAGE,
HANGALAGA HOBLI,
GUNDLUPETE TALUK,
CHAMARAJANAGAR
DISTRICT - 571 440.

...APPELLANT

(BY SRI SHANTKUMAR NAGAYYA, ADVOCATE)

AND:

1. SRI GAVIYAPPA
S/O PINNAPPA
AGE: 64 YEARS
R/AT BELAVADI VILLAGE
HANGALA HOBLI,
GUNDLUPET TALUK,
CHAMARAJANAGAR
DISTRICT - 571 440.





2. SMT.HS SULOCHANA
W/O SHANKARAPPA
AGE MAJOR

3. S. RAJESHA
S/O SHANKARAPPA
AGE MAJOR

RESPONDENTS NO.2 & 3 ARE
R/AT SRI VIJANARAYANA
TEMPLE STREET,
GUNDLUPETE TALUK,
CHAMARAJANAGAR
DISTRICT - 571 440.

...RESPONDENTS

(BY SRI SOMASHEKAR KASHIMATH, ADVOCATE FOR R1;
SRI MR HIREMATHAD & SRI N. RAMAKRISHNA, ADVS. FOR
R2 & R3)

IN RSA NO.345/2024:

BETWEEN:

- 1 . SMT. H S SULOCHANA
W/O LATE SHANKARAPPA
AGED ABOUT 64 YEARS
OCC: HOUSEWIFE
- 2 . S RAJESH
S/O LATE SHANKARAPPA
AGED ABOUT 64 YEARS
OCC: EMPLOYEE

BOTH ARE RESIDENTS OF
SRI VIJAYANARAYANASWAMY
TEMPLE STREET,
GUNDLUPET TOWN



CHAMARAJANAGARA DISTRICT 571 111.

...APPELLANTS

(BY SRI SARVAMANGAL CHIKKANAGOUDAR, ADVOCATE FOR
SRI HIREMATHAD MAHESHIAH RUDRAYYA, ADVOCATE)

AND:

1 . GAVIYAPPA
S/O PINNAPPA
AGED ABOUT 66 YEARS
R/A BELAVADI VILLAGE
GUNDLUPET TOWN
CHAMARAJANAGARA
DISTRICT 570 018.

2 . BELLAMMA
W/O LATE GAVIYAPPA @ BELLAPPA
AGED ABOUT 50 YEARS
GUNDLUPET TOWN
CHAMARAJANAGARA
DISTRICT 570 018.

.... RESPONDENTS

(BY SRI SOMASHEKAR KASHIMATH, ADVOCATE FOR R1;
SRI SHANTKUMAR, ADVOCATE FOR R2)

THIS RSA NO.2195/2023 IS FILED U/S 100 CPC AGAINST
THE JUDGMENT AND DECREE DATED 26.09.2023 PASSED IN
RA NO.66/2010 ON THE FILE OF ADDITIONAL DISTRICT AND
SESSIONS JUDGE, CHAMARAJANAGARA, (SITTING AT
KOLLEGALA), DISMISSING THE APPEAL AND CONFIRMING THE
JUDGMENT AND DECREE DATED 26.10.2010 PASSED IN OS



NO.100/2007 ON THE FILE OF SENIOR CIVIL JUDGE AND CJM,
CHAMARAJANAGARA.

THIS RSA NO.345/2024 IS FILED U/S 100 CPC AGAINST
THE JUDGMENT AND DECREE DATED 26.09.2023 PASSED IN
RA NO.66/2010 ON THE FILE OF ADDITIONAL DISTRICT AND
SESSIONS JUDGE, CHAMARAJANAGARA, (SITTING AT
KOLLEGALA), DISMISSING THE APPEAL AND CONFIRMING THE
JUDGMENT AND DECREE DATED 26.10.2010 PASSED IN OS
NO.100/2007 ON THE FILE OF SENIOR CIVIL JUDGE AND CJM,
CHAMARAJANAGARA.

THESE APPEALS HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 23.01.2026, THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE RAVI V HOSMANI



CAV JUDGMENT

Challenging judgment and decree dated 26.09.2023 passed by Additional District and Sessions Judge, Chamarajanagar, (Sitting at Kollegala), in R.A.no.66/2010 and judgment and decree dated 26.10.2010 passed by Senior Civil Judge and C.J.M., Chamarajanagar, in OS no.100/2007, RSA no.2195/2023 is filed by defendant no.4; while RSA no.345/2024 is by defendants no.2 and 3. For sake of convenience, parties are referred to as per their ranks before trial Court.

2. Sri Shantkumar N, learned counsel for appellant in RSA no.2195/2023 and Smt.Sarvamangal Chikkanagoudar, learned counsel appearing for Sri MR Hiremathad, advocate for appellants in RSA no.345/2024 submitted, appeals arose out of OS no.100/2007 filed by Gaviyappa (plaintiff) for specific performance of Agreement of Sale ('**AoS**', for short) dated 23.06.2006 in respect of two lands bearing Sy.no.86/1 measuring 02 Acres 23 guntas and Sy.no.86/2 measuring 32 guntas of Belavadi village, Hangala Hobli, Gundlupet Taluk, Chamarajanagar District ('**Suit Properties**', for short) and for



directing defendants no.1 to 3 to execute registered sale deed in favour of plaintiff and deliver possession of *suit properties* and declare sale deed dated 07.07.2006 executed by defendant no.1 in favour of defendant no.4 as null and void etc.

3. In plaint, it was stated that defendants no.1 to 3 were owners of *suit properties* and had executed AoS agreeing to sell them for total sale consideration of Rs.3,95,000/- by receiving Rs.25,000/- towards part sale consideration and agreeing to receive balance at time of registration of sale deed. It was stated, though plaintiff was always ready and willing to **pay balance have sale deed registered** and expressed it to defendants no.1 to 3 on several occasions, they kept postponing on some pretext. Ultimately, plaintiff got issued legal notice on 24.07.2006 calling upon them to come forward to perform their part of contract. On service of said notice, defendants no.2 and 3 got issued false reply claiming that defendant no.1 had executed registered sale deed in favour of defendant no.4 on 07.07.2006, behind their back. On receipt of reply, plaintiff realized that defendants no.1 to 3 had colluded with each other to defraud him. He also got issued legal notice



to defendant no.4 on 21.08.2006. Despite service of notice, there was no reply by defendant no.4. It was stated that defendant no.4 being fully aware of AoS in favour of plaintiff had purchased *suit properties* illegally. Collusion was evident from fact that defendant no.4 was none other than sister of defendant no.1 and was not a bonafide purchaser and **therefore**, plaintiff was entitled for relief.

4. On service of summons, defendants entered appearance and filed written statement. In written statement, in addition to denying plaint averments, defendant no.1 admitted execution of AoS on receipt of Rs.25,000/- advance amount, but claimed that time was essence of contract as period of five months was stipulated in said agreement for completion of transaction, since its execution was to mobilize funds to meet urgent family necessities, such as to discharge loans etc. It was stated that plaintiff refused to pay balance amount even after repeated request by defendant no.1. It was alleged that plaintiff was not ready and willing to perform his part of agreement. Therefore, after forfeiting advance amount received and since defendant no.1 was in need of money



urgently, he sold *suit properties* to defendant no.4 on 07.07.2006 for Rs.1,00,000/-. It was also stated that possession of *suit properties* was with BK Kalasappa under registered Mortgage Deed executed for period of five years. Therefore, plaintiff was not entitled for relief and prayed for dismissal of suit.

5. Defendants no.2 and 3 filed separate written statement opposing suit, even they admitted execution of AoS on receipt of advance amount of Rs.25,000/-. They also stated that time was essence of contract and period of five months was stipulated in agreement for completion of sale transaction. They denied receipt of legal notice got issued by plaintiff and alleged lack of readiness and willingness on part of plaintiff and sought dismissal of suit.

6. In his separate written statement, defendant no.4 opposed suit by claiming to be bonafide purchaser of *suit properties*. It was stated, defendant no.1 - her brother had informed about AoS and failure of plaintiff to come forward and have sale deed executed within stipulated period of five months. Only after ascertaining that plaintiff was not ready and



willing as per AoS, defendant no.4 purchased *suit properties*. It was stated, possession was delivered and since then she was in possession and enjoyment of *suit properties* and despite having knowledge of above facts, plaintiff had filed frivolous suit by concocting a story and after issuing untenable legal notice.

7. Based on pleadings, trial Court framed following:

ISSUES:

1. *Does the plaintiff prove that, he is ready and willing to perform his part of contract?*
2. *Does the defendant No. 4 prove that she is the bonafide purchase of suit property for valuation consideration without notice?*
3. *Does the plaintiff proves that he is entitle for the receipt of specific performance of contract?*
4. *What order?*

8. In trial, plaintiff examined himself and two others as PWs.1 to 3 and got marked Exhibits-P1 to P13. While defendants no.1, 2 and 4 examined themselves and two others as DWs.1 to 5 and got marked Exhibits-D1 to D2.



9. On consideration, trial Court answered issue no.1 and 3 in affirmative; issue no.2 in negative and answering issue no.4 in decreeing suit with costs.

10. Aggrieved, defendants no.1 and 4 preferred R.A.no.66/2010 on various grounds, based on which first appellate Court framed following:

POINTS:

1. *Whether the trial Court judgment is not based on facts and law?*
2. *Whether the appellant proves that the judgment and decree passed by the learned trial judge is illegal and perverse?*
3. *Whether the judgment and decree of the trial Court requires for interference?*
4. *What order?*

11. After answering points no.1 to 3 in negative, it answered point no.4 by dismissing appeal.

12. Learned counsel for defendant no.4 submitted that on 23.06.2006, defendants no.1 to 3 executed Ex.P1 – AoS in favour of plaintiff agreeing to sell suit properties for total sale consideration of Rs.3,95,000/- by receiving Rs.25,000/- as



advance and agreeing to receive balance amount within five months and execute registered sale deed. It was submitted, time was essence of contract. And since, plaintiff did not come forward to pay balance sale consideration and have sale deed executed, on 07.07.2006, defendants no.1 to 3 sold suit schedule lands to defendant no.4 executing Ex.P13 registered sale deed for total sale consideration of Rs.1,50,000/-. It was submitted, though plaintiff claimed to have got issued Ex.P2 - legal notice on 24.07.2006, same was duly replied as per Exs.P6 and 7 on 31.07.2006. It was submitted, even filing of suit only on 01.09.2007 would indicate lack of readiness and willingness. Despite same, first appellate Court dismissed appeal.

13. It was submitted, advance amount paid by plaintiff under AoS was only Rs.25,000/- out of total agreed sale consideration of Rs.3,95,000/-. Reason mentioned in AoS for sale was urgent need of funds to clear debts etc. corroborated by production of Ex.D1 - mortgage deed. And though plaintiff was also resident of same village, issuance of legal notice only after purchase of suit properties by defendant no.4 and filing of



suit more than a year later would clearly establish lack of readiness and willingness on part of plaintiff. Without giving specific finding on same, first appellate Court dismissed appeal. Failure to consider above facts and circumstances led to passing of impugned judgment and decree, calls for interference.

14. It was contended that finding of Court about sale deed in favour of defendant no.4 was not bonafide and without any basis or material on record and thus perverse. Hence, following substantial questions of law would arise for consideration:

1. *Whether both Courts erred in allowing suit without plaintiff establishing readiness and willingness?*
2. *Whether both Courts erred in holding that defendant no.4 was not bonafide purchaser?*

15. Learned counsel for defendants no.2 and 3xxxxx while reiterating narration of facts similar to learned counsel for defendant no.4, added that on 04.06.2003, husband of



defendant no.2 had mortgaged suit properties in favour of one BK Kalasappa for Rs.1,00,000/- for period of five years.

16. It was further submitted that on 26.03.2012, RA no.66/2010 came to be allowed in part and judgment and decree passed by trial Court was modified, directing refund of earnest money of Rs.25,000/- with interest at 9% p.a. from date of suit till realization. It was submitted, defendants complied with same on 06.06.2012 by paying Rs.35,875/- i.e. Rs.25,000/- towards refund of earnest money and Rs.10,875/- towards 9% interest from 01.09.2007 till said date, which was acknowledged by plaintiff as per Affidavit and Receipt dated 06.06.2012 executed by plaintiff. It was submitted, suppressing same, plaintiff filed RSA no.1311/2012 before this Court and that came was allowed by judgment dated 31.03.2023, remanding matter back to first appellate Court.

17. It was submitted, after remand, first appellate Court hurriedly passed impugned judgment dismissing appeal and confirming trial Court judgment. Producing copies of receipt and affidavit dated 6.06.2012, learned counsel sought for allowing appeal on ground of suppression of material fact.



In light of above, following substantial questions of law would arise for consideration:

1. *Whether both Courts erred in decreeing suit for specific performance, without plaintiff establishing readiness and willingness?*
2. *In view of compliance with judgment and decree passed by first appellate Court on earlier occasion and repaying earnest money with interest to plaintiff, whether AoS stood rescinded as per Section 62 of Indian Contract Act, 1872?*
3. *Whether both Courts erred in exercising discretion vested in them contrary to Section 20 of Specific Relief Act?*

18. On other hand, learned counsel for plaintiff opposed Appeals. It was submitted, there was no dispute about execution of AoS, on receipt of part sale consideration. There was also no dispute about stipulation of period of five months for plaintiff to pay balance sale consideration and have sale deed executed by defendants no.1 to 3. It was submitted, AoS was executed on 23.06.2006. But in less than a month thereafter defendant no.1 sold *suit properties* to defendant



no.4, who was none other than his sister and resident of same village. It was submitted, even defendant no.4 in written statement admitted knowledge of AoS. Though failure to perform obligation under AoS was alleged, no notice calling upon plaintiff to perform his obligation under AoS or termination of AoS was given. Thus, first appellate Court was justified in holding defendant no.4 as not bonafide purchaser and setting aside of sale.

19. It was submitted, even alleged compliance with judgment and decree of first appellate Court on earlier occasion modifying decree and directing refund of earnest money with interest, was contrary to record and without any basis. It was submitted, such contention was not urged before this Court in RSA no.1311/2012 till its disposal or before first appellate Court on remand. Therefore, said claim was liable to be rejected. Fact that no attempt was made even in these appeals would establish same was without basis. It was therefore submitted, no substantial questions of law would arise for consideration.



20. Heard learned counsel, perused impugned judgment and decree of both Courts.

21. These appeals are by defendants no.2 to 4 against concurrent findings in suit for specific performance. From above submissions, following admitted facts would emerge. Firstly about defendants no.1 to 3 being owners of *suit properties* and execution of AoS in favour of plaintiff by receiving advance sale consideration of Rs.25,000/- out of total sale consideration of Rs.3,95,000/-. There is also no dispute about stipulation of period of five months for payment of balance sale consideration and execution of sale deed. Likewise there is also no dispute about defendant no.1 selling suit properties to defendant no.4 his sister on 07.07.2006 for sale consideration of Rs.1,00,000/,, which would be less than one month from date of AoS dated 23.06.2006. And about trial Court decreeing suit and first appellate Court confirming same.

22. While defendants contend that plaintiff's suit was decreed even though there was no material to establish readiness and willingness on part of plaintiff as well as on ground that plaintiff's claim for specific performance would not



subsist in view of plaintiff acknowledging refund of entire earnest money with interest in compliance of decree passed by first appellate Court on earlier occasion, plaintiff denies and disputes receipt of refund and contends sale of *suit properties* by defendant no.1 to defendant no.4 before expiry of period fixed for performance of obligations under AoS by itself would establish breach of terms of AoS and failure to execute sale deed even after receipt of legal notice about plaintiff being ready and willing to perform his part of contract would establish that no substantial questions of law would arise for consideration and seeks for dismissal.

23. Thus two contentions require examination, firstly, whether finding of both Courts about readiness and willingness on part of plaintiff is without any basis and whether plaintiff is disentitled for specific relief on account of receipt of refund of earnest money paid with interest.

24. It is not in dispute about execution of AoS on 23.06.2006 by defendants no.1 to 3 by receiving Rs.25,000/- as advance amount out of total sale consideration of Rs.3,95,000/- with stipulation that plaintiff **was to have** sale



deed executed within five months by paying balance amount of Rs.3,70,000/-. Admittedly, about 15 days thereafter defendant no.1 sold suit properties to defendant no.4, who is none other than sister of defendant no.4, that too for sale consideration of Rs.1,00,000/-, which is nearly 1/4th agreed sale consideration under AoS and with defendant no.4 having knowledge of AoS in favour of plaintiff. It is also not in dispute that on sale in favour of defendant no.4 coming to knowledge of plaintiff, he got issued Ex.P2 - notice to defendants no.1 to 3 and Ex.P8 - notice to defendant no.4.

25. While passing impugned judgment and decree, both Courts have observed that defendants failed to test readiness and willingness on part of plaintiff either awaiting expiry of duration or by issuing notice to perform his part of agreement. On said reasoning, issue about plaintiff being ready to perform his part of contract was answered in favour of plaintiff. It is seen findings of both Courts are based on appreciation of material on record. Same cannot be stated to be without any basis or contrary to material on record.



26. As noted above, fact that defendants no.2 and 3 are none other than wife of son of defendant no.1 and defendant no.4 – sister of defendant no.1 and sale in favour of defendant no.4 being for a much smaller sale consideration that AoS would indicate alienation of *suit properties* under Ex.P13 – sale deed in favour of defendant no.4, even when defendant no.4 was aware of AoS in favour of plaintiff, without issuing notice to plaintiff or after cancellation of AoS, would leave no doubt that same was not bonafide.

27. Insofar as contention based on alleged Receipt and Affidavit dated 06.06.2012, about repayment of earnest money with interest as per decision of first appellate Court on earlier occasion, disentitling plaintiff to relief, it is seen that same is sought to be substantiated by production of mere photocopies of affidavit and receipt that too along with synopsis at time of argument without any effort either for urging said contention before first appellate Court after remand by this Court, leading evidence on same or by filing application for additional evidence before this Court. In absence of same, there would be no other go than to draw adverse inference and reject said contention.



28. Thus, findings of both Courts would be in accordance with law and no substantial question of law much less ones proposed for consideration would arise for consideration.

29. Consequently, both appeals are dismissed.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

GRD
List No.: 1 Sl No.: 60