

Smt.Sudha W/O Lalitkumar Giri vs M/S Rasshi Farms on 23 August, 2022

Author: M.G.S. Kamal

Bench: M.G.S. Kamal

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 23rd DAY OF AUGUST, 2022

PRESENT

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL
AND
THE HON'BLE MR.JUSTICE M.G.S.KAMAL

R.F.A.No.100004/2021 (SP)
C/W
R.F.A.No.100130/2021 (SP/DE/IN)

R.F.A.NO.100004/2021

BETWEEN:

SMT.AJITA W/O ASHOK SALEM
NOW DECEASED

1. SMT.MANISHA W/O RAJA RAY
AGED ABOUT 50 YEARS
R/O NO.3, TELCO HOUSING SOCIETY NO.19
PLOT NO.D1/12A, SECTOR
NIGADI PUNE - 411 044/A4A/2
RAIL VIHAR, AKURDI, PUNE - 411033
2. SMT.MADHAVI
W/O INDRAJEET BHUSANLAL GANDHI
AGED ABOUT 49 YEARS
R/O NO.3, TELCO HOUSING SOCIETY NO.19
PLOT NO.D1/12A, SECTOR
NIGADI PUNE - 411 044/A4A/2
RAIL VIHAR, AKURDI, PUNE - 411033
3. SRI.SHAILESH S/O ASHOK SALEM
AGED ABOUT 46 YEARS
OCC: SERVICE

R.F.A.No.100004/2021
c/w RFA No.100130/2021

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R/O NO.3, TELCO HOUSING SOCIETY NO.19
PLOT NO.D1/12A, SECTOR
NIGADI PUNE - 411 044/A4A/2
RAIL VIHAR, AKURDI, PUNE - 411033

4. SRI.VINAY S/O SHEENAPPA SHETTY
AGED ABOUT 56 YEARS
BYAHATTI PLOT, DESHPANDENAGAR
HUBBALLI - 580 026 ... APPELLANTS

(BY SRI.JAYKUMAR S PATIL, SR.COUNSEL FOR
SRI.PRAKASH K JAWALKAR, ADVOCATE)

AND:

1. M/S.RAASHI FARMS
A PARTNERSHIP FIRM,
HAVING ITS OFFICE NEAR
HUBLI TOL NAKA,
P.B.ROAD DHARWAD
HEREIN REPRESENTED BY ITS PARTNER
MR.ANAND S/O BHIMREDDY KALWAD
AGE 50 YEARS
OCC: AGRICULTURE AND BUSINESS
R/O DHARWAD - 580001
2. SMT.SUDHA
W/O LALITKUMAR GIRI
AGED ABOUT 65 YEARS
NEAR GANAPATI TEMPLE
KUMARESHWAR NAGAR DHARWAD - 580001
3. SMT.MAMATA
W/O SUNIL JOGALEKAR
AGED ABOUT 45 YEARS
NEAR GANAPATI TEMPLE
KUMARESHWAR NAGAR DHARWAD - 580001
4. SRI.NITIN
S/O LALITKUMAR GIRI
AGED ABOUT 47 YEARS
NEAR GANAPATI TEMPLE
KUMARESHWAR NAGAR DHARWAD - 580001

R.F.A.No.100004/2021

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c/w RFA No.100130/2021

5. SMT.VIBHA

W/O PRAMOD JOGALEKAR
AGED ABOUT 48 YEARS
NEAR GANAPATI TEMPLE
KUMARESHWAR NAGAR DHARWAD - 580001
...RESPONDENTS

(BY SRI.G.R.GURUMATH, SR.COUNSEL FOR
SRI.M.B.HIREMATH, ADVOCATE FOR R-1;
SRI M.R.NAIK, SR.COUNSEL FOR
SRI.MAHESH WODEYAR, ADVOCATE FOR R2 TO R5;
(R2, R3, R5 REP. THROUGH GPA HOLDER - R4)

THIS APPEAL IS FILED UNDER SECTION 96 READ WITH
ORDER 41 RULE 1 OF CPC AGAINST THE JUDGMENT AND
DECREE DATED 20.11.2020 PASSED IN O.S.NO.329/2012 ON
THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CHIEF
JUDICIAL MAGISTRATE, DHARWAD, PARTLY DECREETING THE
SUIT FILED FOR SPECIFIC PERFORMANCE OF CONTRACT AND
PERMANENT INJUNCTION.

R.F.A.NO.100130/2021

BETWEEN:

1. SMT.SUDHA
W/O LALITKUMAR GIRI
AGED ABOUT 65 YEARS
OCC:HOUSEHOLD WORK
NEAR GANAPATI TEMPLE
KUMARESHWAR NAGAR DHARWAD - 580008
2. SMT.MAMATA
W/O SUNIL JOGALEKAR
AGED ABOUT 45 YEARS
OCC:HOUSEHOLD WORK
NEAR GANAPATI TEMPLE
KUMARESHWAR NAGAR DHARWAD - 580008
3. SRI.NITIN
S/O LALITKUMAR GIRI

R.F.A.No.100004/2021

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c/w RFA No.100130/2021

AGED ABOUT 47 YEARS
NEAR GANAPATI TEMPLE
KUMARESHWAR NAGAR DHARWAD - 580008

4. SMT.VIBHA
W/O PRAMOD JOGALEKAR
AGED ABOUT 48 YEARS

OCC:HOUSEHOLD WORK
NEAR GANAPATI TEMPLE
KUMARESHWAR NAGAR DHARWAD - 580008

APELLANT NOS.1, 2 AND 4 ARE REP. BY THEIR
POWER OF ATTORNEY HOLDER APPELLANT NO.3
I.E. NITIN LALITKUMAR GIRI
AGE 47 YEARS, OCC:BUSINESS
R/O NEAR GANAPATI TEMPLE,
KUMARESHWAR NAGAR, DHARWAD . . . APPELLANTS

(BY SRI M.R.NAIK, SR.COUNSEL FOR
SRI.MAHESH WODEYAR, ADVOCATE)

AND:

1. M/S.RAASHI FARMS
A PARTNERSHIP FIRM,
HAVING ITS OFFICE NEAR
HUBLI TOL NAKA, P.B.ROAD DHARWAD
HEREIN REPRESENTED BY ITS PARTNER
MR.ANAND S/O BHIMREDDY KALWAD
AGE 50 YEARS
OCC: AGRICULTURE AND BUSINESS
R/O DHARWAD - 580008

SMT.AJITA W/O ASHOK SALEM
NOW DECEASED
2. SMT.MANISHA W/O RAJA RAY
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R.F.A.No.100004/2021

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c/w RFA No.100130/2021

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AGED ABOUT 56 YEARS
BYAHATTI PLOT DESHPANDENAGAR
HUBBALLI - 580 023

... RESPONDENTS

(BY SRI.G.R.GURUMATH, SR.COUNSEL FOR
SRI.M.B.HIREMATH, ADVOCATE FOR R-1;
SRI.JAYKUMAR S PATIL, SR.COUNSEL FOR
SRI.PRAKASH K JAWALKAR, ADVOCATE FOR R2 TO R5)

THIS APPEAL IS FILED UNDER SECTION 96 OF CPC
AGAINST THE JUDGMENT AND DECREE DATED 20.11.2020
PASSED IN O.S.NO.329/2012 ON THE FILE OF THE PRINCIPAL
SENIOR CIVIL JUDGE AND CHIEF JUDICIAL MAGISTRATE,
DHARWAD, PARTLY DECREETING THE SUIT FILED FOR SPECIFIC
PERFORMANCE OF CONTRACT AND PERMANENT INJUNCTION.

THESE APPEALS COMING ON FOR FURTHER HEARING ON
18.07.2022 AND THE SAME HAVING BEEN HEARD AND
RESERVED FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY,
K.S.MUDAGAL J., DELIVERED THE FOLLOWING:

R.F.A.No.100004/2021

-6- c/w RFA No.100130/2021

JUDGMENT

Aggrieved by the judgment and decree dated 20.11.2020, defendant Nos.5 to 9 in O.S.No.329/2012 on the file of the Principal Senior Civil Judge and CJM, Dharwad have preferred RFA No.100004/2021. Challenging the very same judgment, defendant Nos.1 to 4 in the said suit have preferred RFA No.100130/2021.

2. By the impugned judgment and decree the trial Court has decreed the suit of the respondent/plaintiff in part, granting decree for specific performance against defendant Nos.1 to 4, 6 to 8 and declaring that the sale deed dated 26.10.2009 executed by defendant Nos.5 to 8 in favour of defendant No.9 is null and void and does not bind the plaintiff.

3. For the purpose of convenience the parties will be referred to henceforth according to their ranks before the trial Court.

4. The subject matter of the suit was agricultural land bearing RS No.25/1+2 measuring 10 acres 17 guntas situated at Doddanayakanakoppa village, Dharwad Taluk.

5. The case of the plaintiff in brief is as follows:

i) The plaintiff is a registered partnership firm carrying on the business of developing residential layouts, commercial ventures, farm houses etc in and around Hubli-Dharwad, agglomeration area. The plaintiff by its resolution dated 11.11.2012 has authorized its partner Anand Bhimareddy Kalwad to institute the suit and conduct the suit on behalf of the firm.

ii) Defendant No.1 is the wife, defendant Nos.2 to 4 are the children and defendant No.5 is the sister of deceased Lalitkumar. Defendant Nos.6 to 8 are the children of defendant No.5. Defendant No.5 filed O.S.No.70/1993 against Lalithkumar before the III Addl.

Civil Court, (Senior Division), Dharwad for partition and separate possession of her share in the suit properties and for mesne profits. The present suit land was one of the suit properties in O.S.No.70/1993. Defendant No.5 and Lalitkumar entered into a compromise on 19.10.1997. Accordingly he filed IA No.22 under Order XXIII Rule 3 CPC to draw the decree in terms of the compromise dated 19.10.1997. In the said compromise, present suit land was allotted to the share of Lalitkumar. Defendant No.5 resisted the said application. The III Additional Civil Judge (Sr. Dn), Dharwad by order dated 08.03.2000 rejected the said application. Challenging the said order, Lalitkumar filed CRP No.1702/2000 before this Court. On 05.10.2001 this Court allowed the said petition and directed to draw the decree according to the compromise petition.

iii) Defendant No.5 challenged that order before the Hon'ble Supreme court in CA No.3753/2002. The Hon'ble Supreme Court dismissed the said Civil appeal, thereby the compromise entered into between Lalitkumar and defendant No.5 became final. Despite that defendant No.5 filed O.S.No.136/2004 before the I Addl. Civil Court, Senior Division, Dharwad against Lalitkumar seeking declaration that the decree in O.S.No.70/1993 is the outcome of fraud, misrepresentation and cheating and consequently sought decree for partition and separate possession.

iv) Lalitkumar initially contested the suit. Regarding the suit property, Lalitkumar was entrapped in civil litigations with others also. O.S.No.115/1998 was filed before the II Addl. Senior Civil Judge, Dharwad and O.S.No.251/2004 was filed before the Prl. Senior Civil Judge, Dharwad against him. Further they were also involved in dispute with Umar Housing Cooperative Society Ltd, Dharwad. Due to such litigations Lalitkumar and his family were in financial distress. Therefore, defendant Nos.1, 3 and Lalitkumar for himself and as the power of attorney holder of defendant Nos.2 and 4 entered into a Memorandum of Understanding ('MOU' for short) dated 07.02.2007 agreeing to sell the suit property to the plaintiff. As per the said MOU, the total sale consideration was Rs.1 crore 30 lakhs. Out of that, Lalitkumar and defendant Nos.1 to 4 received Rs.25,00,000/- by the cheque dated 07.02.2007 drawn on Karnataka Vikas Grameen Bank, Gandhinagar branch, Dharwad and Rs.40 lakhs by way of cash. Defendant Nos.1 to 4 and Lalitkumar agreed that they would bear the cost of litigations in O.S.No.115/1998, 251/2004 and 134/2004 before the trial Courts and in case the judgments in those cases are challenged by any of the parties, the cost of such litigations will be borne by the plaintiff. It was further agreed that the litigation between Lalitkumar and defendant Nos.1 to 4 on one hand and Umar Housing Cooperative Society on the other hand would be settled by the plaintiff.

v) The plaintiff was waiting that defendant Nos.1 to 4 and Lalitkumar will clear the litigations and execute the sale deed. But to defraud the plaintiff, on 10.11.2008 defendant Nos.1 to 4, Lalitkumar and defendant No.5 flouting the judgment of the Hon'ble Supreme Court in CA No.3753/2002, entered into another compromise in O.S.No.136/2004 thereby allotting the said property to defendant No.5. Such fraudulent compromise was entered into behind the back of the plaintiff to defeat its right. Plaintiff came to know about such compromise only in August 2009. As assured by Lalitkumar and defendant Nos.1 to 4 should have contested O.S.No.136/2004 but later they turned hostile. Such compromise was totally illegal and therefore the compromise decree was null and void. When the plaintiff questioned that, Lalitkumar and defendant Nos.1 to 4 represented that such compromise was entered into for some other reasons and they will safeguard the interest of the plaintiff, once the litigations in O.S.No.115/1998, 251/2004 and the one with Umar Housing Cooperative Society come to an end, Lalitkumar and defendant Nos.1 to 4 will execute the sale deed. Plaintiff believed their version. In October 2012 when plaintiff obtained the record of rights was shocked to know that the name of defendant No.9 was entered as the owner of the suit property. On probing, plaintiff came to know that name of defendant No.9 is entered in the record of rights pursuant to M.R.No.173 dated 07.02.2012 on the ground that he has purchased the property from defendant Nos.5 to 8. Then only the plaintiff came to know that defendants conspired to defeat his interest and defendant Nos.5 to 8 have executed the sale deed in favour of defendant No.9. The sale deed was executed by Ashok Salem as the power of attorney holder of defendant Nos.5 to 8. Plaintiff also came to know that the judgment in O.S.No.115/1998 was challenged by Lalitkumar and defendant Nos.1 to 4 in RFA No.1755/2007 before this Court and that fact was suppressed. Ultimately RFA No.1755/2007 ended in a compromise on 19.08.2011. Even that fact was suppressed. Having invested huge amount the plaintiff is subjected to loss and mischief. The decree in O.S.No.136/2004 is null and void and does not bind the plaintiff. The defendants are bound to execute the sale deed in favour of the plaintiff. Thus they sought decree for specific performance of MOU dated 07.02.2007, permanent injunction against defendant No.9, if they succeed in getting their relief for specific performance. In the alternative they sought refund of earnest money of Rs.65 lakhs with interest at 21% p.a. and for damages of Rs.65 lakhs.

6. Defendant Nos.1 to 4 filed common written statement. Defendant No.9 filed independent written statement. The defence of defendant Nos.1 to 4 is as follows:

- i) The allegation regarding readiness and willingness of performing the contract was disputed.
- ii) They admitted the ownership of the suit property. However, they disputed the execution of Memorandum of Understanding/agreement of sale and receipt of advance sale consideration of Rs.65 lakhs to clear the cost of several pending litigations.
- iii) Since they were in financial distress, Lalitkumar borrowed loan of Rs.25 lakhs from the plaintiff.

As security for the said loan transaction, they issued blank signed bond papers to the plaintiff, they are manipulated as the memorandum of understanding.

iv) There were long standing litigations between Lalitkumar and defendant Nos.1 to 4 on one hand and defendant No.5 on the other hand. They wanted to settle that. By the time O.S.No.136/2004 was filed Lalitkumar had already sold some of the properties involved in O.S.No.136/2004 and 70/1993. Therefore, to give quietus and properly compensate each other, to arrive at a fair compromise at the intervention of elders and well wishers defendant Nos.1 to 4 and Lalitkumar without any other option entered into compromise in O.S.No.136/2004. In that compromise, since Lalitkumar had sold other family properties agreed to allot the suit property to the share of defendant No.5.

v) The suit is untenable in law. The suit is hopelessly barred by law of limitation. Without seeking declaration with regard to the decree in O.S.No.136/2004, the suit is not maintainable. The constitution of plaintiff- firm is disputed. Rest of the plaint allegations were disputed.

7. The defence of defendant Nos.5 to 8 was similar to that of defendant Nos.1 to 4 on the legal issues, regarding denial of execution of MOU and binding nature of decree in O.S.No.70/1993 and compromise in O.S.No.136/2004 were all the same. They contended that after entering into compromise, defendant No.5 became the absolute owner of the property. She has sold the same to defendant No.9 for valuable consideration. The Court lacks pecuniary jurisdiction. The MOU set up by the plaintiff being champertous agreement was opposed to public policy and Indian law. The challenge to the suit and the legal issues of maintainability of the suit, bar of limitation etc. was also the same. The plaintiff is not represented as per Order XXX Rule 1 and 2 CPC. Therefore, suit was not maintainable. Description of the suit property is incorrect. The defence with regard to the execution of MOU and the allegations of the plaintiff regarding fraud was similar to the other defendants.

8. Defendant No.9 filed written statement and additional written statement denying the averments made in the plaint. He claimed that he is a bonafide purchaser for value. The valuation of the suit is incorrect and Court fee paid on the same is inadequate etc.

9. On the basis of such pleadings, the trial Court framed the following issues and additional issues:

ISSUES

- i) Whether the Plaintiff proves that Defendants Nos.1 to 4 have executed a sale agreement in respect of the schedule property on 07.02.2007 by receiving an earnest amount of Rs.65,00,000/- from it?
- ii) Whether the Plaintiff further proves that it was ever ready and willing to perform its part of the contract?
- iii) Whether the Defendants Nos.1 to 4 prove that some of the Schedule properties were already sold by late Lalithkumar Ramanarayan Giri before 1993 itself?

iv) Whether the Defendants Nos.1 to 4 further prove that 5th Defendant has sold Schedule property in favour of 9th Defendant for valuable consideration in view of compromise that was entered into in O.S.No.136/2004?

v) Whether defendants No.1 to 4 further prove that suit is hopelessly barred by limitation ?

vi) Whether the Defendants Nos.1 to 4 further prove that this Court has no pecuniary jurisdiction to try the suit?

vii) Whether the Plaintiff entitled to the efficacious relief of the specific performance?

viii) Whether the Plaintiff is entitled to other plaint reliefs?

ix) What Order or Decree

Addl. Issues:

1. Whether the Plaintiff proves that it is a registered partnership firm and got registered before the Registrar of Firms, Dharwad?

2. Whether the Plaintiff further proves that it is entitled for additional plaint reliefs?

10. In support of the case of the plaintiff, PWs.1 to 3 were examined, Exs.P1 to P25 were marked. Defendant No.3 was examined as DW.1 and defendant No.9 was examined as DW.2. On their behalf, Exs.D1 to D8 were marked. Pending the suit, defendant No.5 died survived by defendant Nos.6 to 8.

11. The trial Court on hearing both side by the impugned judgment and decree partly decreed the suit. The trial Court declared that the sale deed dated 26.10.2009 executed by defendant Nos.5 to 8 in favour of defendant No.9 is null and void and does not bind the plaintiff. The trial Court further directed defendant Nos.1 to 4 and 6 to 8 to execute the sale deed in favour of plaintiff in respect of suit schedule property receiving balance consideration of Rs.65 lakhs. The trial Court rejected the relief of permanent injunction. The trial Court held that:

i) Plaintiff being registered firm is proved by the evidence of plaintiff, DW.1 and Ex.P22.

ii) The execution of Ex.P24 the agreement of sale is proved by the evidence of PWs.1 to 3 and DW.1.

iii) The readiness and willingness to perform the plaintiff's part of contract is proved by the contents of Ex.P24 itself and the denial of DW.1 to receive the balance amount and execute the sale deed.

iv) Defendants lead no evidence to show that Lalitkumar had sold some of the properties in O.S.No.70/1993 and 136/2004 thereby they failed to prove issue No.3.

v) Defence of limitation is not sustainable in view of Lalitkumar and defendant No.5 compromising the matter in O.S.No.136/2004 contrary to the judgment of the Hon'ble Supreme Court arising out of O.S.No.70/1993.

12. Submissions of Sri Jayakumar S.Patil, learned senior counsel for Sri Prakash K.Jawalkar, advocate for appellants in RFA No.100004/2021 and Sri Madhusudan R Naik, learned senior counsel for Mahesh Wodeyar, advocate on record for appellants

i) Execution of Ex.P24 MOU was not proved. Ex.P24 was purportedly executed in favour of partnership firm on 07.02.2007. But the partnership deed Ex.P23 is dated 28.06.2007 that is subsequent to the alleged MOU. Therefore, the MOU being executed in favour of the plaintiff/partnership firm itself becomes doubtful.

ii) The resolution Ex.P21 dated 11.11.2012 provides only for prosecuting the suit. The partner who is alleged to be party to Ex.P24 was not examined to prove payment of Rs.40 lakhs in cash. No material was produced to show that he was authorized to execute Ex.P24 on behalf of the firm. Ex.P24 was only a security document for repayment of loan of Rs.25 lakhs.

iii) Plaintiff failed to plead and prove his readiness and willingness to perform his part of the contract all along. The very fact that Ex.P24 was taken pending so many Court proceedings which were lingering in uncertainty timewise and resultwise goes to show that Ex.P24 was not an agreement of sale which was intended to be enforced.

iv) The evidence on record sufficiently shows that though as per Ex.P24 the plaintiff had to pursue and fight the appellate proceedings, it did not bother to ascertain what happened in those proceedings and perform its part of the contract.

v) Ex.P18 the certified copy of the judgment in RFA No.1755/2007 shows that Lalitkumar had suffered a decree for specific performance in respect of the very property and he took that in appeal on his own and fought, that ended in a compromise.

vi) Apart from the present suit schedule properties, several other properties were involved in O.S.Nos.70/1993 and 136/2004. Lalitkumar had alienated substantial part of the properties by the time OS No.136/2004 was filed and pending. Therefore to give a quietus to the long drawn litigations, Lalitkumar and defendant No.5 entered into compromise. Since the plaintiff-firm claims through Lalitkumar, unless they seek a declaration with regard to the decree in O.S.No.136/2004, the suit was not maintainable.

vii) Since defendant No.9 paid substantial amount for settlement in RFA No.1755/2007, defendant Nos.5 to 8 sold the property to him. Such sale in no way amounts to waiver or dispensation of the burden of the plaintiff pleading and proving his readiness and willingness to perform his part of the

contract in accordance with law.

viii) The records substantially show that plaintiff was aware of the denial of Lalitkumar and defendant Nos.1 to 4 to perform their part of the contract which was lit large by the compromise decree in O.S.No.136/2004. He should have filed the suit from the date of knowledge of the decree. As per Article 54 of the Limitation Act, he should have filed the suit within three years from the date of the decree or atleast within three years from the date of his own notice Ex.D7 and reply Ex.D8. Therefore, the suit was hopelessly barred by time.

ix) The grant of relief of specific performance is a discretionary relief since the plaintiff did not comply the conditions as required under Section 16(c)(ii) of the Specific Relief Act. Section 20 of the said Act barred granting any relief for specific performance.

x) Even if the decree is null and void, the plaintiff was required to seek declaration. To that effect, the trial Court without proper appreciation of the evidence on record and the legal position proceeded to grant impugned decree which is unsustainable in law.

13. In support of their submissions, they relied on the following judgments:

1. Ram Awadh (Dead) by LRs and others Vs Achhaibar Dubey and Another¹
2. K Karuppuraj Vs M Ganesan²
3. Kadupugotla Varalakshmi Vs Vudagiri Venkata Rao and Others³
4. Shenbagam and others Vs KK Rathinavel ⁴
5. B.K.Sri Harsha (Dead) by LR and another Vs Bharat heavy Electricals Ltd⁵
6. Rathnavathi and Another Vs Kavita Ganashamdas⁶
7. T.L. Muddukrishana and Anr. Vs Lalitha Ramchandra Rao⁷
8. K.S Vidyanadam and Others Vs Vairavan⁸
9. State of Punjab and Others Vs Gurudev Singh⁹
10. Shiv Chander Kapoor Vs Amar Bose¹⁰
11. Anita International Vs Tungabhadra Sugar Works Mazdoor Sangh and Others¹¹
12. Triloki Nath Singh Vs Anirudh Singh (Dead) Through Legal Representatitves and Others ¹² (2000) 2 SCC 428 2021 SCC Online SC 857 2021 SCC Online SC 365 2022 SCC Online SC 71 (2008) 4 SCC 48 (2015) 5 SCC 223 (1997) 2 SCC 611 (1997) 3 SCC 1

(1991) 4 SCC 1 (1990) 1 SCC 234 (2016) 9 SCC 44 (2020) 6 SCC 629

13. Mohinder Kaur Vs Sant Paul Singh¹³

14. Kamal kumar Vs Premlatha Joshi and Others¹⁴

15. Umabai and Another Vs Nilkanth Dhondiba Chavan (Dead) by LRS and another¹⁵

16. Ahmadsahab Abdul Mulla(2) (dead) by Proposed LRs Vs Bibijan and others¹⁶

17. Madina Begaum and Another Vs Shiv Murti Prasad Pandey and others¹⁷

18. B.Vijaya Bharathi Vs P.Savitri and Ors¹⁸

19. Jugraj Singh and Another Vs Lab Singh and others¹⁹

20. M.M.S. Investments, Madurai and others Vs V. Veerappan and others²⁰

21. U N Krishnamurthy (Since Deceased) Thr. LRs Vs A M Krishnamurthy²¹

22. Vivek M. Hinduja and Others Vs M Ashwatha and Others²²

23. Kamal Kumar Vs Premlata Joshi & Ors²³ (2019) 9 SCC 358 (2019) 3 SCC 704 (2005) 6 SCC 243 (2009) 5 SCC 462 (2016) 15 SCC 322 (2018) 11 SCC 761 (1995) 2 SCC 31 (2007) 9 SCC 660 2022 SCC Online 840 (2020) 14 SCC 228 (2019)3 SCC 704

24. Padmakumari and Others Vs Dasayyan and Others²⁴

25. Mehboob-Ur-Rehman (dead) Through LRS Vs Ahsanul Ghani

26. Rajeshwari Vs Puran Indoria²⁶

27. Joyce Severine Rego Vs Gretta Asha D'Silva²⁷

28. Jayakantham and Ors. Vs Abaykumar²⁸

29. M/s Enkon Pvt.Ltd., Vs Bhubaneswar Smart City Ltd and others²⁹

14. Submissions of Sri G.R.Gurumath, learned senior counsel for Sri M.B.Hiremath, learned advocate on record for the plaintiff-respondent

i) Execution of Ex.P24 is proved by the evidence of plaintiff and DW.1. For the other defendants the defence with regard to execution of Ex.P24 is not available as that is within the personal knowledge of Lalitkumar and defendant Nos.1 to 4.

(2015)8 SCC 695 (2019)19 SCC 415 (2005)7 SCC 60 RFA No.1550/2011 (SP) (2017) 5 SCC 178 2017 SCC Online Ori 97

ii) Though defendant Nos.1 to 4 contended that Exs.P24 was only a security document, they failed to substantiate the said contention in view of Ex.D1 the admitted document of defendant Nos.1 to 4, the challenge to the constitution of the plaintiff firm deserves no merit.

iii) Under Ex.P24 the plaintiff has not instigated Lalitkumar and defendant Nos.1 to 4 to initiate any litigation. By the time Ex.P24 was executed the litigations were already pending. Ex.P24 was not entered into with any immoral purpose. Therefore, the contention that Ex.P24 was a champertous agreement is unsustainable.

iv) Similarly Ex.P24 and the evidence of the plaintiff and DW.1 show that the parties intended to enter into an agreement of sale and in terms of Ex.P24 defendant Nos.1 to 4 Lalitkumar received part of the sale consideration. Therefore, mere title of the document "Memorandum of Understanding" does not preclude that the document being an agreement of sale. In considering whether the document is agreement of sale or memorandum of understanding the Court has to consider the intention of the parties and cumulative effect of the conduct of the parties under the document. That shows that Ex.P24 was in fact an agreement of sale captioned as Memorandum of Understanding.

v) The evidence on record sufficiently show that plaintiff was always ready and willing to perform its part of the contract throughout. But that was frustrated by illegal compromise entered into between Lalitkumar and defendant No.5 and further the sale of the property by defendant No.5 to defendant No.9.

vi) Once the conveyance is effected the question of compliance of Section 16(c) of the Specific Relief Act does not survive for consideration at any rate such plea is not open to defendant Nos.5 to 9.

vii) Under Ex.P24 the only duty of the plaintiff was, if any appeal is preferred against any of the order of the trial Court to bear the expenses of such appellate proceedings. Lalitkumar and defendant Nos.1 to 4 never disclosed to the plaintiff about the disposal of O.S.No.136/2004 and 115/1998. Therefore he filing the appeal or bearing the expenses of appeal did not arise.

viii) So far as the maintainability of the suit without seeking declaration with regard to the decree in O.S.No.136/2004, Order 23 Rule 3A of CPC bars seeking such declaration. Since the said compromise was ab-initio-void and as the plaintiff was not party to the said compromise and also in view of the judgment of this Court in CRP No.1702/2000 and the Hon'ble Supreme Court in CA No.3753/2002, there was no need to seek declaration with regard to such compromise decree.

ix) So far as limitation as per the terms of Ex.P24 the sale deed was to be executed after disposal of the pending litigations. Lalitkumar and defendant Nos.1 to 4 had to inform about the status of the pending litigations which they did not do. In any event, RFA No.1755/2007 was dismissed on 19.08.2011 and the suit was filed within three years from the date of such disposal of RFA

No.1755/2007. Had the plaintiff filed the suit before disposal of RFA No.1755/2007, such suit would have been premature. Under the facts and circumstances of the case, Article 113 of the Limitation Act applies and not Article 54 of the said Act. Considering all aforesaid aspects the trial Court rightly rejected the defence of defendants and decreed the suit. The same does not warrant interference of this Court.

15. In support of his submissions, learned counsel for the respondent relied on the following judgments:

- i) Sree Surya Developers and Promoters Vs. N.Sailesh Prasad and Ors.³⁰
- ii) Dhurandhar Prasad Singh Vs. Jai Prakash University and Ors.³¹
- iii) Madhegowda (dead) by LRS Vs. Ankegowda(dead) by LRS and Ors. ³²
- iv) Fateh Chand and Anr. Vs. Narsingh Das and Anr.³³
- v) Nawabkhan Abbaskhan Vs. The State of Gujrat³⁴
- vi) State of Punjab Vs. Gurudev Singh³⁵
- vii) Vundavalli Ratna Manikyam & Anr. Vs. V.P.P.R.N. Prasada Rao³⁶
- viii) Sita Ram & Ors. Vs. Radhey Shyam³⁷
- ix) Sughar Singh Vs. Hari Singh(Dead) Through LR.

And Ors.³⁸ (2022) 5 SCC 736 (2001) 6 SCC 534 (2002) 1 SCC 178 AIR 1915 Cal 825 (1974) 2 SCC 121 (1991) 4 SCC 1 (2020) 3 SCC 289 (2007) 14 SCC 415 AIR 2021 SC 5581

- x) Kasturi Vs. Iyyamperumal and Ors.³⁹
- xi) M.M.S. Investments, Madurai and Ors. Vs. V Veerappan and Ors.⁴⁰
- xii) A-One Granites Vs. State of U.P. and Ors.⁴¹
- xiii) Suganchand and Ors. Vs. Balchand and Anr.⁴²
- xiv) Abbai Maligai Partnership firm & Anr. Vs. K.Santhakumaran & Ors.

16. On considering the submissions of both side and the records, the points that arise for determination of the Court are:

- i) Whether the trial Court was justified in holding that the execution of Ex.P24 the agreement of sale was proved ?
- ii) Whether the trial Court was justified in holding that the plaintiff has proved that it was ever ready and willing to perform its part of the contract ?
- iii) Whether the suit was within the time prescribed by law ?
- iv) Whether defendant No.9 is a bonafide purchaser for valuable consideration ?
(2005) 6 SCC 733 (2007) 9 SCC 660 (2001) 3 SCC 537 AIR 1957 Raj 89 (1998) 7 SCC 386
- v) Whether the trial Court was justified in granting a decree for specific performance ?

Analysis Reg: Execution of Ex.P24

17. The plaintiff's claim that defendant No.1, 3 and Lalitkumar for himself and as the power of attorney holder of defendant Nos.2 and 4 executed Ex.P4 Memorandum of Understanding. The other ancillary questions raised by the defendants are that plaintiff was not a registered firm as claimed and Ex.P24 was only a Memorandum of understanding and not the agreement of sale.

18. Ex.P24 bears the signatures of Lalitkumar, defendant No.1 and defendant No.3 and one Manohar Ningappa More as the partner of the plaintiff. The document further shows that the same was executed before the notary. One S.D.Naduvanamani, Advocate identified the parties to the agreement before PW.3 the Notary. The subject matter of Memorandum of Understanding shown in para 1 of the document is land bearing RS No.25/1+2 measuring 10 acres 17 guntas of Doddanayakanakoppa village, Dharwad. As per para 2 of the said document, the agreed sale consideration was Rs.1,30,00,000/- and out of that the vendors received Rs.25,00,000/- by way of cheque and Rs.40,00,000/- by way of cash. In all Rs.65,00,000/-.

19. As per Clause 3 of the agreement in respect of the suit property the suits bearing No.136/2004 and 115/1998 were pending before the II Addl. Civil Judge (Sr.Dn) Dharwad and O.S.No.251/2004 was pending on the file of the Prl. Civil Judge (Sr.Dn) Dharwad. Clause-3 further states that the vendors have to bear the litigation expenses of all those suits. If at all the litigations are taken to the higher Courts by either parties to the suit then the litigation expenses of such appellate proceedings shall be borne by the purchaser/plaintiff. Clause 4 of the agreement refers to the litigation pending between the vendor and Umar Housing cooperative Society and states that the plaintiff has to settle the said dispute with the society at its cost. Clause 7 of the agreement states that if the vendors are unable to execute the sale deed due to the decisions in any of the aforesaid suits, they shall refund the advance consideration to the plaintiff.

20. PW.1 the partner of the plaintiff, by resolution Ex.P21 was authorized to depose as to the execution of Ex.P.24, terms of the same and further events. Defendant Nos.1 to 4 do not dispute the

signatures of Lalitkumargiri and defendant Nos.1 and 3 on Ex.P24. But their only case is that the document was not an agreement of sale but that was a security document for the loan of Rs.25,00,000/- lent by the plaintiff. They deny the receipt of 65,00,000/- under Ex.P4 and claim that only Rs.25,00,000/- was paid as the loan. Therefore, the burden was on them to prove that Ex.P24 was only a security document.

21. Though in the written statement defendant Nos.1 to 4 contended that they signed on blank stamp papers, DW.1 in his evidence does not state so. At one stage, it was contended that general power of attorney said to have been executed by defendant Nos.2 and 4 was not produced. But defendant Nos.2 and 4 do not enter the witness box to deny that Lalitkumar was their power of attorney holder. DW.1 in para No.1 of cross examination dated 21.11.2019 unequivocally admits that himself, his father and mother have subscribed their signatures on Ex.P24. He further admits that his father subscribed his signature on the said document as the general power of attorney holder of defendant Nos.2 and 4. Therefore, such contention regarding non-production of GPA of defendant Nos.2 and 4 deserves no merit.

22. When questioned whether Ex.P24 contains any recital about the transaction being the hand loan and the term for the return of the same, DW.1 says that the document was not intended to be acted upon, he does not know whether the same was mentioned in the document or not. He admits in his cross examination that they have not initiated any legal action against the plaintiff or PW.3 the notary saying that both of them have fabricated the said document. To the suggestion that Ex.P24 was voluntarily executed by them and they have not initiated any action to challenge the same, he does not deny that, but in an evasive manner he says that his aunt defendant No.5 has not signed the same. He further admits the suggestion that his father is no more and he is responsible to the acts of his father and he is responsible to the liabilities arising under Ex.P24. If Ex.P24 was only a security document for the loan transaction allegedly borrowed by defendant Nos.1 to 4 and Lalitkumar, then they should have repaid the said loan. DW.1 in his cross- examination admits that they have not produced any documents to show that they have repaid the said loan by way of D.D or any other documents.

23. As already pointed out, defendant Nos.2 and 4 and defendant Nos.5 to 8 did not enter the witness box. PW.3 the notary had no ill-will against defendant Nos.1 to 4 and Lalitkumar or any interest in the plaintiff. There was no reason to disbelieve the credibility of her evidence that defendant Nos.1, 3 and Lalitkumar for himself and as the Power of Attorney of his daughters defendant Nos.2 and 4 executed Ex.P24 in her presence. Defendant Nos.1 to 4 failed to discharge their burden to prove that Ex.P24 was executed only to secure the loan of Rs.25,00,000/-. Whereas, plaintiff discharged the burden of proving execution of Ex.P24.

Reg: Champertous Agreement:

24. Defendant No.9 who is a purchaser subsequent to the decree in O.S. No.136/2004 in his written statement contended that Ex.P24 was a champertous agreement and therefore unenforceable. Champertous agreement means an agreement whereby the nominal plaintiff agrees with the maintainer to share with or give to him a part of

whatever is gained as a result of the suit maintained.

Though in England such agreement are held to be void and unenforceable, in India the legal position is not the same.

25. To call it as a champertous agreement the plaintiff should have funded the litigation. The evidence on record clearly shows that even before Ex.P24 was executed the litigations were already pending. Even as per Ex.P24 the burden of meeting the cost of the original side litigations was on the executants. It is not the case of defendant Nos.1 to 4 themselves that the agreement was champertous nor DW.1 deposes to that effect. In the evidence of plaintiff's witnesses nothing was elicited to show that the agreement was champertous. According to defendant Nos.1 to 4 themselves the plaintiff did not meet the costs of the appellate proceedings in RFA No.1755/2007.

26. The Hon'ble Supreme Court in the matter of Mr.'G' a Senior Advocate of the Supreme Court vs. in the matter of Summons issued to Mr.'G'44 and further the Privy Council in Lala Ram Sarup vs. Court of Wards⁴⁵ held that the precedents lead to the acceptance (1955)¹ SCR 490 1942 Bombay Law Reporter 307 of champertous contracts as being legal in India unless they are inequitable, unconscionable or extortionate. Defendant Nos. 1 to 4 did not allege any extortion by the plaintiff in the transaction under Ex.P24. The agreement was not unconscionable, the agreed consideration was Rs.1,30,00,000/-. Out of that Rs.65,00,000/- was already paid. Defendant No.5 claims to have sold the suit property to defendant No.9 under Ex.P15 for Rs.75,00,000/-. Therefore it cannot be said that by the transaction Ex.P24 either plaintiff tried to make any unlawful gain or extorted defendant Nos. 1 to 4. Therefore by no stretch of imagination Ex.P24 falls under the category of champertous contract.

Reg: Memorandum of understanding

27. Defendant No.9 in his written statement contended that Ex.P.24 was not an agreement of sale at all, it was only a memorandum of understanding and such document does not fall in the definition of 'agreement' under Section 2 of the Indian Contract Act. According to the appellant's Counsel Ex.P24 is only a proposal that culminate into agreement. As rightly contended by the counsel for the plaintiff, a document shall not be decided by its caption, but the substance of the document to be considered. The intention of the parties under the memorandum of understanding was to enter into an agreement of sale and part of that was performed by payment of earnest money. It is settled law that whether a document is an agreement or not has to be decided on analyzing the document and the conduct and intention of the parties in execution and performance of such agreement. No doubt Ex.P24 is styled as MOU. However in the body of the document it is clearly mentioned that the vendors have agreed to sell the property and the purchaser has agreed to purchase for Rs.1,30,00,000/- and the vendors have received Rs.65,00,000/- earnest money. It is already held that the execution of Ex.P24 and the receipt of part sale consideration of Rs.65,00,000/- is proved. Therefore, it becomes clear that the parties intended Ex.P24 to be an agreement of sale and acted on that in paying and receiving the money. Therefore, there is no merit in the contention that the document was not an agreement of sale in terms of Section 2 of the Indian Contract Act. That is covered under Section 2(e) of the Indian Contract Act. Therefore, the contention that Ex.P24 is not

an agreement of sale carries no merit. Reg: readiness and willingness to perform the contract:

28. Needles to say that in a suit for Specific performance of Contract, Section 16(c)(ii) of the Specific Performance Act as it stood at the time of execution of Ex.P24, bars Specific Performance of Contract in favour of the plaintiff if he fails to aver and prove that he has performed or was always been, ready and willing to perform the essential terms of the contract which are to be performed by him, other than the terms, the performance of which has been prevented or waived by the defendant.

29. Explanation (ii) to Section 16(c) reads as follows:

"16. Personal bars to relief.--Specific performance of a contract cannot be enforced in favour of a person--

[(a) XXXXXXXX or]

(b) XXXXXXXX; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.--For the purposes of clause (c),--

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

30. For the purpose of clause (c) plaintiff must aver the readiness or willingness to perform the contract according to its true construction. Section 16(c) makes it clear that mere reproduction of the phrase in the plaint that the plaintiff was always ready and willing to perform his part of the contract is not sufficient. But the plaint and the evidence should demonstrate such readiness and willingness to perform in its true construction. Though both side relied upon so many judgments on the point, the ratio of the said judgments is to the effect of the aforesaid basic legal provisions.

31. No doubt the plaintiff in para No.20 of the plaint pleaded as follows:

"The plaintiff was ever ready and willing to perform his part of the contract".

The agreement of sale was executed on 07.02.2007. The suit was filed on 16.11.2012. The plaintiff had to show what he had done from 07.02.2007 till 16.11.2012 as a man of ordinary prudence to pursue the performance of the contract as required on his part. The recitals in Ex.P24 themselves showed that as on that day three suits namely OS.No.136/2004, 115/1998 before the II Additional Civil Judge, (Senior Division) Dharwad and O.S.No.251/2004 before the Prl. Civil Judge, (Senior division) Dharwad were pending. Apart from that there was one more litigation between the vendor and Umar Housing Cooperative Society Ltd., Dharwad, which was pending and plaintiff had agreed to settle the said dispute or to fight the said litigation. In the plaint the plaintiff has not whispered anything about what was the stage of the suit in O.S.No.115/1998 and the dispute between the vendors and Umar Housing Cooperative Society as on the date of the suit at least.

32. As per the clause 3 of the agreement if at all those litigations pending before the trial Court were to be agitated before the appellate forums, then the plaintiff had to bear the costs of the same. The plaintiff has not whispered anything as to what steps he took to ascertain the progress of those litigations and their results. As per the plaintiff himself, Lalitkumar and defendant No.5 entered into a collusive compromise in O.S.No.136/2004 and based on that the Court decreed the said suit on 10.11.2008 allotting the suit property to defendant No.5.

33. Plaintiff claims that defendant Nos.1 to 4 and Lalitkumar kept him in dark and they did not intimate him about the litigations. Since he was not aware of the decree in O.S.Nos.136/2004 and 115/1998, the question of he paying the litigation expenses of RFA No.1755/2007 does not arise. Having invested Rs.65,00,000/- no man of ordinary prudence keeps quiet for such a long time without ascertaining the out come of those litigations and how they are proceeding.

34. To crown all that admittedly plaintiff itself got issued public notice Ex.PD.7 on 05.09.2009 in 'Sumyuktha Karnataka', Kannada daily news paper alleging that with an intention to cheat him, Lalitkumar and defendant No.5 entered into a collusive compromise decree in O.S.No.136/2004 allotting that property to defendant No.5 though Lalitkumar has entered into the agreement of sale receiving Rs.65,00,000/- from him. In the notice he has cautioned that he has right to purchase the property and nobody shall deal with the said property with defendant No.5. For that defendant No.5 got issued reply notice dated 11.09.2009 as per Ex.D.8 in the news paper denying the right of the plaintiff and the other allegations with regard to memorandum of understanding. Even thereafter neither the plaintiff took any legal steps either to injunct defendant No.5 from selling the property nor calling upon defendant No.1 to 4 and Lalitkumar to execute the said document.

35. It is unfortunate that while issuing reply notice in Ex.D8 the advocate for defendant No.5 has made following disgraceful remarks against the counsel who issued the notice.

"it is unworthy of the counsel to publish falsehood on behalf of his client"

36. Author of Ex.D8 could have refrained from making such personal attack referring to the name of the counsel who issued Ex.D7. The advocates are also Court Officers. The practice of they resorting to such personal attacks and scandalous remarks against their brethren shall be deprecated. Better Karnataka State Bar Council educate them on such aspects.

37. The plaintiff in para No.15 of its plaint claimed that after such compromise decree plaintiff questioned and insisted Lalitkumar and defendant Nos. 1 to 4 to jointly execute the sale deed but they represented to him that such compromise was made for some other reason and he shall not bother about the sale. He further claimed that they assured him that once the other litigations in O.S.No.115/1998 and 251/2004 and with Umar Housing Cooperative Society Ltd., are concluded, a sale deed will be executed in its favour but later they deceived him. The said contention was vehemently denied by the defendants. Therefore the burden was on the plaintiff to prove such contention.

38. Though the plaintiff claimed during the evidence that there was a secret agreement between him on the one part and defendant Nos.1 to 4 and Lalitkumar on the other part, that the compromise decree was only a mock and later they have executed the sale deed, such secret agreement was not proved. Having invested so much amount, if at all the compromise decree was not intended to be acted upon and it was represented to the plaintiff to be so, plaintiff who is the business entity would have secured some document to that effect from defendant Nos.1 to 8 and Lalitkumar. Therefore, it goes hard to accept that before the sale deed in favour of defendant No.9 there was any assurance or secret agreement between the plaintiff and defendant Nos.1 to 4 and Lalitkumar more particularly when defendant No.5 had denied that by paper publication Ex.D8 dated 11.09.2009.

39. Thereafter on 26.10.2009 the registered sale deed Ex.P15 was executed by defendant No.5 in favour of defendant No.9. As per Explanation I to Section 3 of the Transfer of property Act such registration amounts to notice to the plaintiff. The plaintiff claims that since no mutation entries were made in accordance with Ex.D8, he was not aware of such sale deed, on probing the matter he found the mutation entry dated 07.02.2012 as per Ex.P17 was effected. When his right was denied by defendant No.5 under reply notice dated 11.09.2009 to the notice of the entire public, it goes hard to believe that plaintiff does not make any effort to pursue or enquire what is going on in the matter.

40. Ex.P18 shows that O.S.No.115/1998 was filed by Anand Cooperative Society against Lalitkumar and defendant Nos.1 to 4 for specific performance in respect of the suit property which was decreed on 21.04.2007. Against that the vendors filed RFA No.1755/2007 before this Court. That appeal ended in a compromise between the parties to the said appeal by the judgment dated 19.08.2011. Plaintiff admits that it has not paid the cost of the litigation. But only justification is that defendants have not informed it.

41. As already pointed out, in a suit for specific performance, parrot like reproduction of the words in the plaint and in evidence that plaintiff was always ready and willing to perform its part of contract is not sufficient. The particulars of the action taken by the plaintiff to perform its part of the contract have to be pleaded and proved. At the cost of repetition, it has to be said that plaintiff did not even mention in the plaint as to what happened to the other litigations that found place in Ex.P24. The pleading and evidence regarding readiness and willingness of the plaintiff to perform essential terms of its part of the contract from the date of Memorandum of Understanding till the date of the suit was not as per the requirement of explanation (ii) to Section 16(c) of the Specific Relief Act. The trial Court failed to appreciate the evidence on this point in accordance with law.

42. Relying on the judgment of the Supreme Court in M.M.S. Investments' case referred to supra, it was contended that once there is concluded conveyance readiness and willingness becomes irrelevant so also the applicability of Section 16(c) of the Act. It was contended that once defendant No.5 sold the property to defendant No.9 on 26.10.2009, the question of plaintiff being ready and willing to perform its part of the contract and compliance of Section 16(c) do not survive. It was also contended that defence of readiness and willingness is not available to a subsequent purchaser.

43. The Hon'ble Supreme Court in MMS Investments' case held as follows:

"6. Questioning the plea of readiness and willingness is a concept relatable to an agreement. After conveyance the question of readiness and willingness is really not relevant. Therefore, the provision of the Specific Relief Act, 1963 (in short "the Act") is not applicable. It is to be noted that the decision in Ram Awadh case relates to a case where there was only an agreement. After the conveyance, the only question to be adjudicated is whether the purchaser was a bona fide purchaser for value without notice. In the present case the only issue that can be adjudicated is whether the appellants were bona fide purchasers for value without notice. The question whether the appellants were ready and willing is really of no consequence. In Ram Awadh case the question of the effect of a completed sale was not there. Therefore, that decision cannot have any application so far as the present case is concerned. Once there is a conveyance the concept would be different and the primary relief could be only cancellation."

(Emphasis supplied)

44. The above extraction shows that while considering the question the appellants therein were the bonafide purchasers, it was held that the question whether the appellants were ready and willing is really of no consequence. The Hon'ble Supreme Court distinguished the larger bench's judgment in Ram Awadh's case referred to supra on the ground that there was no completed sale. Ultimately the appeal was dismissed on the ground that plea of the appellants being bonafide purchasers was without substance. In MM Investments' case the legal issue whether the subsequent purchaser of the property or his legal representatives could raise the plea of readiness and willingness had not fallen for consideration.

45. The larger bench of the Supreme Court in Ram Awadh's case was pressed into service to support the defence on readiness and willingness and the availability of the defence of Section 16(c) to the subsequent purchaser. The plaintiff's counsel also relied on the case in Jugraj Singh's case referred to supra. However the larger bench of the Hon'ble Supreme Court in Ram Avadh's case in para 6 of the judgment disapproving such proposition of law laid down in Jugraj Singh's case held as follows:

"6. The obligation imposed by Section 16 is upon the court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his

part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jugraj Singh case is erroneous."

(Emphasis supplied)

46. In the light of the ratio of the larger bench of the Hon'ble Supreme Court in Ram Awadh's case, the contention that the defence under Section 16(c) is not open to defendants and the judgment in M.M.S Investments' case has to be followed cannot be accepted. The trial Court failed to properly appreciate the pleadings, evidence, law and the precedents on compliance of Section 16(c) of the Specific Relief Act. Therefore, the finding that the plaintiff was ever ready and willing to perform its part of the contract is unsustainable.

Reg: Limitation

47. The defendants contend that the suit was not filed within three years from the date of their refusal of the execution of agreement of sale, therefore, the suit was barred by time. Whereas the plaintiff claims that as agreed by the parties, the sale deed was to be executed on disposal of the litigations mentioned in the agreement of sale, therefore Article 113 of the Limitation Act applies. The suit is one for specific performance of the contract. Article 54 of the Limitation Act which deals with such suits reads as follows:

THE SCHEDULE (PERIODS OF LIMITATION) [See sections 2(j) and 3] FIRST DIVISION--SUITS PART II.--SUITS RELATING TO CONTRACTS Description of suit Period of limitation Time from which period begins to run

54. For specific performance of a contract. Three years. The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

48. The reading of the above provision shows that in a suit for specific performance where the date for execution of the agreement of sale is fixed, the suit shall have to be filed within three years from such date. If no such date is fixed, the suit has to be filed within three years from the date when the plaintiff has the notice of refusal of the performance.

49. In the present case, the material dates are as follows:

Dates	Events
07.02.2007	Execution of Ex.P24

10.11.2008 Compromise decree in O.S.No.136/2004

05.09.2009 Ex.D7 Notice by the plaintiff in Samyukta

Karnataka daily news paper claiming that decree in O.S.No.136/2004 is collusive one to deceive him. Therefore, public shall not deal with the property.

11.09.2009 Ex.D8 Reply notice of defendant No.5 to Ex.D7 19.08.2011 Disposal of RFA No.1755/2007 17.11.2012 Filing of the suit.

50. In the agreement, admittedly no date was fixed for performance of the contract. Though it is contended that as per Ex.P24 sale deed was to be executed on conclusion of the litigations mentioned in Ex.P24, in Ex.P24 there is no such recital. It was suggested to DW.1 in his cross examination that as per clause 3 and 6 of Ex.P24 the sale deed was to be executed only after termination of all litigations. Clauses 3 and 6 read as follows:

"3. Whereas, there are litigations pending in the Courts at Dharwad, namely OS No.136/04 and as No.115/98 both pending in the Court of the II Addl.

Civil Judge (Sr.Dn.) Dharwad and also O.S.No.251/04 in the Court the Prl. Civil Judge (Sr. Dn.) Dharwad. That the party on the First Part shall bear the costs of the above said litigations till the same are disposed in the above said trial Courts. If at all the said litigations are taken up for higher Courts, by either of the parties to the suit, then all the costs and consequences of the said litigations on behalf of the first party shall be borne by the 2nd party at this its cost and consequences.

6. In case any disputes arises in additions to the litigations mentioned above the same shall be settled by the party of First part alone and at his cost."

51. In the above clauses, there is no recital that the sale deed shall be executed after the disposal of all cases. Therefore such suggestion itself was incorrect. It is true that in case the property was sold pending such litigations that would have been hit by Section 52 of the Transfer of property Act. But, the plaintiff could have made at least some efforts to seek leave of the Court to purchase. As the plaintiff had the notice of refusal of execution as long back as on 05.09.2009 itself, the contention that the suit was filed within three years from 19.08.2011 i.e., the date of disposal of RFA No.1755/2007 that was within the prescribed time cannot be accepted.

52. The plaintiff did not whisper anything in the plaint about the disposal of the other litigations mentioned in Ex.P24. Only in the evidence of DW.1 it is suggested that those litigations are disposed of. It is not even stated in the evidence of the plaintiff that those litigations were disposed of before filing of the suit nor such dates were suggested to DWs.1 and 2. Thus it is clear that the plaintiff tried to take shelter under date of disposal of RFA No.1755/2007 only to circumvent the application of article 54 and to save itself from the clutches of bar of limitation.

53. To press into service Article 113 of the Limitation Act, learned counsel for the plaintiff relied on the judgment of the Hon'ble Supreme Court in Vundavalli's case referred to supra. Contrary to that the appellant's counsel relying on the other larger bench judgment of the Supreme Court in Ahmadsahab Mulla's case contends that Article 54 is applicable. In Vundavalli's case the sale agreement was dated 07.05.1981 fixing four months time for execution of the sale deed. That was extended in writing by another period of eight months which was coming up to 06.05.1982. The suit was filed on 23.04.1986. Before the extended period of 06.05.1982. Some developments which were beyond the control of the parties to the said agreement took place. The land was notified for compulsory acquisition under the Land Acquisition Act. In that case, both vendor and purchaser together filed writ petition before the High Court challenging the acquisition notification which was allowed. The appeal against such judgment in writ petition was dismissed on 04.02.1985. In the meantime, the original vendor died and apprehending the transfer of property by the heirs of the original vendor, the purchaser filed suit for injunction against them and after the disposal of the appeal in the land acquisition proceedings, the purchaser claimed specific performance. Since in that case the execution of agreement of sale was admitted and the performance of the agreement was beyond the control of both the parties in view of the statutory acquisition proceedings, the Hon'ble Supreme Court held that Article 113 of the Limitation Act applies. That is not the case on hand.

54. First of all in this case agreement of sale itself was disputed and the plaintiff had the notice of refusal of performance of the contract on 05.09.2009 itself. As pointed out earlier, Ex.P24 did not contain the term that sale deed shall be executed after disposal of all litigations. If so, that was leading to eternal uncertainty timewise and resultwise. In that event, Ex.P24 amounts to wagering contract which are unenforceable in view of Section 30 of the Indian Contract Act.

55. The contention that Article 113 applies to the present case also cannot be countenanced. The matter is covered by the judgment in Ahmadsahab Abdul Mulla's case referred to supra. Therefore, the suit was barred by time. The trial Court did not consider the aforesaid aspects at all. Therefore, the finding of the trial Court on the point of limitation is unsustainable.

56. It is no doubt true that the compromise decree in O.S.No.136/2004 was entered into suppressing Ex.P24. Apparently by such compromise the parties tried to overreach the judgment of the Hon'ble Supreme Court in C.A.NO.3753/2002. At least the counsel on record for the parties in the said suit should have fairly submitted to the Court about the implication of such compromise. It appears in that suit the Court also did not thoroughly examine the effect of the judgment of the Hon'ble Supreme Court in C.A.No.3753/2002. Prima facie the parties to the said suit by such acts committed contempt of Court. However both of them have left this world. Therefore, action for contempt of Court also does not survive. That itself does not save the plaintiffs' case from bar of limitation.

Reg: Specific performance of the contract

57. As per Section 20 of the Specific Relief Act, the relief for specific performance is a discretionary relief. The said relief can be exercised only on the compliance of the other requirements of the

provisions of the Act. In this case, such relief cannot be granted on more than one grounds. As already held the plaintiff has failed to prove its readiness and willingness to perform the contract. The suit was barred by time. Even to grant the relief of refund of the earnest money, the suit was barred by time. Therefore the suit was liable to be dismissed.

58. In view of the settled legal position discussed above on the questions involved, suffice it to say that the other judgments relied on by both the learned counsel do not need elaborate discussion. Under the circumstances, the impugned judgment and decree calls for the interference of this Court. Hence the following:

ORDER The appeals are allowed.

The impugned judgment and decree is hereby set aside.

The suit of the plaintiff is hereby dismissed. No order as to costs.

Sd/-

JUDGE Sd/-

JUDGE akc