

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF OCTOBER, 2024

BEFORE

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

R.S.A. NO.176/2018 (SP)

C/W.

R.S.A. NO.175/2018 (SP)

R

IN R.S.A. NO.176/2018:

BETWEEN:

- 1 . SMT. CHIKKAMMA
W/O. LATE DUGGAPPA,
SINCE DEAD BY LRS
- 1(a) SMT. INDRAMMA
W/O LATE THIMMAIAH
AGED ABOUT 48 YEARS
R/O JODIDEVARAHALLI
SIRA TALUK
TUMAKURU DISTRICT.
- 1(b) SMT.THOLASAMMA
W/O RAMESH
AGED ABOUT 35 YEARS
R/O DEVARAHOSAHALLI
SOMPURA HOBLI
TUMAKURU TALUK AND DISTRICT.
- 1(c) SMT.KALAVATHI
W/O OBALESHIAH
AGED ABOUT 28 YEARS
R/O CHUNCHENAHALLI

KORATAGERE TALUK
HOLAVANAHALLI HOBLI
TUMAKURU DISTRICT.

(AMENDED VIDE COURT ORDER DATED 07.07.2023)

- 2 . SRI. NAGARAJU
S/O. LATE DUGGAPPA,
AGED ABOUT 52 YEARS,
- 3 . SRI. NARASIYAPPA
S/O. LATE DUGGAPPA,
AGED ABOUT 50 YEARS,
- 4 . SRI. DEVARAJU
S/O. LATE DUGGAPPA,
AGED ABOUT 48 YEARS,
- 5 . SRI. LAKSHMIKANTH
S/O. LATE DUGGAPPA,
AGED ABOUT 44 YEARS,
- 6 . SRI. SHIVANNA
S/O. LATE DUGGAPPA,
AGED ABOUT 38 YEARS,

ALL ARE RESIDENTS OF
HANCHIHALLI, KASABA HOBLI,
KORATAGERE TALUK,
TUMAKURU DISTRICT.

... APPELLANTS

(BY SRI M.B.CHANDRA CHOODA, ADVOCATE
APPELLANT NO.1[a to c])

AND:

- 1 . SRI. RANGARAJU
S/O. LATE RANGAPPA,
SINCE DEAD BY LRS
- 1(a) SMT.RAJAMMA
W/O LATE RANGARAJU
AGED ABOUT 60 YEARS
- 1(b) SRI MANJUNATHA K.R.
S/O LATE RANGARAJU
AGED ABOUT 48 YEARS
- 1(c) SRI RAMAKRISHNAIAH K.R.
S/O LATE RANGARAJU
AGED ABOUT 40 YEARS

ALL ARE R/O NEW HARIJAN COLONY
BEHIND CRESCENT SCHOOL
KORATAGERE TOWN AND TALUK
TUMAKURU DISTRICT-572129.

(AMENDED VIDE COURT ORDER DATED 19.04.2024)

- 2 . SRI. RUDRESH
S/O. LATE DURGAPPA,
AGED ABOUT 46 YEARS,
PARAPPANA AGRAHARA JAIL,
PARAPPANA AGRAHARA,
BENGALURU,
THROUGH JAILER,
PARAPPANA AGRAHARA,
BENGALURU.

... RESPONDENTS

(BY SRI G.S.VENKAT SUBBA RAO, ADVOCATE FOR R1[a to c];
R2 – SERVED AND UNREPRESENTED)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 16.11.2017 PASSED IN R.A.NO.82/2012 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND JMFC, MADHUGIRI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 30.07.2012 PASSED IN O.S.NO.104/2006 ON THE FILE OF THE CIVIL JUDGE AND JMFC, KORATAGERE.

IN R.S.A. NO.175/2018:

BETWEEN:

- 1 . SMT. CHIKKAMMA
W/O. LATE DUGGAPPA,
SINCE DEAD BY LRS
- 1(a) SMT. INDRAMMA
W/O LATE THIMMAIAH
AGED ABOUT 48 YEARS
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TUMAKURU DISTRICT.
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TUMAKURU TALUK AND DISTRICT.
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TUMAKURU DISTRICT-572129.

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PARAPPANA AGRAHARA, BENGALURU,
THROUGH JAILER,
PARAPPANA AGRAHARA, BENGALURU.

... RESPONDENTS

(BY SRI G.S.VENKAT SUBBA RAO, ADVOCATE FOR R1[a to c];
R2 – SERVED AND UNREPRESENTED)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC, 1908 AGAINST THE JUDGEMENT AND DECREE DATED 16.11.2017 PASSED IN R.A.NO.81/2012 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND JMFC., MADHUGIRI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DATED 30.07.2012 PASSED IN OS.NO.72/2006 ON THE FILE OF THE CIVIL JUDGE AND JMFC, KORTAGERE.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 15.10.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

Heard the learned counsel for the appellants and learned counsel for the respondent Nos.1(a) to (c).

2. The factual matrix of the case of the plaintiffs before this Court in both the appeals is that the plaintiffs in O.S.No.72/2006 filed the suit for the relief of specific performance, wherein the appellants are the defendants. The appellants have also filed the suit in O.S.No.104/2006 seeking the relief of re-conveyance of suit schedule property based on the document of Ex.D1. The case of the plaintiffs in O.S.No.72/2006 is that sale agreement was executed on 24.11.1995 for sale consideration of Rs.50,000/- and out of that, Rs.40,000/- was paid and remaining balance of Rs.10,000/- was payable at the time of registration, when the defendants call upon to execute the sale deed in respect of Sy.No.93/2 measuring 4 acres, 25 guntas. It is also the case of the plaintiffs in O.S.No.72/2006 that registered sale agreement was executed and husband of the first defendant was one of the executant of

the sale agreement and the second defendant are also signatories to the said document and husband of the first defendant executed the sale agreement on behalf of the minor children also.

3. The defence of the appellants in the said in O.S.No.72/2006 as well as in the suit filed by the appellants in O.S.No.104/2006 is that on the very day of registered sale agreement dated 24.11.1995, a document of reconveyance was executed. Hence, they filed the suit for the relief of reconveyance. The material discloses that both the executant of Durgappa and also father of the plaintiffs in O.S.No.72/2006 Rangappa passed away after the sale agreement came into existence and original executant Durgappa died on 06.10.1999 and father of the plaintiffs died on 01.04.2003. Hence, litigation has taken place between the legal representatives of the said Rangappa and Durgappa.

4. In order to prove the case, the plaintiffs, who have filed the suit for the relief of specific performance in O.S.No.72/2006 examined the second plaintiff as P.W.1 and got

marked the documents as Exs.P1 to P5. On the other hand, the defendants in the said suit, who are the plaintiffs in O.S.No.104/2006 along with others, examined the second defendant in O.S.No.72/2006 and second plaintiff in O.S.No.104/2006 as D.W.1 and examined two attesting witnesses as D.Ws.2 and 4, scribe as D.W.3 and got marked reconveyance agreement as Ex.D1, notice as Ex.D2 and postal receipt as Ex.D3.

5. The Trial Court, having assessed both oral and documentary evidence placed on record, has decreed the suit in O.S.No.72/2006 and dismissed the suit in O.S.No.104/2006. The Trial Court directed the defendants to execute the sale within two months in terms of the sale agreement and to handover the possession. It is also observed that, in case, if the defendants fail to execute the sale deed by receiving the balance amount of Rs.10,000/-, the plaintiffs can get the sale deed through Court Commissioner.

6. Being aggrieved by the judgment and decree passed in O.S.No.72/2006 granting the relief of specific performance

and dismissal of the suit in O.S.No.104/2006, the defendants in O.S.No.72/2006 and the plaintiffs in O.S.No.104/2006 have filed two appeals before the Principal Senior Civil Judge and J.M.F.C., Madhugiri in R.A.Nos.81/2012 and 82/2012. The First Appellate Court having considered the grounds urged in both the appeals, formulated the points for consideration whether the Trial Court committed an error in dismissing the suit and granting the relief of specific performance and whether it requires interference. The First Appellate Court, on reassessing both oral and documentary evidence placed on record, confirmed the judgment of the Trial Court in both the suits. Hence, these two appeals are filed before this Court.

7. In R.S.A.No.175/2018, the main contention of the appellants before this Court is that the Trial Court committed an error in decreeing the suit for specific performance and suit was filed on 18.09.2006 after 11 years and sale agreement was dated 24.11.1995 and the same was barred by limitation and no reason was assigned by the plaintiffs to approach the Trial Court for specific performance of contract after the delayed period. It

is also contended that plaintiffs failed to prove the agreement of sale. Merely because agreement is registered, the proof of the execution and the contents are not proved by examining any independent witnesses. It is also contended that both the Trial Court and the First Appellate Court have failed to consider the fact that document was executed by very same Rangappa in favour of Durgappa to cancel the agreement and the Trial Court has not properly appreciated the defence set up by the defendants. It is also contended that said Durgappa died on 06.10.1999 and no suit was filed for the relief of specific performance immediately after his death and the original agreement holder Rangappa also died in 2003 and also they have not taken steps to file the suit and after lapse of three years, they have filed the suit. Hence, the suit is barred by limitation and the aspect of limitation also not been considered by the Trial Court. The Trial Court and the First Appellate Court did not appreciate the provisions of Section 16 and 20 of the Specific Relief Act, while granting the relief of specific performance.

8. In R.S.A.No.176/2018 which is filed against dismissal of the suit in O.S.No.104/2006, similar grounds have been urged and particularly, concentrated on the dismissal of the suit filed by the appellants and also contended that, even the First Appellate Court also failed to consider the material available on record and erroneously confirmed the judgment of the Trial Court. Hence, it requires interference of this Court.

9. This Court, having considered the material on record and the grounds which have been urged in both the appeals, framed the substantial questions of law. The substantial questions of law framed in the appeal in R.S.A.No.175/2018 reads as under:

1. Whether the suit filed by plaintiff seeking the relief of specific performance is in time?
2. Whether the Judgments and Decrees of both Courts is vitiated for non-consideration of the statutory provisions of Section 16 and 20 of the Specific Relief Act?

The substantial question of law framed in the appeal in R.S.A.No.176/2018 reads as under:

1. Whether the suit for reconveyance of the property is maintainable when there is a registered sale agreement?

10. The main grounds urged before this Court by the learned counsel appearing for the appellants is that there is a registered sale agreement dated 24.11.1995 executed by the original executant Durgappa and his son and on the very same day, document of re-conveyance was also executed on 24.11.1995 itself that he had agreed to reconvey the property after nine years and hence, two suits are filed, one for specific performance by the plaintiffs in O.S.No.72/2006 and the defendants also filed the suit in O.S.No.104/2006 for reconveyance of the property based on Ex.D1. The Trial Court committed an error in decreeing the suit in O.S.No.72/2006 and failed to consider the aspect of limitation and not accepted the case of the defendants and existence of the document of Ex.D1. Learned counsel also would vehemently contend that the Trial Court as well as the First Appellate Court failed to take note of the fact that suit is barred by limitation, since original agreement holder died in 2003 itself and notice was issued in 2006 and filed

the suit for specific performance after eleven years. Learned counsel also would contend that possession has not been delivered till date and when the suit was filed after eleven years, both the Courts ought to have taken note of the aspect of limitation.

11. Learned counsel for the appellants in support of his argument, relied upon the judgment in ***GUNWANTBHAI MULCHAND SHAH AND OTHERS VS. ANTON ELIS FAREL AND OTHERS*** reported in ***(2006) 3 SCC 634*** and brought to notice of this Court discussion made in Paragraph No.8, wherein an observation is made that suit for specific performance is governed by Article 54 of the Limitation Act, 1963 and observation is also made that there is no dispute that no date for performance is fixed in the agreement and if so, the suit could be held to be barred by limitation only on a finding that the plaintiffs had notice that the defendants were refusing performance of the agreement.

12. The counsel also brought to notice of this Court Paragraph No.12 of the judgment, wherein the Apex Court has

observed that question as to how long a plaintiff, even if he had performed the whole of his obligations under an agreement for sale, in which a time for performance is not fixed, could keep alive his right to specific performance and to come to Court after 29 years seeking to enforce the agreement, may have also to be considered by the Court especially in the context of the fact that the relief of specific performance is discretionary and is governed by the relevant provisions of the Specific Relief Act. The counsel also brought to notice of this Court Paragraph No.13 of the judgment, wherein also discussion was made with regard to Section 27 of the Limitation Act and also Section 4 to 24 of the Act and observed that when the suit is for specific performance of an agreement for sale and we conduct a search in the Limitation Act, keeping in view Section 3 and 54 of the Limitation Act and so also applicability of Section 27 of the Limitation Act.

13. The counsel also relied upon the judgment of the Apex Court in **GANNMANI ANASUYA AND OTHERS VS. PARVATINI AMARENDRA CHOWDHARY AND OTHERS** reported in **(2007) 10 SCC 296** and brought to notice of this Court Paragraph No.27, wherein an observation is made that in

terms of Section 3 of the Limitation Act, it is for the Court to determine the question as to whether the suit is barred by limitation or not irrespective of the fact that as to whether such a plea has been raised by the parties. Such a jurisdictional fact need not, thus, be pleaded. In any event, the said evidence was admissible for the purpose of contradicting a witness, which being a relevant fact should have been considered in its proper perspective. Learned counsel also brought to notice of this Court Paragraph No.28, wherein factual aspect of the said case was discussed and also Paragraph No.30, wherein an observation is made that it may also be necessary for the High Court to consider the applicability of the relevant articles of the Limitation Act and set aside the judgment and remitted the matter to High Court for fresh consideration.

14. Per contra, learned counsel appearing for the respondent Nos.1(a) to (c) in his argument would vehemently contend that these two appeals are filed against the concurrent finding and both the Courts have given reasoning and rightly disbelieved the case of the appellants, particularly with regard to Ex.D1-reconveyance document. It is contended that Ex.P1 was

a registered sale agreement and appellants contend that on the very same day, other document was executed and even if it assumed that it was agreed to be reconveyed after nine years, ought to have registered the said document and the document was not registered and claim is made by the defendants based on the unregistered document of reconveyance and the Trial Court rightly disbelieved the case of the defendants. The Trial Court and the First Appellate Court have given reasoning while dismissing the case of the appellants and granted the relief of specific performance. The First Appellate Court also rightly reassessed the material on record and there are no grounds to reverse the concurrent finding of both the Trial Court and the First Appellate Court.

15. Learned counsel appearing for the respondent No.1(a) to (c), in support of his argument, relied upon the judgment in **PANCHANAN DHARA AND OTHERS VS. MONMATHA NATH MAITY (DEAD) THROUGH LRS. AND ANOTHER** reported in **(2006) 5 SCC 340** and brought to notice of this Court Paragraph No.20, wherein discussion was made

with regard to limitation is concerned that a plea of limitation is a mixed question of law and fact. The question as to whether a suit for specific performance of contract will be barred by limitation or not would not only depend upon the nature of the agreement but also on the conduct of the parties and also as to how they understood the terms and conditions of the agreement. It is not in dispute that the suit for specific performance of contract would be governed by Article 54 of the Limitation Act, 1963. While determining the applicability of the first or the second part of the said provision, the Court will firstly see as to whether any time was fixed for performance of the agreement of sale and if it was so fixed, whether the suit was filed beyond the prescribed period unless any case of extension of time for performance was pleaded and established. When, however, no time is fixed for performance of contract, the Court may determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the contract and in that event the suit is required to be filed within a period of three years therefrom.

16. Learned counsel for the respondent Nos.1(a) to (c) would vehemently contend that in the case on hand, there is no time stipulated for performance of contract and before filing the suit, legal notice was issued and when they refused to receive the same, filed the suit in time and also brought to notice of this Court Paragraph No.22 of the judgment in **PANCHANAN DHARA's case**, wherein discussion was made with regard to Section 54 of the Limitation Act and also Paragraph No.28, wherein also, discussion was made with regard to Section 63 of the Contract Act, 1872 which provides that every promise may extend time for the performance of the contract and so also brought to notice of this Court Paragraph No.31 of the judgment.

17. The counsel also relied upon the judgment of the Apex Court in **C.DODDANARAYANA REDDY (DEAD) BY LEGAL REPRESENTATIVES AND OTHERS VS. C. JAYARAMA REDDY (DEAD) BY LEGAL REPRESENTATIVES AND OTHERS** reported in **(2020) 4 SCC 659** and brought to notice of this Court Paragraph No.28, wherein the Apex Court discussed the judgment reported in **(2019) 8 SCC 637** and an observation is

made that when any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded dehors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached. Learned counsel also brought to notice of this Court Paragraph No.30, wherein an observation is made that both the Courts have examined the documentary evidence available on record and given the finding. In this case also, both the Courts have considered the material on record and passed the order and it does not require any interference.

18. The counsel also relied upon the judgment in ***P. DAIVASIGAMANI VS. S. SAMBANDAN*** reported in **(2022) 14 SCC 793** and brought to notice of this Court the discussion made in Paragraph No.16 that in England, there is no period of limitation for instituting a suit for the said relief and if there is any delay, that may itself be sufficient to refuse the relief; but in

India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. Learned counsel also brought to notice of this Court Paragraph No.17, wherein an observation is made that, without reference to the conduct of the plaintiff, could not be a ground for refusing the said relief, when the suit was filed within the statutory time-limit by the respondent-plaintiff.

19. In reply to the arguments of the learned counsel for respondent Nos.1(a) to (c), learned counsel for the appellants would contend that it is a case of loan transaction and hence, the document at Ex.D1 was executed and it clearly shows that it was a document of reconveyance and not a sale transaction and possession was not delivered. Learned counsel also contend that 4 acres 25 guntas of land cannot be sold for an amount of Rs.50,000/- and the same also cannot be believed that it is a sale transaction.

20. Having heard the learned counsel for the appellants and learned counsel for the respondent Nos.1(a) to (c) and also taking note of the defence that there was a document of

reconveyance, this Court framed the substantial question of law in R.S.A.No.176/2018 whether the suit for reconveyance of the property is maintainable when there is a registered sale agreement. In the connected appeal in R.S.A.No.175/2018, raised the substantial questions of law whether the suit filed by plaintiff seeking the relief of specific performance is in time and whether the Judgments and Decrees of both Courts is vitiated for non-consideration of the statutory provisions of Section 16 and 20 of the Specific Relief Act.

21. These are the substantial questions of law which are interconnected to each other and the material available on record has to be considered in both the appeals in consonance with the substantial questions of law. The statutory provisions of Section 16 and 20 of Specific Relief Act is with regard to readiness and granting the relief of specific performance exercising the discretion under Section 20 of the Specific Relief Act. No doubt, reconveyance is also based on the unregistered document and as against the registered document executed in favour of the plaintiffs in O.S.No.72/2006, the other ground is

with regard to the limitation is concerned. Keeping these substantial questions of law, this Court has to discuss the material available on record.

22. This Court would like to answer the first substantial question of law framed in the appeal in R.S.A.No.175/2018. The main contention of learned counsel for the appellants is that Ex.D1 is of the year 1995 and admittedly, the executant i.e., the husband of the first defendant and father of the defendants died in the year 1999 itself within four years of Ex.D1. It is also not in dispute that original agreement holder also died in the year 2003 and there is no time limit is fixed for performance of the contract and time is not the essence of the contract.

23. It is also important to note that Article 54 of the Limitation Act, 1963 is pressed into service with regard to the limitation is concerned and if the time is the essence of the contract, within three years suit has to be filed. If time is not the essence of contract, within three years from the date of refusal. It is also not in dispute that both the original executant and the agreement holder passed away subsequent to the document of

sale agreement and suits filed are between the legal representatives. It is important to note that second defendant is also signatory to the agreement of sale. It is also important to note that the main contention of the appellants is that agreement of sale has not been proved and the said contention cannot be accepted, since very execution of sale agreement is admitted and it is not necessary to examine any witness when there is an admission on the part of the defendants. Apart from that, document is a registered sale agreement. Having perused the document, it is also clear that agreement was also executed on behalf of the minors by the husband of the first defendant. When such being the case, when there is no dispute with regard to the execution of the sale agreement and time is not the essence of the contract, it is clear that when demand was made in 2006, they refused to execute the sale agreement and hence, they issued the legal notice. Issuance of legal notice and the fact that the same is also served is admitted and no reply was given to the notice issued by the plaintiffs is also not in dispute. When such being the case, when notice was issued in 2006 and

in the same year, suit was filed. Hence, it is clear that from the date of refusal, suit is within time.

24. No doubt, in the judgment relied upon by the learned counsel for the appellants detailed discussion was made with regard to Article 54 and 27 and Section 3 of the Limitation Act, 1963 and also Paragraph No.8 and 12 of the judgment in **PANCHANAN DHARA**'s case are with regard to invoking of Article 54 and when the factual aspects are very clear that from the date of refusal, the suit filed is in time. The very contention of the learned counsel for the appellants that both the Courts failed to take note of limitation cannot be accepted and suit is filed within the limitation period and both the Courts rightly comes to the conclusion that suit is in time. Hence, I answer substantial question of law No.1 in R.S.A.No.175/2018 as 'affirmative' that suit for specific performance is filed in time.

25. The substantial question of law No.2 in R.S.A.No.175/2018 is whether the Judgments and Decrees of both Courts is vitiated for non-consideration of the statutory provisions of Section 16 and 20 of the Specific Relief Act. The

suit is filed for the relief of specific performance and this Court has already held that time is not the essence of the contract. The main contention of the appellants is that the relief granted is not in consonance with Section 16 and 20 of the Specific Relief Act. It is an admitted fact that registered sale agreement was executed and husband of the first defendant and the second defendant are also signatories to the sale agreement and very execution of the sale agreement is also admitted. The sale agreement is also executed on behalf of the minors by the original executant of the sale agreement one Rangappa. When this Court comes to the conclusion that time is not the essence of the contract, the question of readiness and willingness does not arise. The Apex Court also in the judgment referred (supra) in **DAIVASIGAMANI'S** case in Paragraph No.16, discussed with regard to the specific performance of the contract, wherein the Apex Court extracted Paragraph No.20 i.e., discretion as to decreeing the suit for specific performance and the Court may properly exercise the discretion with regard to suit for specific performance and also discussed that from the bare reading of Section 20, it clearly emerges that the specific performance of

the contract, may in the discretion of the Court, be enforced, when the act agreed to be done. In the case on hand, out of sale consideration of Rs.50,000/-, already an amount of Rs.40,000/- was paid and the expression 'readiness' and 'willingness' used in Section 16(c) of the said Act is also discussed in Paragraph No.23 of the judgment.

26. It is also important to note that in Paragraph No.16 of the said judgment observed that time lag depending upon circumstances may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, the statute prescribes the period of limitation. This Court already discussed with regard to the issue of limitation is concerned and also there is no inordinate delay. No doubt, suit is filed after eleven years, but when there is no time stipulated for performance of contract, the fact that original executant and agreement holder also passed away is not in dispute. It is the specific case of the plaintiffs that before filing the suit, for a period of three months, demand was made, but the defendants refused to execute the sale deed. Hence they issued legal notice

and filed the suit. When such being the case, the very contention that Section 16 and 20 of the Specific Relief Act has not been invoked cannot be accepted.

27. It is also important to note that there is a concurrent finding with regard to the factual aspects as well as question of law by both the Trial Court and the First Appellate Court and the scope of second appeal is very limited. The Apex Court in the judgment in **C.DODDANARAYANA REDDY's** case in Paragraph No.20 discussed with regard to when any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded dehors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence and such occasion is not warranted in the case on hand to come to an other conclusion that Section 16 and 20 of the Specific Relief Act has not been invoked. Hence, I answer substantial question of law No.2 as 'negative'.

28. The substantial question of law framed in other connected appeal in R.S.A.No.176/2018 is with regard to

whether the suit for reconveyance of the property is maintainable when there is a registered sale agreement. It has to be noted that there is no dispute that there is a registered sale agreement and the same is also admitted. But, the plaintiffs in the other suit claimed reconveyance based on Ex.D1 and the same is not a registered document, but Ex.P1 is a registered document and in order to prove the document of Ex.D1, the plaintiffs in the other suit examined D.W.2, who had not supported the case of the plaintiffs. No doubt, they relied upon the evidence of D.W.3 i.e., the scribe, he deposed that Ex.D1 and Ex.P1 are prepared by him and the plaintiffs/defendants also relied upon the evidence of D.W.4, who categorically admits that he was not present at the time of execution of document Ex.D1. When such being the case, the Trial Court and the First Appellate Court rightly appreciated the material available on record and when there is a registered sale agreement i.e., Ex.P1, the document at Ex.D1 is an unregistered document and the same has not been proved, the question of granting the relief of reconveyance does not arise and the same is also not maintainable when there is a registered sale agreement i.e.,

Ex.P1. First of all, the document at Ex.D1 has not been proved and there was no explanation on the part of the plaintiffs/defendants in the said suit that as to what made them to execute unregistered document, when the document of sale agreement was registered on the very same day. When such being the case, both the Courts have given finding that plaintiffs in O.S.No.104/2006 is not entitled for any relief.

29. Having considered the factual aspects as well as the substantial questions of law and so also the question of law, this Court does not find any error committed by the Trial Court in dismissing the suit filed by the plaintiffs for the relief of reconveyance and also granting the relief of specific performance based on the registered sale agreement. No doubt, there was a delay, but time is not the essence of the contract and the factual aspect of death of original executant and also agreement holder is not in dispute and suit is also inter-se between the legal representatives of original owner as well the legal representatives of agreement holder. Hence, I do not find any error on the par of the Trial Court and the First Appellate Court

in dismissing the suit for reconveyance and granting the relief of specific performance, as prayed in the respective suits. Hence, there is no merit in the second appeals to reverse the findings of the Trial Court and the same not suffers from any illegality and discretion is also exercised properly.

30. The other contention that land of 4 acres 25 guntas was sold only for consideration of Rs.50,000/- and it was only a loan transaction and not the sale transaction cannot be accepted and the Court has to take note of the fact that sale agreement came into existence on 24.11.1995 and if really there was an agreement of re-conveyance, the defendants ought to have taken steps to reconvey the property and only after filing the suit for the relief of specific performance on 18.09.2006, legal notice was issued by the defendants and the same is offshoot of the earlier suit filed for the relief of specific performance and afterthought, the suit is filed. If really, it is a loan transaction as contended by the learned counsel for the appellants, immediately after nine years, they would have filed the suit for reconveyance and would have initiated the proceedings and the

same has not been done and the document at Ex.D1 disclose with regard to delivery of possession and possession was not delivered in terms of the registered sale agreement as per Ex.P1. Hence, this Court does not find any material on that ground also to reverse the findings of the Trial Court, in coming to the conclusion that it was only a loan transaction and not a sale transaction. Therefore, the material on record has been properly appreciated by the Trial Court and the First Appellate Court and there are no grounds to reverse the same.

31. In view of the discussion made above, I pass the following:

ORDER

The regular second appeals are dismissed.

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

ST
CT-nsd/-