

[2023] 1 S.C.R. 231

BASAVRAJ

A

v.

PADMAVATHI & ANR.

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(Civil Appeal Nos.8962-8963 of 2022)

JANUARY 05, 2023

[M.R. SHAH AND B. V. NAGARATHNA, JJ.]

Specific performance—specific performance suit— palliba lam adu sale consideration Rs.12.74 lakhda July 31, 2007da nattraga mamangda da yonge haiba yaduna Respondent No.1na March13, 2007 da appellant-buyergi favourda agreement to sell execute tourammi—Rs.3 lakhs earnest money oina pirammi—Adumoinamak Respondent No.1na sale deed execute toukhida—Appellant-buyerna specific performancegidamak tang 14.02.2008da suit file toukhi—Trial courtna suit decree tarammi—appellant-plaintiffna contractda magi part perform touna ready amasung willing oidri haiba maruoiba maramda High Courtna Trial Courtgi judgment adu set aside toukhi—Held: Facts da yenglaga, appellantgi readiness amasung willingnessgo maramda Trial Courtgi findings High Courtna reverse touba materially erred—passbook amasung/natraga bank statement puthoktabana balance sale consideration pinaba magi cash leirammi amasung/nattraga amount and/nattraga sufficient funds/means lei haina plaintiffna prove touramde haina High Courtna reasoning pirammi —Adubu, Indira Kaur and Ramrati Kuer cases da Supreme Courtna semkhiba law yenglaga, plaintiffbu passbook puthoknaba defendantna demand toudragadi nattraga Courtna madu puthoknaba order pidrabadi, adverse inference amata High Courtna draw touba yade— aduna High Courtgi judgment unsustainable oi—Adubu, complete justicegidamak, appellantna respondent no.1da ahenba Rs.10 lakhgi senfam pigani amasung hairiba payment touraba matungda, respondent no.1na appellantgi favourda sale deed execute tougani.

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Allowing the appeals, the Court

HELD:1. Case asigi facts amasung circumstances khannabada, Trial courtgi findings High Courtna appellantgi readiness amasung a willingnessda reverse touduna decree reverse touba materially erred. [Para 6] [238-F]

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A 2.1 Asumna ui madudi High Courtn piba reasoning adudi passbook amasung/nattraga bank statement puthoktabana balance sale consideration pinaba plaintiffgi cash and/ntrraga amount amasung/nattraga sufficient funds/means lei haibasi plaintiffna prove toude.

B 2.2. *Ramrati Kuer* caseda Court asina pikhiba observations khannaraba matungda *Indira Kaur* caseda Court asina lower court ahumgi, passbook puthoktaba amasung aduna maram oiduna plaintiffna agreementda magi part perform tounaba ready amasung willing oide haina hold touduna plaintiffgi mayokta adverse inference draw toukhiba, recorded findings adu set aside

C toukhi. Plaintiffna passbook puthoknaba defendantna demand toudragadi nattraga Courtna mahakpu madu puthoknaba order pidragadi, adverse inference draw touba yaroi haina Courtna observe amasung hold tourammi. Mathakta palliba case anisida Court asina semkhiba law adu case on handa apply toubada, High Courtna adverse inference draw touba yaramde. Appellantgi readiness

D amasung willingness maramda Trial courtna record touramba findings adu High Courtna reverse toubadu shathina lanli. **[Para 6.2 and 6.3][239-F-H: 240-B-C]**

3. High Courtna pass toukhiba impugned judgment unsustainable oi. Adubu complete justice tounaba, plaintiffna na defendant No.1 da ahenba Rs.10 lakhs

E pinaba direct toukhi amasung, payment toubaga original plaintiff-appellantgi favourda sale deed execute tounaba defendantda direction piri.**[Para 7][240-B-C]**.

F *Indira Kaur and Ors. v. Sheo Lal Kapoor, (1988) 2 SCC 488* and *Ramrati Kuer v. Dwarika Prasad Singh, (1967) 1 SCR 153*—relied on.

G *Beemaneni Maha Lakshmi v. Gangumalla Appa Rao, (2019) 6 SCC 233 : [2019] 7 SCR 490; J.P. Builders and Anr. v. A. Ramadas and Anr., (2011) 1 SCC 429 :[2010] 15 SCR 538* and *U.N. Krishnamurthy v. A.M. Krishnamurthy, 2022 SCC OnLine SCC 840*—referred to.

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Case Law Reference

(1988) 2 SCC 488	Para 3.6	relied on	A
(2019) 7 SCR 490	Para 3.6	referred to	
(1967) 1 SCR 153	Para 3.8	relied on	B
[2010] 15 SCR 538	Para 4.4	referred to	
2022 SCC OnLine SC 840	Para 4.4	referred to	C

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8962-8963 of 2022

High Court of Karnataka, Kalaburagi Benchna RP No.200036 of 2021da tang 06.12.2021 amasung R.F.A. No.5033 of 2011(SP) tang 27.11.2020 gi Judgment amasung Order dagi. D

K. Parmeshwar, Nishanth Patil, Ayush P. Shah, Advs. For the Appellant.

Shailesh Madiyal, Rajan Parmar, Mrigank Prabhakar, Ms. Sakshi Banga, Akshay Kumar, Advs. For the Respondents. E

Courtgi judgment delivered by

M. R. SHAH, J. F

1. Karnataka High Court, Kalaburagi Benchna Regular First Appeal(RFA) No.5033/2011 amasung Review Petition(RP) No.200036/2021da mathangsitna tang 27.11.2020 amasung 06.12.2021 takhiba impugned judgments(s) amsung order(s)na case asida respondents– original defendant na thaba appeal adu allow toubikhi amasung Learned Trial Courtna suit specific performancegi pikhiba judgment amasung decree quash amasung set aside toubada aggrieved amasung dissatisfied oiduna original plaintiffna present appeals thabani. G

2. Houjikki appeals asi tharakhibagi asamba facts makhada piri: H

2.1 Palliba lam adu sale consideration, Rs.12.74 lakhda, Respondent No.1– original defendant No.1na tang 31.07.2007da nattraga mamangdana yonba

- A yaduna agreement to sell tang 13.03.2007da casesida appellant-buyergi favourda execute tourammi. Earnest money oina Rs.3 lakhs pirammi. Respondent No.1 na madugi receipt pirammi. Madudi adugi tungda, respondent No.1na sale deed execute toudabadagi, balance sale consideration lounaba amasung sale deed execute tounaba respondent-sellerda legal notice tangd
- B 20.11.2007 appellantna issue touhalammi. Agreement to sell execution toukhida haina sellerna legal noticegi paokhum tang 03.12.2007da pikhi. Madudi, matungda, appellant-buyer na specific performancegi suit vide O.S. No. 17/2008 tang 14.02.2008da file tourammi. Original defendants-sellersna makhoigi written statement file tourammi amasung suit oppose tourammi.
- C Agreement to sell gi executionbu defendantsna deny tourammi. Plaintiffna contract aduda magi part perform tounaba ready oide haina defendantsna written statementda makhoigiwafam thamlammi. Aduna, magi contractgi part perform tounaba plaintiff-buyergi readiness amasung willingness leite haina defendantsna haikhi.
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- 2.2 Party animak Trial Courtgi mamangda evidence puthoklammi. Contractda yaoba magi part perform tounaba readiness amasung willingnessgi matangda, plaintiffna witnesses examine touduna evidence lead tourammi. Plaintiffna cash puduna sellergi manakta chatlammi amasung sellerna madu lou yaramde
- E haibasi recordda purakkhi. Madudi, adugi tungda, learned Trial Courtna evidence appreciate touraba matungda specific performancegi suit decree pikhi vide judgment amasung order tangd 30.09.2011. Plaintiff-buyerna agreement to sell execute toukhi haiba warol learned Trial Courtna thajarammi. Plaintiffna sellerda earnest money Rs.3 lakhs pi haiba warolsu learned Trial Courtna thajarammi. Plaintiff-buyerna contractda yaoba magi part adu perform tounaba ready amasung willing oirammi haina Trial Courtna hold tourammi. Madudi, learned Trial Courtna piba judgment amasung decree matung inna buyer-original plaintiffna Trial Courtda Rs.9,74,000/- deposit tourammi, madu houjik faoba Trial Courtda leiri haina report touri.
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- 2.3 Learned Trial Courtna pass toubu judgment amasung decreedu aggrieved amasung dissatisfied oiduna, asida yaoriba respondents-sellersna High Courtda appeal tharammi. Impugned judgment amasung orderna hairiba appeal allow toubirammi amasung learned Trial Courtna pass toubu judgment amasung decree, maru oina, plaintiffna contractgi part adu perform tounaba ready amasung willing oiramde haiba maruoiba maramda set aside tourammi. High Court pass toukhiba impugned judgment amasung order adu houjikki appeal asigi subject matter oiri.
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2.4 Apellant na review petition ama tharammi, madu High Courtna dismiss toukhi, amasung review petitionda taba judgment adusu appealsigi manunda yaoba subject matter amani. A

3. Shri Parmeshwar, appellantgi appear touriba learned counselna, yamna kannna haijarammi madudi case asigi facts and circumstances manungda, appellantgi readiness amasung willingnessgi maramda Trial Courtgi findings High Courtna reverse toubasi materially lanli(erred). B

3.1 Recordda leiba evidence pumnamak appreciate touraba matungda learned Trial Courtna, readiness amasung willingnessgi mari leinana, appellantgi favourda findings record tourammi, amasung asigumba findings High Courtna khut thingjinfam thokte hairammi. C

3.2 Houbadagi mapung fana magi contractgi part perform tounaba appellant-buyer ready amasung willing oi haina makha tana hairammi. Appellantna tang 13.03.2007 gi agreement to sellda magi part perform tounaba readiness amasung willingness issuegi maramda khannabada, evidence on recordda thoklakpa makhagi aspects khannabiyu haina mahakna haijarammi: D

- (i) Madudi tang 13.03.2007gi agreement to sell perform tounaba ready amasung willing da oi haina appellantna plaintda specifically hairammi;
- (ii) Madudi tang 20.11.2007gi suit noticeda balance sale consideration pinaba ready amasung willing oi haina plaintiffna specifically hairammi; E
- (iii) Agreement perform tounaba ready amasung willing oi haina plaintiffna magi evidenceda hairammi. June, 2007 thada amasung July,2007da balance sale consideration yaona plaintiffna defendant–seller approach tourammi haina magi depositionda makha tana hairammi. Masigi matangda cross-examination leite; F
- (iv) Paintiffna agreement to sellda attestor oiba PW2 amasung PW3 examine tourammi, makhoi plaintiffna June, 2007da defendants approach toui amasung balance sale consideration loubiyu hainaspecifically hairammi. Madudi, masigi matangda cross-examination leite; G
- (v) Madudi, magi cross-examinationda, first defendant, DW-1, na agreement to sell execute toukhi amasung madudi hairiba property adu mahakna mapuni haina admit tourammi; H

- A (vi) Madudi agreement to sell da magi signature affix toukhi amasung madudi Rs.3 lakhs fannglammi;
- (vii) Madudi, balance consideration, RS.9,74,000/-, learned Trial Court da tang 31.10.2011 da appellant na deposit toukhi;
- B 3.3.1 Appellant-buyer gi learned counsel na makha tana hairammi madudi defendant na asumna Trial Court gi mamangda pukchel sengdaba firep loukhi amasung agreement execution toukhi haiba yakhide. Written statement da defendant sing na specific oina partysinggi marakta agreement execute touba leikhide hairammin haina makha tana haijarammi. Defendant No.1 matungda Rs.3 lakhs fangkhi amasung receipt tang 13.03.2007 issue toukhi haina yetlammi.
- C 3.4 Contradictory amasung dishonest oiba pleas seller–defendant No.1 faobana loukhi haina makha tana yetlammi. Mahakna ahanbadadi agreement execute toude hairammi, matungda madu agreement to sell natte, loan transaction amagi agreement oibadani.
- D 3.5 Defendant No.1 na agreement to sell execution touba amasung buyerna earnest money oina Rs.3 lakhs pikhiba amsung agreement to sell adu security gi natte amsung/nattraga loan transaction gi natte, madu touigumbasu outright sale gi nai haibasi Trial Court amasung High Court gna record touba concurrent findings oirammi haina appellant gi learned counsel na mathangda yetlammi.
- E 3.6 Buyer gi readiness amasung willingness gi matangda **Indira Kaur and Ors. Vs. Sheo Lal Kapoor**, (1988) 2 SCC 488 (para 8, 9 amasung 10) caseda Court asina pikhiba decision amasung **Beemaneni Maha Lakshmi Vs. Gangumalla Appa Rao**, (2019) 6 SCC 233 (para 14) caseda matungda pikhiba decisionsing aduda appellant gi learned counsel na yamna rely toukhi. Passbook, accounts nattraga atoppa documentary evidence puthoktabana balance consideration mahakna pinaba means lei/leite haiba ground da plaintiff gi mayokta adverse inference touba yade haina **Indira Kaur** (supra) caseda hold toukhi haina hairammi.
- F 3.7. Magi evidence gi tang mamangda balance sale consideration pinaba sufficient money leirammi haiba vendee na “demonstrate” touba ngamdaba yamna consequence leite haina **Beemaneni Maha Lakshmi** (supra) caseda Court asina observe amasung hold toukhi haina hairammi.
- G H

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3.8 Party amabu accounts puthoknaba specific prayer yaodana, amasung makhoina matungda puthoktrabadi, adverse inference draw toubayaro haina **Ramrati Kuer v. Dwarika Prasad Singh, (1967) 1 SCR 153** (para 9) caseda Court asina observe amasung hold toukhi haina makha tana haijarammi.

3.9 Mathakki submissions touraga amasung makhakta palliba decisionsgingda rely touraga, appellantgi readiness amasung willingness matangda Trial Courtgi findings High Courtna reverse toubadu materially erred toui hairammi. Maram aduna, houjikki appeals allow toubiyu amasung impugned judgments set aside toubiyu haijarammi.

4. Seller-respondents-original defendantsgi learned counsel, Shri Shailesh Madiyalna houjikki appeals kanna yetlammi.

4.1 Appellantgi readiness amasung willingnessga matangda findings reverse toubada amasung learned Trial Courtgi judgment amasung decree reverse toubada High Courtna mayek sengna maramsing pikhi haina respondents- seller learned counselna haijarammi.

4.2 Balance sale consideration pinaba sufficient means/funds/cash lei haina appellant-original plaintiffna demonstrate amasung evidence lead toukhide haina makha tana haijarammi. Asigumba evidence yaodana, tang 13.03.2007gi agreement adu perform tounaba readiness amasung willingness lei haibadu buyer-appellantna establish amasung prove toubay ngamkhide haibasi High Courtna chumna wayenkhi haijarammi.

4.3 Agreementduda plaintiffna magi part perform tounaba ready amsung willing oide haina written statement adumakta defendantsginggi specific case oi haina haijarammi.

4.4 **J.P. Builders and Anr. Vs. A. Ramadas and Anr., (2011) 1 SCC 429** case da Court asigi decision amasung **U.N. Krishnamurthy v. A.M. Krishnamurthy, 2022 SCC OnLine SCC 840** caseda ikui kuidana takhiba Court asigi decision aduda rely touraga houjikki appeals dismiss toubinaba respondents-original defendantsgi learned counselna haijarammi.

A

5. Respective partysinggi mahutta lepliba learned counselgi warolsing eikhoina mapung fana (at length) tare.

- B 6. Evidence on record appreciation touraga, agreementda yaoba magi part rform tounabagi plaintiffngi readiness amasung willingness matanggi findings rned Trial Courtna specifically record tourammi haibasi ahanbada note toubagaifade. Plaintiffgi readiness amasung willingnessgi findings record toukhibadutire evidence on record appreciation touragani. Tang 20.11.2007da issue toukhiba
- C al notice aduda plaintiffna defendantda balance amount loubiyu amasung sale deed execute tounaba haikhi. Legal noticegi paokhum piraga, defendantna agreement to sell umak execute toukhide haikhi. Madudi matungda, tang 13.03.2007gi agreement adurform toubagi ready amasung willing oi haina specifically palladuna specific rformancegi damak plaintiffna suit file toukhi. Agreementda magi toufam thokpa
- D ithou perform toubagi ready amasung willing oi haina specifically plaintiffna magi positionda hairammi. Balance sale consideration amount puraga June tha , 2007da asung amauk hanna July, 2007da plaintiffna defendant approach toukhi haina ihakna makha tana hairammi. Masigi matangda cross-examination toukhide. Tang .03.2007gi agreement to selldubu attestor oikhiba witness ani, PW-2 amasung PW-
- E plaintiffna examine toukhi, makhoina specifically hairammi madudi July, 2007da intiffna defendantsing approach tourammi amasung cash oina balance sale rconsideration accept toubiyu haijakhi, madugisu cross-examination toukhide. Rs.3hs earnest money oina fangkhi haibasi lower court animakna chummi haina prove khre. Decree pass toubatha amagi manungda balance sale consideration, haibadi, 9,74,000/- Trial Courtda plaintiffna deposit toukhi. Mathakki case asigi facts and
- F cumstances yengluraga, appellantgi readiness amsung willingnessgi Trial Courtgi dings reverse touduna High Courtna decree reverse touba materially erred oi.

- 6.1 Passbook amasung bank statement puthoktaba maramna, balance sale rconsideration pinaba cash amasung/nattraga amount amasung/nattraga sufficient ds/means lei haiba prove toukhide haina High Courtna pass toubapugned
- G lgment amasung order adugi maram piba ui. **Indira Kaur**(supra) da specifically Court na consider toukhiba **Ramrati Kuer**(supra) caseda Court asina makhagi sumna serve amasung hold toukhi:-

- H “Marisuba oina, accounts maintain tourammi amasung madudi tonganna chaba widowsingda Basekhi Singhna maintenance allowance pirammi haibana makhoigi case oirasu, respondentsna accounts amatta puthokte

haina kanna hairammi. Respondentsingna accounts puthoklamde haiba A
factda yenglaga amasung madudi makhoina puthoklamlaladi haiba fact
asina maram oiduna adverse inference draw toubiyu haina takshillami
amasung madu puthoklamladi, maintenance allowancegi nattaba,
widowngi propertygi right leibana, incomegi tangkhai amagi payment
utlamgani. Mahakki mapana accounts maintain tourammi haina Dwarka
Prasad Singhna haibadu chummi. Adubu, Dwarka Prasad Singhna B
accounts puthoknaba appellantna courtda hainaba hotnakhide.
Karigumba appellantna makhoina accounts puthoknaba courtda order
toubiyu haijaramlaba amasung Basekhi Singhna accounts maintain toui
haiba admit touduna makhoina account puthokpa ngamlamdraba
adukhaktada plaintiff-respondents gi mayokta adverse inference draw
touramba yai. Asigumba prayer amatta courtda toukhide, asigumba C
circumstances asida accounts puthoktabagi adverse inference draw
toubu yaroi. Adum oinamak, widowsingda maintenance piduna leirammi
haibagi khwaidagi faba evidencedi accounts haina takshillammi,
amasung khwaidagi faba evidence adu plaintiffna withhold tourammi,
amasung widowsingda Basekhi Singhna maintence piduna lerammi
haibagi oral evidencekhaktang pirammi. Maintenance pibagi khwaidagi D
faba evidence adu accountsna oiramlagasu, amasung makhoina
accounts withhold touramlasu, widowssingda maintenance piduna
leirammi haiba oral evidence adu acceptable oide haiba tai; adubu,
accounts puthoklamlabadi maduna income adu appellantna claim
touriba title matunginna half half yenthoklammi, adverse inference
draw toubu yade(accounts puthoknaba appellantna prayer toubu E
yaodana).

6.2 Passbook puthoktaba maramda amasung aduna agreementda
magi part adu plaintiffna perform toubagi ready amasung willing oide
haina plaintiffgi mayokta adverse inference draw toukhiba makhagi
court ahumna record toukhiba findings, **Ramrati Kuer**(supra) caseda F
Court asina pikhiba observation khannaraba matungda, **Indira
Kaur**(supra) caseda set aside toukhi. Plaintiffna Passbook puthoknaba
defendantna demand toudraba natraga Courtna madu tounaba order
toudrabadi adverse inference toubu yaroi haina observe amasung hold
tourammi. G

6.3 Court asina mathakta palliba case anida semkhiba law khutta
leiriba case asida apply toubada, adverse inference High Courtna toubu
yade. Trial Courtna appellantgi readiness amasung willingnessgi
matangda recorded findings High Courtna reverse toubu seriously lanli. H

A

7. Mathakta narrate touriba circumstances khanaraga, appellantgi readiness amasung willingnessgi findings reverse touduna learned Trial Courtna pass touba judgment amasung decree quash touba amasung set aside touba materially erred haina eikhoina khalli. Leiriba

B

circumstances ashida, High Courtna pass touba impugned judgment(s) amasung order(s) unsustainable oi haina hold toui amasung makhoising asi quash amasung set aside touba matik chai. Adubu, matam asimakta, complete justice tounaba, plaintiffbu sale consideration oina ahenba Rs.10 lakhs pinaba direction pirabadi, pumnamakki justice touba oini

C

haina eikhoina khalli.

8. Mathakki discussion amasung mathakta piriba maramsing yenglaga, houjikki appeals mai pakle. High Courtna pass toukhiba impugned judgments(s) amasung order(s) sing maramduna quash amasung set aside toure. Learned Trial Courtna tang 13.03.2007gi agreement

D

specific performancegi suitda pikhiba judgment amasung decree adu order asina restore toure. Adubu, mapungfaba justice tounaba, ahenba shenfam Rs.10 lakhs ngasidagi hapta nipangi manungda plaintiffna defendant No.1da deposit touduna pinaba direction piri amasung asumna pibadagi hapta anigi manungda original plaintiff-appellantgi

E

favourda sale deed execute tounaba defendant No.1 bu direct touri. Tang 31.10.2011da plaintiffna learned Trial Courtgi judgment amasung decreegi matung inna deposit toukhiba Rs.9.74,000/- amasung accrue tourakpa mathoi yaona defendant No.1 na withdraw touba yagani, madu account payee chequena defendant da pigani. Houjikki appeals mathakki ahenba directions yaona allow toubire. Costs gi oina order

F

tadre.

Bibhuti Bhushan Bose
allowed.

Appeals