HC-KAR

NC: 2026:KHC:56407
RSA No. 1489 of 2007

CNR: KAHC010599692007

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO.1489 OF 2007 (RES)

BETWEEN:

SRI. ABDUL RAHMAN
S/O H.M ABDUL HAFEEZ
AGED ABOUT 45 YEARS
D.NO 1410/2, 4TH CROSS
SERKHAZI STREET KABIR ROAD,
MANDI MOHALLA
MYSURU – 570 012.

...APPELLANT

(BY SRI. A.G. SRIDHAR, ADVOCATE)

AND:

SRI. G.A. MANSOOR ALAM KHAN
S/O LATE G ABDUL GAFOOR KHAN
AGED ABOUT 50 YEARS
D/NO.25, HIG, HUDCO
BANNIMANTAP MYSURU-BANGALORE ROAD
MYSURU-570 012.

...RESPONDENT

(BY SRI. M. TARIQUE SIDDIQUI, ADVOCATE FOR
SRI. S. JAGAN BABU, ADVOCATE)

THIS REGULAR APPEAL IS FILED UNDER SECTION 100 R/W ORDER XLI RULE 1 OF CPC., AGAINST THE JUDGMENT & DECREE DATED 9TH MARCH, 2007 PASSED IN REGULAR APPEAL NO.275 OF 2004 ON THE FILE OF THE III ADDITIONAL DISTRICT JUDGE, MYSURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 24TH JULY,

2004 PASSED IN ORIGINAL SUIT NO.575 OF 2000 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (Sr.Div) MYSURU.

THIS REGULAR SECOND APPEAL HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, ***E.S. INDIRESH J.,*** DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S. INDIRESH

CAV JUDGMENT

1. This appeal is filed by the defendant, assailing the judgment and decree dated 09.03.2007 passed in R.A.No.275 of 2004 by the III Additional District Judge, Mysore, whereby the appeal was dismissed and the judgment and decree dated 24.07.2004 passed in O.S.No.575 of 2000 by the Principal Civil Judge (Sr.Dn.), Mysore, decreeing the suit of the plaintiff, was confirmed.

2. For the sake of convenience, the parties in this appeal shall be referred to in terms of their status and ranking before the Trial Court.

3. The plaint averments are that the plaintiff claims to be the owner in possession of the suit schedule property and intends to construct a new building thereon by demolishing the existing old building. It is stated that the defendant came forward to construct a new building on the suit schedule property and, accordingly, the plaintiff and the defendant entered into an agreement dated 10.07.1997.

4. It is further averred in the plaint that the plaintiff had agreed to sell the western portion of the suit schedule property in favour of the defendant, as shown as ABCD in the sketch appended to the agreement dated 10.07.1997, for a sale consideration of Rs.5,00,000/-. It is stated that the defendant agreed to put up construction of a building measuring 12 squares, subject to the condition that he would pay Rs.2,00,000/- on the date of the agreement and the

remaining amount of Rs.3,00,000/- after completion of the eastern portion of the suit schedule property.

5. It is stated that the proposed building would consist of a ground floor and first floor, measuring 25 squares, as marked EFGH. It is further averred in the plaint that the defendant had agreed to leave a space measuring 6 feet for a common entrance between the two structures, as shown as DCEF in the sketch appended to the agreement. It is further stated in the plaint that the defendant had undertaken to hand over vacant possession of the eastern portion of the suit schedule property to the plaintiff and had agreed to complete the entire construction within a period of one year from the date of the agreement.

6. It is further averred in the plaint that, as the defendant failed to pay the advance consideration of Rs.2,00,000/- and to complete the construction of the

eastern portion of the suit schedule property, in terms of the agreement, the dispute was referred to the arbitrators, namely, Sri. Asgar and Dr. Kabir. At the instance of the arbitrators, the plaintiff and the defendant entered into a fresh agreement dated 08.01.1999, whereby the defendant agreed to sell the newly constructed shops in the western portion of the suit schedule property and to invest a sum of Rs.4,29,000/- towards the construction of the remaining portion of the schedule property.

7. It is further averred in the plaint that, as the defendant was unable to complete the construction, the plaintiff filed O.S.No.534 of 1999 before the Civil Court seeking an injunction restraining the defendant from interfering with the construction undertaken by the plaintiff. It is also stated that the dispute was referred to the arbitrators and, accordingly, the

plaintiff and the defendant accepted the award passed by the arbitrators, whereby the constructed shops in the western portion of the schedule property were kept for sale by the arbitrators.

8. It is also stated that the plaintiff had obtained the requisite licence from the competent authorities for construction of the remaining portion of the building and, accordingly, subsequent agreements were entered into between the plaintiff and the defendant. Hence, the plaintiff filed O.S.No.575 of 2000 before the Trial Court seeking relief of a declaration that the agreement dated 10.07.1997 and all subsequent agreements entered into between the plaintiff and the defendant are *non-est* and also sought for consequential relief of permanent injunction restraining the defendant from interfering with the

plaintiff's possession and construction over the suit schedule property.

9. After service of summons, the defendant entered appearance and filed detailed written statement denying the plaint averments. It was contended that the plaintiff and the defendant had entered into an agreement dated 10.07.1997 for the purpose of constructing a new complex, as per the sketch appended to the agreement, after demolishing the existing old structure. It was further averred in the written statement that the construction of the building has to be undertaken at the cost of the defendant and, accordingly, the western portion of the schedule property, consisting of six shops, was to be sold in favour of the defendant by the plaintiff.

10. It is also stated in the written statement that the plaintiff had agreed to sell western portion of the

schedule property to the defendant. It was, therefore, contended that, as possession of the property had been handed over to the defendant for the purpose of constructing the building, and as such, the defendant had constructed the shops on the western side of the schedule property. Accordingly, the defendant contended that, he had taken possession of the suit property in part performance of the contract and defendant was always been ready and willing to perform his part of the contract as mutually agreed upon between the parties as per agreement dated 10.07.1997. Hence, the defendant sought dismissal of the suit.

11. It is categorically averred in the written statement that the defendant was in possession of the suit schedule property and that the plaintiff was not in possession thereof. Accordingly, the defendant denied

the plaintiff's claim of possession over the schedule property as he was constructing the western portion of the schedule property as per the agreement dated 10.07.1997 and accordingly, sought for dismissal of the suit.

12. The plaintiff filed rejoinder to the written statement, contending that the tenant in the schedule property had vacated the premises in the year 1991 itself. The plaintiff also denied the averment made by the defendant that the defendant had paid a sum of Rs.2,32,000/- to the plaintiff on various dates.

13. On the basis of the rival pleadings, the Trial Court formulated the issues for its consideration. In order to establish his case, the plaintiff examined himself as P.W.1 and examined another witness as P.W.2, and marked documents produced by him as Exs.P1 to P240. On the other hand, the defendant examined

three witnesses as D.W.1 to D.W.3 and produced 46 documents, which were marked as Exs.D1 to D46.

14. The Trial Court, after considering the material on record, by its judgment and decree dated 24.07.2004, decreed the suit in favour of the plaintiff. Being aggrieved by the same, the defendant preferred R.A.No.275 of 2004 before the III Additional District Judge, Mysore. The said appeal was resisted by the plaintiff. The First Appellate Court, after re-appreciating the material on record, by its judgment and decree dated 09.03.2007, dismissed the appeal and confirmed the judgment and decree passed by the Trial Court in O.S.No.575 of 2000. Being aggrieved by the judgment and decree passed by the Courts below, the defendant has preferred this Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908.

15. Heard Sri. A.G. Sridhar, learned counsel appearing for the appellant and Sri. M. Tarique Siddiqui, learned counsel for Sri. S. Jagan Babu, learned counsel appearing for the respondent.

16. It is contended by Sri. A.G. Sridhar, learned counsel appearing for the appellant, that the respondent herein had filed a suit seeking declaration that the agreement dated 10.07.1997 and all subsequent agreements entered into between the parties are *non- est*, without considering the fact that the defendant was in possession of a portion of the schedule property as per the Agreement of Contract is part performance of the agreement and as such, he submits that the plaintiff himself admitted that the construction of a portion of the building was undertaken by the defendant, which is evident from paragraph 9 of the plaint and therefore, it is

contended that, as the defendant was in possession of the suit schedule property in question and possession had not been handed over to the plaintiff, and therefore, the learned counsel contends that the findings recorded by both the Courts below are contrary to the pleadings in the plaint. Accordingly, he seeks interference of this Court with respect to the impugned judgment and decree passed by the Courts below.

17. It is further contended by the learned counsel for the appellant that the Courts below have recorded a finding that the defendant had delivered possession of the western portion of the building in question and the tenant has vacated the eastern portion on 01.11.1998, to enable the plaintiff to commence the construction work. According to the learned counsel for the appellant, the said finding itself establishes

that possession of the suit schedule property was with the defendant. It is therefore contended that the finding recorded by both the Courts below is contrary to the material on record. Accordingly, the learned counsel submits that the impugned judgment and decree are liable to be set aside.

18. It is further argued by the learned counsel for the appellant that the Courts below have failed to properly appreciate Ex.D46, which indicates that the plaintiff's tenant had delivered possession of the suit schedule property to the defendant on 01.11.1998. Therefore, it is contended that the findings recorded by both the Courts below are contrary to the material on record and, as such it is argued that, impugned judgment and decree passed by both the courts below, are liable to be set aside in this appeal.

19. The learned counsel for the appellant, referring to the prayer sought in the plaint, contended that the plaintiff had not sought the relief of recovery of possession of the suit schedule property from the defendant. Therefore, it was contended that the suit itself was not maintainable. Accordingly, the learned counsel sought for dismissal of the suit.

20. It is also argued by learned counsel appearing for the appellant that both the Courts below have erroneously come to the conclusion that the plaintiff had paid a sum of Rs.2,00,000/- to the defendant for completing the construction of the building. It is further argued that the tenants of the plaintiff were not examined to controvert the contents of Exs.D42 and D43. Therefore, the learned counsel for the appellant contends that the impugned judgments and decrees passed by the Courts below are contrary to

the material on record and as such, liable to be set aside in this appeal.

21. Learned counsel appearing for the appellant further, contended, by referring to the admission made by the plaintiff in paragraph 2 of the plaint, that pursuant to the agreement entered into between the parties, the plaintiff had handed over possession of the suit schedule property to the defendant, and the defendant had agreed to hand over the portion of the schedule property to the plaintiff after the completion of the construction of the building. Referring to Ex.P239, learned counsel for the appellant argued that the recitals contained therein satisfy the essential ingredients of an agreement of sale. It is therefore contended as that the defendant had invested a substantial amount towards construction of the building, which in fact has also been admitted by the

plaintiff, and that the said aspect of the matter has not been properly considered by both the Courts below. Accordingly, learned counsel sought interference by this Court with the impugned judgment and decree passed by the Courts below.

22. Nextly, it is contended by the learned counsel for the appellant, by referring to Ex.P1, that both the plaintiff and the defendant had agreed to overcome the financial constraints and shortage of funds for completing the entire construction. It is further contended that both parties had agreed to alienate two shops in the western portion of the constructed schedule property. According to the learned counsel, the said recitals would establish that the defendant had constructed the shops out of his own funds. Therefore, it is contended that the findings recorded

by both the Courts below are contrary to the material on record and are liable to be set aside in this appeal.

23. Sri. A.G. Sridhar, learned counsel appearing for the appellant, while referring to Ex.P3, submitted that the said agreement is unilateral in nature and as such, not binding on the defendant. He further submitted, by referring to paragraph 4 of the said agreement, that the said paragraph had been struck out arbitrarily and behind the back of the defendant. Therefore, learned counsel contended that the judgment and decree passed by the Courts below are liable to be interfered with by this Court in the present appeal.

24. It is also contended by the learned counsel appearing for the appellant that the signatory to Ex.P3, namely, Wahab, was not examined to prove the contents of Ex.P3. Further, referring to the cross-examination of P.W.2 at page 8, learned counsel for

the appellant argued that the defendant was not present at the time of execution of Ex.P3. Accordingly, learned counsel sought for interference by this Court with the judgment and decree passed by the Courts below.

25. Nextly, it is contended by the learned counsel appearing for the appellant, by referring to paragraph 14 of the written statement, that the agreement at Ex.P239 is not merely an agreement for construction of a building; rather, the same contains the essential ingredients of an agreement of sale. Further, referring to paragraph 18 of the written statement, it is contended that the agreement has been partly performed with an intention to sell the western portion of the schedule property by the plaintiff in favour of the defendant and the defendant has invested amount to construct eastern portion of the building.

Accordingly, learned counsel sought for interference by this Court with the judgment and decree passed by the Courts below.

26. In order to buttress his arguments, learned counsel appearing for the appellant places reliance on the judgment of the Hon'ble Supreme Court in the case of ***Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs. and Others***, reported in ***(2008) 4 SCC 594***, and submits that the plaintiff ought to have sought for relief of possession of the suit schedule property. He further submits that, in the absence of a prayer to seek recovery of possession of the suit schedule property, the suit itself is not maintainable. Accordingly, learned counsel for the appellant seeks setting aside of the impugned judgment and decree passed by the Courts below.

27. It is further contended by the learned counsel appearing for the appellant, by referring to Ex.P239, that the nomenclature of a document is not decisive and that the contents of the document as a whole have to be considered to ascertain its true nature and effect. In this regard, learned counsel appearing for the appellant places reliance on the judgment of the Hon'ble Madhya Pradesh High Court in the case of ***Laxmi Narayan and others vs. Diwan Singh and another*** reported in ***AIR 2019 Madhya Pradesh 114***, and submits that the recitals and substance of the document, rather than merely its title or nomenclature, have to be looked into for determining the nature of the transaction.

28. Learned counsel appearing for the appellant further contended, by referring to the agreement of cancellation dated 02.01.2000 (Ex.P4), that the said

document was executed without the consent of the defendant and behind his back. It is further submitted that Ex.P4 does not bear the signatures of either the plaintiff or the defendant. Therefore, learned counsel argued that the said document is *non-est* in law and, as such, the Trial Court ought to have rejected the suit filed by the plaintiff.

29. Emphasising these aspects, learned counsel appearing for the appellant referred to Issue No.7 and argued that the defendant had taken a specific contention in paragraphs 18 and 19 of the written statement. Therefore, it is contended that Ex.P4 itself is a void document. Accordingly, learned counsel sought for interference of this Court with respect to the judgment and decree passed by the Courts below.

30. It is further argued by the learned counsel appearing for the appellant, while referring to

paragraph 18 of the plaint, that the plaintiff has stated that the arbitrators, being frustrated by the conduct of the defendant, surrendered possession of a portion of the property to the plaintiff. It is therefore contended that the said averment would indicate that the defendant was in actual possession of the property in question at the time of handing over of possession to the plaintiff. Accordingly, learned counsel contended that the findings recorded by both the Courts below are contrary to the material on record and the applicable law.

31. Sri. M. Tarique Siddiqui, learned counsel appearing for the respondent, refers to the following points:

> (a) The transfer of possession pursuant to the development agreement was only to enable the developer-defendant to carry out the construction on

behalf of the owner-plaintiff and, therefore, such possession was merely permissive in nature.

(b) The defendant was only a licensee having permission to enter the schedule property and carry out the construction of the building, and was not an agreement holder claiming rights as a prospective purchaser of the property as per Ex.P239.

(c) What would be the consequence of the subsequent agreement dated 02.01.2000 (Ex.P4) on the question of possession, vis-à-vis the agreement dated 10.07.1997 as per Ex.P239?

32. Learned counsel for the respondent, while referring to the aforementioned points, argued that nothing is contemplated in the agreement of contract dated 10.07.1997 (Ex.P239) with regard to handing over exclusive legal possession of the suit schedule property to the defendant. He further submitted that Ex.P239 is merely granted a permissive license, i.e., a temporary right of entry under Section 52 of the Indian Easements Act, 1882, strictly for the limited

purpose of carrying out construction work as a contractor on behalf of the owner-plaintiff and as such, refutes the contention of the learned counsel appearing for the appellant.

33. Learned counsel appearing for the respondent further argued that, as the defendant had continuously defaulted in completing the construction of the building for want of funds and had consequently abandoned the construction work, the permissive right of entry granted to the defendant stood terminated. It is further submitted that possession was thereafter handed over to a third party (P.W.2) under the agreement dated 26.06.1999 (Ex.P3), which resulted in the cessation of the contractual relationship between the plaintiff and the defendant. The subsequent return of the keys to the plaintiff pursuant to the cancellation agreement dated 02.01.2000

(Ex.P4) by the P.W.2, according to the learned counsel, makes it clear that possession of the suit schedule property was with the plaintiff only. It is therefore contended that the defendant has no independent, subsisting or enforceable right, title or interest to remain in possession of the suit schedule property. Accordingly, it is submitted that the question of seeking a separate relief of possession does not arise in the suit.

34. It is the argument of the learned counsel appearing for the respondent, by referring to Exs.P1 to P4 and Ex.P239, that possession of the suit schedule property remained with the plaintiff. It is further contended that the defendant had failed to comply with the terms and conditions relating to payment of the consideration as stipulated under Ex.P239 and, further, that the defendant did not have

sufficient funds to complete the construction of the building as per the agreement at Ex.P239. Accordingly, learned counsel for the respondent sought for dismissal of the appeal.

35. Nextly, it is contended by the learned counsel appearing for the respondent, by referring to the evidence of P.W.1 and P.W.2, that the agreement dated 26.06.1999 (Ex.P3) makes it clear that the construction work was entrusted to P.W.2. Accordingly, learned counsel sought for dismissal of the appeal. It is further argued by the learned counsel appearing for the respondent, while referring to page 23 of the judgment of the Trial Court, that the Trial Court has recorded a finding that the cancellation agreement at Ex.P4 was executed in the presence of both the plaintiff and the defendant. It is further submitted that the finding recorded by the Trial Court

that the consent of both parties was obtained before execution of agreement at Ex.P4 effectively answers the contention advanced by the learned counsel appearing for the appellant. Accordingly, learned counsel for the respondent sought for dismissal of the appeal.

36. It is also argued by the learned counsel appearing for the respondent that each of the agreements/conciliation arrangements was necessitated at the instance of the defendant's default and inability to complete the construction of the building on account of want of funds. Therefore, it is submitted that the defendant cannot escape the legal consequences flowing from Exs.P1, P3 and P4.

37. It is further argued by the learned counsel appearing for the respondent that the defendant, in his cross-examination, has categorically admitted that

he had requested the arbitrators in writing to cancel the agreement at Ex.P3. Therefore, it is contended that the cumulative effect of the subsequent agreements and arrangements is that the contract stood terminated by mutual consent between the plaintiff and the defendant. Consequently, the keys were surrendered to the plaintiff, and the defendant ceased to have any subsisting right or interest in respect of the suit schedule property. Accordingly, it is contended that the defendant's status in respect of the suit schedule property was reduced to that of an unauthorised occupant. Hence, learned counsel for the respondent sought for dismissal of the appeal.

38. In order to buttress his arguments, learned counsel appearing for the respondent places reliance on the judgment of the Hon'ble Delhi High Court in ***Harish Chander Bhardwaj v. Government of NCT***

of Delhi, reported in ***2026 SCC OnLine Delhi 4887***, and the judgment in ***Suhas Damodar Sathe v. State of Maharashtra***, reported in ***(2025) 1 HCC (Bom) 626*** and contended that the determinative test for distinguishing a development agreement from a conveyance is whether possession was handed over to the builder/contractor solely to facilitate development of the property, without conferring upon the developer any independent right to alienate the suit schedule property. Accordingly, it is contended that the defendant was merely a contractor entrusted with the task of completing the construction work and had no independent right, title or interest in the suit property in question.

39. It is further argued by the learned counsel appearing for the respondent, by referring to the judgment of the Hon'ble Supreme Court in the case of

Seshasayee Steels (Pvt.) Ltd. v. CIT, reported in ***(2020) 14 SCC 774***, that Section 53A of the Transfer of Property Act, 1882, would not be attracted in a case where a licence is granted to another person for the purpose of developing the property. Accordingly, it is contended that the status of the defendant is that of a mere contractor and that the defendant has no independent right or interest in the suit schedule property. Hence, learned counsel sought dismissal of the appeal.

40. Learned counsel appearing for the respondent referred to the judgment in the case of ***Sunil Manchanda and Others v. Ansal Buildwell Limited***, reported in ***ILR 2004 (1) Delhi 321***, and contended that the exclusive possession of the schedule property remained with the plaintiff and that permission was accorded to the defendant only to

carry out the necessary construction of the building in question. Therefore, it is contended that the possession handed over to the defendant was merely permissive in nature and that the defendant was only a licensee permitted to carry out the development work. Accordingly, learned counsel sought dismissal of the appeal.

41. On the said legal issue, learned counsel appearing for the respondent referred to the judgment in ***M/s R.K. Apartments (Pvt.) Ltd. and Another v. Aruna Bahree and Others***, reported in ***1988 SCC OnLine Delhi 669***, and, while referring to paragraph 14 thereof, submitted that the possession of the suit schedule property handed over to the defendant pursuant to Ex.P239 was only temporary and permissive in nature. It is contended that such possession was granted to the defendant merely to

enable him to carry out the development and construction work and that the defendant was only a licensee without any independent right, title or interest in the suit schedule property. Accordingly, learned counsel sought dismissal of the appeal.

42. Learned counsel appearing for the respondent, referring to the findings recorded by both the Courts below, argued that this Court, while exercising jurisdiction under Section 100 of the Code of Civil Procedure 1908, has limited scope to interfere with concurrent findings of fact recorded by the Courts below. It is therefore contended that no interference is called for in the present appeal, particularly when the findings recorded by the Courts below are neither perverse nor contrary to the material on record. Accordingly, learned counsel sought for dismissal of the appeal.

43. Having heard the learned counsel appearing for the parties, I have perused the original records and it is not in dispute that the suit schedule property belonged to the plaintiff and that the plaintiff intended to construct a complex on the schedule property by demolishing the old dilapidated building, in which some of the shops were also under tenancy. It is also not in dispute that the plaintiff and the defendant entered into an agreement dated 10.07.1997 (Ex.P239), whereby the defendant agreed to put up a non-residential building on the schedule property.

44. It is also stated in Ex.P239 that, upon completion of the construction by the defendant, the plaintiff agreed to sell the western portion of the schedule property, as marked in the sketch as 'ABCD', to the agreement. In the western portion of the schedule property, the defendant agreed to put up construction

measuring 12 squares comprising shops. It is further stated in the aforementioned agreement that the defendant had undertaken to first complete the construction on the western side and thereafter demolish the eastern portion of the schedule property, wherein the defendant had agreed to put up construction measuring 25 squares.

45. It is further stated in the agreement at Ex.P239 that the defendant had agreed to put up non-residential construction at his own cost. In paragraph 5 of the agreement at Ex.P239, it is stated that the defendant was required to hand over vacant possession of the eastern portion of the schedule property, marked as 'EFGH', to the plaintiff along with the constructed built up area. It is further stated in paragraph 6 of the agreement at Ex.P239 that the defendant was required to complete the construction

of the non-residential building within one year from the date of the agreement. It is also stated in the aforementioned agreement at paragraph 7 that the plaintiff was required to obtain the necessary plan sanction from the Mysore City Corporation for the proposed construction.

46. A perusal of Clauses 9 and 10 of Ex.P239 would indicate that the defendant had agreed to pay a sum of Rs.5,00,000/- to the plaintiff. It was further agreed that the defendant would pay a sum of Rs.2,00,000/- at the time of execution of the agreement and the remaining balance amount of Rs.3,00,000/- upon completion of the construction of the eastern portion of the schedule property.

47. It is categorically stated in Clause 10 of the agreement that, sum of Rs.5,00,000/- payable by the defendant to the plaintiff was towards the

consideration of the sale deed that was to be executed by the plaintiff. Clause 11 of the agreement stipulates that the plaintiff shall execute a registered sale deed in favour of the defendant in respect of the western portion of the schedule property, as marked 'ABCD' in the plan. It is also not in dispute that the difference between the parties, if any, relating to the proposed construction of the building was referred to the arbitrators for resolution.

48. It is also pertinent to mention that the plaintiff and the defendant entered into an agreement dated 08.01.1999 (Ex.P1) for alienation of two shops situated in the western portion of the constructed schedule property, and the funds realised from the sale of the said two shops were to be utilised for construction of the remaining portion in the schedule property.

49. It is also forthcoming from the deed of agreement dated 26.06.1999 (Ex.P3) that the plaintiff and the defendant had authorised one Khurshid Anwar (P.W.2) to take over the construction work and complete the same on or before 10.07.1997. It is further forthcoming from the evidence on record that Khurshid Anwar (P.W.2) had handed over the keys and possession of the shops in the schedule property to the plaintiff pursuant to the cancellation agreement dated 02.01.2000 (Ex.P4). The entire case of the parties revolves around the agreement of contract dated 10.07.1987 (Ex.P239), the agreement of contract dated 08.01.1999 (Ex.P1), the deed of agreement dated 26.06.1999 (Ex.P3), and the cancellation agreement dated 02.01.2000 (Ex.P4).

50. On careful perusal of Ex.P239, which is the principal document to bind the contractual obligation

between the parties and it is forthcoming that the plaintiff had entrusted the construction of the building to the defendant. Clause 5 of the agreement would indicate that the defendant was required to construct the building and, thereafter, hand over vacant possession of the eastern portion of the schedule property to the plaintiff, which is marked as 'EFGH' in the sketch.

51. It is also stated in Clause 6 of the agreement that the defendant was required to complete the entire construction of the building within one year from the date of the agreement. Clause 10 of the agreement at Ex.P239 reveals that a sum of Rs.5,00,000/- was agreed to be payable by the defendant to the plaintiff towards the western portion of the schedule property. A perusal of Clause 11 of the agreement would further indicate that the plaintiff was required to execute a

registered sale deed in favour of the defendant in respect of the western portion of the schedule property. The aforesaid Clauses 9 to 11 have to be read conjointly with Clause 3 of the said agreement, wherein it is stated that the defendant had agreed to put up the non-residential construction at his own cost. It means that the entire cost of the construction of the building has to be born by the defendant. Therefore, for all practical purposes, the agreement dated 10.07.1997 (Ex.P239) has to be construed as an agreement of sale, in respect of western portion of the property as the recitals contained therein satisfy the essential ingredients of an agreement of sale. It is pertinent to mention here that, if the defendant fails to pay Rs. 5,00,000/- to the plaintiff as per Ex.P239 as sale consideration particularly, Rs. 2,00,000/- at the time of execution of the agreement, the plaintiff could have taken steps to issue legal notice to rescind

the agreement itself in the initial stage, however, such action has not been taken by the plaintiff and further allowed the defendant to construct shops in the western side.

52. Nextly, it is necessary to take note of the observation of the Hon'ble Supreme Court, by order dated 20.01.2026, remitting the matter to this Court for consideration as the rights of the parties in relation to possession. Paragraphs 16 and 17 of the aforesaid order reads as under:

> *"16. In our view, the first and foremost issue which the High Court was required to address is, whether there was transfer of possession pursuant to a development agreement which, ordinarily, is to enable the development to raise construction on behalf of the owner. Therefore, whether it is a mere privilege in the form of a license to enter the land and raise constructions or a right coupled with transfer of possession is a question which required determination. Besides that, what would be the consequence of subsequent agreement dated 26.06.1999 on the possession, if any, of the defendant under the agreement dated 10.07.1997 has not been discussed, particularly, when the trail court found those agreements proved. Moreover,*

even it transferred possession, it was necessary to consider whether it transferred possession on the entire suit schedule property or part thereof. We notice that the High Court while reversing the judgment and decree passed by the two courts below have failed to advert to all those aspects.

17. In such circumstances, we deem it appropriate to set aside the impugned order and remand the matter back to the High Court to decide the RSA afresh in accordance with law. Consequently, this appeal is allowed. The judgment and decree passed by the High Court is set aside. RSA No. 1489 of 2007 shall stand restored on the file of High Court and shall be decided afresh in accordance with law. It is made clear that we have not expressed any opinion regarding the possession of the parties quo the suit schedule property."

53. The Hon'ble Supreme Court remitted the matter to this Court for determination of the issue as to whether possession was transferred pursuant to the agreement of contract at Ex.P239 and the subsequent documents, particularly Exs.P1, P3 and P4. It is the case of the plaintiff that the construction of the building was entrusted to one Mr. Khurshid Anwar (P.W.2) pursuant to the deed of agreement dated 26.06.1999 (Ex.P3). However, there appears to be a discrepancy in Clause 4 of the agreement at Ex.P3. It

is also to be noted that, subsequent to the execution of the deed of agreement at Ex.P3, another agreement dated 02.01.2000 (Ex.P4) came to be executed, wherein it is stated that the said Khurshid Anwar had handed over the keys and possession of the shops in the schedule property to the plaintiff.

54. On careful consideration of the recitals contained in the cancellation agreement at Ex.P4, it is clear that the defendant had constructed the shops in the western portion of the schedule property. However, the defendant had not completed the entire construction in terms of the agreement at Ex.P239.

55. In this regard, on careful consideration of the findings recorded by the Trial Court, it is evident that no specific issue was framed with regard to the transfer of possession between the parties. Though several contentions have been urged by both sides

with regard to the agreements relating to the construction of the building by the defendant, the entrustment of the construction work to Khurshid Anwar (P.W.2) for completion of the construction, upon the defendant having failed to complete the construction of the building in its entirety, and the subsequent cancellation of the agreement dated 02.01.2000 by the said Khurshid Anwar (P.W.2), pursuant to which possession of the schedule property was stated to have been handed over to the plaintiff, there is no specific finding recorded by the Trial Court as to whether the defendant had handed over possession of the constructed western portion of the schedule property either to the plaintiff or to Khurshid Anwar (P.W.2). In view of the question formulated by the Hon'ble Supreme Court with regard to the transfer of possession in respect of the subject property, I find force in the submission made by the learned counsel

appearing for the appellant that a specific issue in this regard ought to have been framed and the parties ought to have been afforded an opportunity to adduce evidence as to the transfer of possession between the parties.

56. In that view of the matter, as an enquiry is required to be undertaken with regard to the transfer of possession in terms of the order passed by the Hon'ble Supreme Court, the substantial question of law framed above is required to be considered in addition to the enquiry that may be undertaken by the Trial Court. Therefore, answering the substantial question of law framed above requires to be made only after possible enquiry that may be undertaken by the Trial Court and therefore, at this stage, I do not wish to answer the substantial question of law, as it is bearing on the final resolution of the disputes between

the parties. In these circumstances, there is no impediment for this Court to remand the matter to the Trial Court for fresh consideration in the light of the observations made hereinabove.

57. It is made clear that the Trial Court shall frame an appropriate issue in the light of the order passed by the Hon'ble Supreme Court and on the basis of the pleadings available on record. The Trial Court shall, if necessary, reformulate the issues and thereafter afford an opportunity to both the parties to adduce further evidence, if any, on the said issues. The Trial Court shall thereafter consider the matter afresh and pass appropriate order in accordance with law.

58. I am also conscious of the law declared by the Hon’ble Supreme Court in catena of decisions whereunder it is held that, unless there are compelling reasons to remit the matter to the Trial Court, it is not

desirable to resort to exercise the power under Order XLI Rule 23 or 23A or 25 of the Code of Civil Procedure, 1908 which is likely to cause complete damage to the interest of the parties. On the other hand, it is also settled principle that remand is permissible only when the Appellate Court in the interest of justice feels that the remand is just and appropriate and that the Appellate Court cannot arrive at a specific finding on the issues based upon material evidence available on record. Equally it is an accepted proposition of law that, remand of a case is a serious matter and can be ordered in exceptional circumstances where there had been no complete and effective adjudication of the dispute and the judgment, on hand, is one such. I may say so for the simple reason that, material evidence available on record had been ignored or not at all considered as to the determination of possession. Hence, I reiterate

that judgment and decree by both the courts below under challenge is an exceptional case for remand for the reasons stated above.

59. It is also relevant to note the law declared by the Hon'ble Supreme Court in the case of ***Remco Industrial Workers House Building Co-operative Society v. Lakshmeesha M. And Others*** reported in ***AIR 2003 SC 3167*** wherein it has been categorically held that, circumstances warrant invocation of power of remand under Order XLI Rule 25 of the Code of Civil Procedure, 1908 are the powers of the Appellate Court which are not inhibited by the acts or omissions of the parties. Order XLI Rule 25 of the Code of Civil Procedure, 1908 empowers the Appellate Court to remit the case to the Trial Court which has omitted to frame an issue, and further it appears to the appellate

Court that it is essential to arrive at a right decision of the case.

60. In the case of ***Shyam Singh v. Daryao Singh (Dead) By LRs and Others*** reported in ***AIR 2004 SC 348*** the Hon'ble Supreme Court has held thus:

> *"20. The additional grounds urged in this appeal as a result of subsequent legal developments of consolidation of holdings under the Act of 1953 raise issues both of fact and law. We consider it just and proper to remand the case to the trial court for deciding these additional issues arising on facts and law."*

61. I have given my anxious consideration to the question formulated by the Hon'ble Supreme Court with regard to the transfer of possession, the issues framed by the Trial Court, and the judgments and decrees passed by both the Courts below. On careful perusal of the material on record, it is evident that there is no specific material to establish the date on which possession was transferred by the defendant to

the plaintiff. In view of the same, I am of the considered view that the impugned judgments and decrees passed by the Courts below are liable to be set aside and the matter requires to be remanded in its entirety to the Trial Court for fresh disposal on merits.

62. The Trial Court shall reconsider the matter in the light of the observations made hereinabove, particularly with regard to the nature and contents of Ex.P239, so as to determine whether the said document constitutes merely a agreement of contract or an agreement of sale, and also determine the issue relating to the transfer of possession between the parties to the suit, after affording reasonable opportunity to both parties to adduce evidence, if any, in accordance with law.

63. For the reasons stated above, the substantial question of law framed herein requires further consideration on the basis of additional evidence to be adduced before the Trial Court. Accordingly, the matter is remanded to the Trial Court for fresh consideration, in the light of the observations made hereinabove. In the result, I pass the following:

ORDER

i. The Regular Second Appeal is ***allowed in-part***.

ii. The judgment and decree dated 09.03.2007 passed in R.A.No.275 of 2004 by the III Additional District Judge, Mysore, and the judgment and decree dated 24.07.2004 passed in O.S.No.575 of 2000 by the Principal Civil Judge (Sr.Dn.), Mysore, are hereby set aside. The matter is remanded to the Trial Court for fresh consideration in the light of the observation made hereinabove, in accordance with law.

iii. All contentions of the parties are kept open. The observations made in this appeal are confined to the disposal of the present appeal. The Trial Court is directed to independently reconsider and dispose of the suit on its merits, without being influenced by any of the observations made hereinabove.

iv. Since the parties are represented through their respective learned counsel, they shall appear before the Trial Court on ***06.11.2026 at 11:00 a.m.***

v. The Trial Court is requested to dispose of the matter at the earliest, preferably within a reasonable time, in accordance with law.

vi. Registry is directed to send back the original records at the earliest, on priority, to enable the Trial Court to take further action in the matter.

Sd/-
(E.S. INDIRESH)
JUDGE

SB
List No.: 1 Sl No.: 74