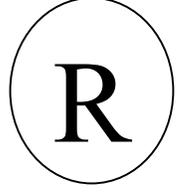


IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13<sup>TH</sup> DAY OF SEPTEMBER, 2023

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR



AND

THE HON'BLE MR. JUSTICE T.G. SHIVASHANKARE GOWDA

**R.F.A NO. 656 OF 2013 (SP)**

**BETWEEN:**

M/S. JAMNALAL BAJAJ SEVA TRUST  
REGISTERED PUBLIC CHARITABLE TRUST  
BAJAJWADI WARDHA P.O - 442 101.  
MAHARASHTRA STATE.  
BY ITS P.A HOLDER  
DR. RAMESH SHARMA  
CHIEF EXECUTIVE OFFICER  
VISHWANEEDAM INTERNATIONAL  
SARVODAYA CENTER, A UNIT OF  
JAMNALAL BAJAJ SEVA TRUST  
S/O P.C. SHARMA  
AGED ABOUT 61 YEARS  
NO.13, K.M. MAGADI ROAD  
VISHWANEEDAM POST  
BANGALORE-560 091.

...APPELLANT

(BY SHRI. UDAYA HOLLA, SENIOR ADVOCATE FOR  
SHRI. P.N. RAJESWARA, ADVOCATE)

**AND:**

1. SRI. PARAMESHWARA  
S/O SRI NAGAPPAIAH  
SINCE DEAD BY LRs.
- 1(A). SRI. N. KRISHNAMURTHY  
S/O LATE P. NAGAPPAIAH

AGED ABOUT 67 YEARS  
R/AT NO. 12, 2<sup>ND</sup> CROSS  
MAGADI ROAD  
BANGALORE-560 023.

- 1(B). SRI. N. GANESH  
S/O LATE P. NAGAPPAIAH  
AGED ABOUT 67 YEARS  
R/O NO.12, 2<sup>ND</sup> CROSS  
MAGADI ROAD  
BANGALORE-560 023.
- 1(C). SRI. N. SRIDHAR  
S/O LATE P. NAGAPPAIAH  
AGED ABOUT 61 YEARS  
R/O NO. 124/4, MAGADI ROAD  
BANGALORE-560 023.
- 1(D). SMT. N. JAYALAKSHMI  
D/O LATE P. NAGAPPAIAH  
W/O RAMACHANDRA RAO  
AGED ABOUT 58 YEARS  
R/O FLAT NO.5, PRC OFFICERS COLONY  
MULLAINAGAR  
KANKAKULLAM POST  
MADURAI-625 006.
- 1(E). SRI. N. SHIVARAM  
S/O LATE P. NAGAPPAIAH  
AGED ABOUT 54 YEARS  
R/O NO. 124/4, MAGADI ROAD  
BANGALORE-560 023.
- 1(F). SMT. N. MANJULA  
D/O LATE P. NAGAPPAIAH  
W/O VASANTH  
AGED ABOUT 50 YEARS  
R/AT NO. 778, 5<sup>TH</sup> MAIN  
10<sup>TH</sup> D CROSS, 2<sup>ND</sup> STAGE  
WEST OF CHORD ROAD  
BANGALORE-560 010.
- 1(G). SMT. NAGARATHNA  
W/O LATE N. CHANDRASHEKAR  
AGED ABOUT 60 YEARS

R/O NO.12, 2<sup>ND</sup> CROSS, MAGADI ROAD  
BANGALORE-560 023.

2. SRI. NARAYANA RAO KURDEKHAR  
S/O SOMAIAH KHURUDEKAR  
SINCE DECEASED BY HIS  
LEGAL REPRESENTATIVES

2(A). SRI. PRAKASH N. KURDEKAR  
S/O LATE NARAYAN  
S. KURDEKAR  
AGED ABOUT 52 YEARS

2(B). SRI. ASHOK N. KURDEKAR  
S/O LATE NARAYAN S. KURDEKAR  
AGED ABOUT 51 YEARS

2(C). SRI. MANJUNATH N. KURDEKAR  
S/O LATE NARAYAN S. KURDEKAR  
AGED ABOUT 50 YEARS

R2(A) TO R2(C) ARE R/AT  
NO. 35, MANJUNATHNAGAR  
GOKUL ROAD  
HUBBALLI-580 030.

2(D). SMT. GEETA T. NAGARAJ  
D/O LATE NARAYAN S. KURDEKAR  
W/O DR. P.G. NAGARAJ  
AGED ABOUT 53 YEARS  
RESIDING IN FLAT NO.18  
UNIT NO.4, ADHISHAKTI NILAYA  
AMBI DEFENSE COLONY, SAGARMEL  
KHOLLAPUR-413 008.

2(E). SMT. SAROJA  
D/O LATE NARAYAN S. KURDEKAR  
AGED ABOUT 49 YEARS  
RESIDING AT NO.65, GURUKRUPA  
SHAKTINAGAR (GANDHINAGAR)  
2<sup>ND</sup> CROSS  
DHARWAD-580 001.

3. SRI. RAMAKRISHNA BAJAJ  
SINCE DEAD BY HIS LR

SMT. MEENAKSHI BAJAJ  
TRUSTEE  
M/S. JAMNALAL BAJAJ SEVA TRUST  
MAJOR  
BAJAJWADI, WARDHA P.O.  
MAHARASHTRA STATE.

4. SRI. N.S. DESAI  
TRUSTEE  
JAMNALAL BAJAJ SEVA TRUST  
NARIMAN POINT  
BOMBAY-400 021.
5. S.B. HALBE  
TRUSTEE & LEGAL ADVISOR  
FOUNTAIN CHAMBERS  
FLORA FOUNTAIN  
OPP: AKBAR ALI ROAD  
BOMBAY
6. SMT. ANUSUYA BAJAJ  
TRUSTEE  
JAMNALAL BAJAJ SEVA TRUST  
2<sup>ND</sup> FLOOR, BAJAJ BHAVAN  
NARIMAN POINT  
BOMBAY-400 021.
7. M/S. DHARUV & CO.  
NATWAR CHAMBER  
2<sup>ND</sup> FLOOR, NO.94  
NAGIR DAS MASTER ROAD  
BOMBAY-400 023.

...RESPONDENTS

(BY SHRI. SHASHIKIRAN SHETTY, SENIOR ADVOCATE FOR  
SMT. FARAH FATHIMA, ADVOCATE FOR R1(C TO I);  
SHRI. RAMESH P. KULKARNI, ADVOCATE  
FOR R2(A TO D);  
SHRI. S.P. SHANKAR, SENIOR ADVOCATE FOR  
SHRI. KIRAN RAMESH, ADVOCATE FOR R2(E);  
SHRI. GANAPATHI BHAT, ADVOCATE FOR PROPOSED  
IMPLEADING APPLICANT AS R8;  
SHRI. SHARATH KUMAR SHETTY, ADVOCATE FOR  
PROPOSED R9 ON I.A.No.1/2018;  
SHRI. R. KALYAN, ADVOCATE FOR IMPLEADING  
APPLICANT AS SUCCESSOR DECEASED R1 ON

I.A.No.2/2021;  
SHRI. A. MADHUSUDHANA RAO, ADVOCATE FOR  
IMPLEADING APPLICANT I.A.No.3/2023;  
R1(A), R1(B), R3 AND R7 ARE SERVED;  
V/O DTD: 01.12.2015 NOTICE TO R4 AND R6  
ARE HELD SUFFICIENT;  
V/O DTD: 17.09.2018 NOTICE TO R5 ARE HELD  
SUFFICIENT)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED: 23.03.2013 PASSED IN O.S.No.641/1994 ON THE FILE OF THE I/C VII-ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE, DECREERING THE SUIT FOR SPECIFIC PERFORMANCE.

THIS RFA, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.07.2023 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **P.S. DINESH KUMAR J.**, PRONOUNCED THE FOLLOWING:-

### **JUDGMENT**

This appeal by the defendant No.1 is directed against the judgment and decree dated March 23, 2013 in O.S. No. 641/1994 passed by the learned VII Addl. City Civil and Sessions Judge, Bangalore, decreeing the suit for specific performance of contract.

2. For the sake of convenience, parties are referred as per their status before the Trial Court.

3. We have heard Shri. Uday Holla, learned Senior Advocate for the defendant No.1/appellant and Shri. Shashi Kiran Shetty, learned Senior Advocate for the plaintiff

No.1/respondent No.1 and Shri. Ramesh Kulkarni, learned Advocate for respondent No.2 (a to d) and Shri.S.P.Shankar, learned Senior Advocate for respondent No. 2 (e) and Shri. Madhusudhan Rao and Shri. Sharath Kumar Shetty, learned Advocates for proposed impleading Applicants.

4. As per plaint averments, first plaintiff is an agriculturist. He entered into an agreement with first defendant, a registered public charitable Trust (hereinafter referred to as 'Trust') which owns a large tract of agricultural property. Second defendant is the Chairman and third defendant is the Power of Attorney<sup>1</sup> holder for the Trust. Out of about 500 acres, 168.06 acres is a subject matter of the agreement. First plaintiff and the Trust initially entered into an 'Agreement to Sell' dated 20.03.1982, whereunder first plaintiff had agreed to obtain the permission under Karnataka Land Reforms Act, 1961 and the Urban Land Ceiling and Regulation Act, 1976. Due to some complexities, he could not obtain the same and an 'Amended Sale Agreement' dated

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<sup>1</sup>'P.A. Holder' for short

25.07.1982 was entered into, whereunder the Trust had agreed to obtain the permissions. First plaintiff, in all, paid an advance sale consideration of Rs.16,37,000/-. The consideration agreed between the parties was Rs.17,500/- per acre. First plaintiff was always ready and willing to pay the balance consideration and get the Sale Deed registered in his favour. The Trust failed to obtain the necessary permissions. While agreements were subsisting, the Trust sought to alienate the property compelling first plaintiff to bring the instant suit for specific performance.

5. The Trust resisted the suit by filing written statement denying the plaint averments and contending *inter alia* that first plaintiff is an Real Estate Agent and not an agriculturist. Third defendant namely, Birdhichand Chowdhary (hereinafter referred to as 'Birdhichand') was not the P.A. Holder of the Trust; that he was not in service with effect from 05.07.1982, therefore, defendant No.3 could not have been authorized to execute any agreement. Birdhichand

had executed the agreement in his individual capacity without approval from the Trust.

6. Defendants No. 3 to 7 have been placed *ex-parte*. They have not filed written statements.

7. Based on the pleadings, the Trial Court has framed following eight issues and four additional issues:

- 1) *Whether plaintiff proves that defendant No.3 as G.P.A of first defendant-Trust executed the suit agreement of sale dated 20.03.1982 and 25.07.1982 to sell the suit property?*
- 2) *Whether plaintiff had paid amount of Rs.16,37,000/- as part consideration to the first defendant through third defendant?*
- 3) *Whether plaintiff was put in possession of schedule property in part performance of contract?*
- 4) *Whether plaintiff has been ready and willing to perform his part of contract?*
- 5) *Whether plaintiff is entitled for the relief of specific performance of contract against defendants No.1 & 2?*
- 6) *Whether in the alternative, the plaintiff is entitled for the refund of amount claimed?*
- 7) *Whether plaintiff is entitled for the relief of injunction prohibiting the defendants from alienating suit property?*
- 8) *To what order or decree, the parties are entitled?*

*Addl. Issues:-*

*1)Whether the suit is barred by law of limitation?*

*2)Whether suit is not maintainable as suit sale agreement is void ab-initio as pleaded in para-5 of written statement of first defendant?*

*3)Whether the suit is liable to be dismissed as barred under the provisions of the Karnataka Land Reforms Act, 1961?*

*4)Whether the assignment as contended is proved by plaintiff No.2?*

8. On behalf of plaintiff, three witnesses were examined as P.W.1 to P.W.3 and Exs. P1 to P19 marked. On behalf of the Trust, two witnesses were examined as D.W.1 and D.W.2 and Exs. D1 to D38 marked. Answering issues No. 1 to 5, 7 and additional issue No.4 in the affirmative, holding that issue No.6 did not arise for consideration and additional issues No.1 to 3 in the negative, the Trial Court has decreed the suit.

9. Assailing the impugned judgment and decree, Shri. Uday Holla, for the Trust, mainly contended that:

- the alleged agreements are of the year 1982 and the instant suit has been filed in the year 1994 after a lapse of 12 years and that too after collecting the refund of the entire advance sale consideration in full and final settlement of all claims;
- in a suit for specific performance, plaintiff is required to prove that he was always ready and willing to perform his part of the contract by placing documentary evidence to show that he had necessary funds to pay the consideration from the date of execution of the agreement till the date of the decree and plaintiffs have not produced any such proof;
- the suit property is situated in Magadi Road in Bangalore City. The guideline value of the property is about Rs.50,000/- per Sq.Mt. which works out to about Rs.3,500 Crores;

- it is settled law that if a decree for specific performance results in a bonanza for the plaintiff, such suit should not be entertained;
- the suit property cannot be alienated without the permission of the Charity Commissioner under Section 36 of the Bombay Public Trust Act, 1950;
- Courts have *parens patriae* jurisdiction in respect of religious and charitable trusts and must protect the interest of the charitable Trust. The property was meant for setting up of an ashram and other charitable activities. The Trust is already carrying on several charitable activities on the property. The impugned decree for specific performance would be detrimental to the interest of Trust and also public interest;
- the application for impleadment by the assignee of the agreement is filed with inordinate delay.

With these submissions, Shri.Uday Holla prayed for allowing this appeal.

10. Shri. Shashi Kiran Shetty, for the first plaintiff, mainly contended that:

- 'Agreement to Sell' was based on the terms of contract agreed between the parties;
- it was expressly agreed between the parties in the second agreement that there was no time limit to conclude the transaction. Therefore, the defence urged by the Trust that suit is time barred is untenable;
- first plaintiff has paid an advance sale consideration of Rs.16,37,000/-. He was always ready and willing to perform his part of the contract;
- the Trial Court has rightly decreed the suit and the impugned judgment does not call for any interference.

11. Shri. S.P.Shankar for one of the legal representatives of original second plaintiff and Shri. Ramesh

P. Kulkarni for remaining legal representatives of original second plaintiff, mainly contended that:

- the Trust had failed to obtain the permission from the authorities to complete the transaction. The cause of action is 'implied refusal';
- the Trust is attempting to alienate the property to third parties;
- the Trust has not disowned Shri. Birdhichand who has signed both agreements on behalf of the Trust. The very same Birdhichand has represented the Trust in W.P. No.17137/1981 also;
- the Trust has failed to produce the resolution book for the period relating to execution of Ex.P1 dated 11.03.1982;
- major part of agreed sale consideration was paid by first plaintiff. The Trust has not performed its part of contract and failed to obtain the necessary

permissions which are set out in paras 2 to 6 of Ex.P2;

- D.W.1 did not appear for cross-examination and D.W.2 did not appear for full cross-examination; and there is no rebuttal evidence on behalf of the Trust;
- invoking the provisions of Bombay Trust Act, 1950 is not permissible because the said Act is not applicable to the lands situated in Bangalore.

12. Shri. Madhusudan Rao, for the impleading applicant in I.A. No. 1/2018, contended that:

- with regard to non-production of first agreement (dated 20.3.1982), the Trial Court has rightly held that the said agreement has not been disputed by the Trust;
- in W.P. No. 17137/1981 dated 19.4.1983, Birdhichand had represented the Trust as its P.A. Holder;

- Ex.P.3 and Ex.P.4, are receipts for the total sum of Rs.16 lakhs and they are issued by Birdhichand on behalf of the Trust;
- the evidence of D.W.1 and D.W.2 cannot be considered and the documents relied upon by them also cannot be considered as they have not subjected them to cross-examination;
- in the second agreement, time to conclude the contract is kept open. In any event suit has been filed within the time prescribed under Article 54 of the Limitation Act, 1963. Therefore, the contention that the suit is time barred is untenable;
- the contention with regard to permission under the Bombay Public Trusts Act, 1950, is raised for the first time in this appeal and hence does not merit consideration.

13. We have carefully considered rival contentions and perused the records.

14. In the light of the material on record, the following points arise for our consideration:

- (i) *Whether the Trial Court was right in holding that agreements dated 20.03.1982 and 25.07.1982 were executed by the Trust's P.A. Holder?*
- (ii) *Whether the Trial Court was right in holding that a consideration of Rs.16.37 Lakhs (averred in the plaint)/Rs.16 Lakhs (mentioned in the receipt Ex.P4) was paid to the Trust?*
- (iii) *Whether the Trial Court was right in holding that first plaintiff was put in possession of the suit property?*
- (iv) *Whether the impugned judgment and decree calls for any interference?*

**Re. Point No. (i):**

15. In a suit for specific performance, the plaintiff is required to first prove the 'agreement to sell'. In this case, first plaintiff claims to have entered into two separate agreements dated 20.03.1982 and 25.07.1982 with the Trust but only the agreement dated 25.07.1982 has been marked as Ex.P2.

16. We have carefully perused Ex.P2. It is between the Trust (represented by P.A. Holder Birdhi C.Chowdhary) and the first plaintiff Parameshwara. It is stated therein that there was an earlier agreement dated 20.03.1982 between the parties based on the Resolution of the Trust dated 11.03.1982. It contains only 6 Clauses and they read as follows:

- 1. And Whereas M/s. Jamnalal Bajaj Seva Trust has realised the complications imposed by the law regarding the sale of lands belonging to the Trust in Karnataka, the Trust has agreed to take all necessary steps to solve and settle all the complecations by its own efforts and withdraw all the terms and conditions imposed on the second Party in this regard.*

2. *And Whereas it has been agreed between the P.A. Holder and the Second Party Sri. Parameswara that this Agreement has no time limitations untill such time that all necessary permissions obtained by the P.A. Holder on behalf of the Trust either from the Government of Karnataka, B.D.A. or from the Revenue Department*
3. *And Whereas it is agreed that the Second party Sri. Parameswara shall continues to be in possession of the Schedule properties and take all necessary steps to cultivate, develop and maintain the same as he deems fit since the Trust is unable to maintain the costly expenses of cultivation and control unauthorised Tress-passers on the schedule properties.*
4. *And whereas it has been agreed that the initial amount of Rs.1,37,000.00 by cheque and Rs.15,00,000/- cash in all Rs.16,37,000/- (Rupees sixteen lakhs thirty seven thousand only) paid by the second party to the First Party carries no interest (Payable by the First party) under any circumstances since it may take long time to obtain necessary permissions from the authorities referred to in Clause 2 above. However the Second party has agreed to be content with the income he derives from the cultivation of the schedule property.*
5. *And Whereas it has been agreed that the P.A Holder on behalf of the First Party shall incur all the expenses necessary for the completion of this Sale Transaction and maintain proper account for the same, and all such amounts spent shall be paid by the second party in addition to the Sale amount agreed upon in the first agreement referred to above.*

6. *And Whereas it has been agreed between the parties that this irrevocable sale Agreement is valid for all practical purposes since the responsibility of obtaining necessary permissions from the concerned authorities referred to in clause 2 above as the true and absolute owner of the schedule properties mentioned in the first agreement dated 20<sup>th</sup> March, 1982. And the First Party has also agreed that the Second party's rights over the Schedule properties and the possession shall never be severed or disturbed at any time untill the completion of the Sale Transaction.*

17. Ex.P2 is a document as loosely as it could be drafted. It does not contain the details of the property, details of the vendor, its title and the total consideration amount. It is mentioned in Clause-6 that the agreement is 'irrevocable' and 'valid for all practical purposes'.

18. The main contention of the Trust is that Birdhichand did not have the authority to enter into the 'Agreement to Sell' on behalf of the Trust and therefore, Ex.P2 is not a valid document.

19. In order to prove that Birdhichand was the P.A. Holder during the execution of Ex.P2, first plaintiff has produced Ex.P19, a copy of the order in W.P.No. 17137/1981.

In its cause title, Birdhichand is shown as the P.A.Holder of the Trust. The Power of Attorney in favour of Birdhichand authorising him to execute the agreement in question is not produced. First plaintiff (P.W.1), in his cross-examination has denied a suggestion that he had not verified whether Birdhichand was the P.A. Holder. He has also stated that there is a reference about the Power of Attorney in the Resolution (Ex.P1). We have perused the same. It is a copy of the Resolution of the Trust dated 11.03.1982. It is stated therein that Birdhichand was empowered to finalise and execute the 'Agreement to Sell' on behalf of the Trust in favour of C.N.Aiah and Parameshwara. We may record that Ex.P2 the 'amended agreement' is only in favour of Parameshwara and not in consonance with the said Resolution.

20. The learned Trial Judge has held that Birdhichand was the P.A.Holder of the Trust only on the basis of Ex.P19 (copy of the order in W.P. No. 17137/1981) and admission of D.W.2 that Birdhichand was the manager of the Trust. It is

observed by the learned Trial Judge in para 14 of the judgment that:

*"When third defendant was manager, naturally, it can be inferred that he was representing the trust in all the matters by obtaining power of attorney."*

21. This inference of the learned Trial Judge is illogical and cannot be accepted because there is no material on record to show that the manager of the Trust was appointed as a P.A.Holder. The above finding is based on surmise and hence, not sustainable.

22. On the other hand, it is a specific stand of the Trust that as on the date of the agreement, Birdhichand was not on the roll of the Trust. D.W.2 has produced the attendance Register (Ex.D35). In his cross-examination, he has stated that Birdhichand's accounts were settled in Bombay office on 05.07.1982. He has stated that the signature columns for 09 to 19 July, 1982 in respect of Birdhichand were blank. He has also denied a suggestion that Birdhichand was in service holding GPA as on 25.07.1982.

23. We may also record that there are two attesting witnesses to the agreement. Both have not been examined. It is recorded in the impugned judgment that the Advocate for the Trust had raised a contention that witnesses to the agreement were not examined. The learned Trial Judge has held that the Trust was in a better position to bring the witnesses before the Court as the witnesses were employees of the 'sister concern'. It is settled that it is always for the plaintiff to aver and prove his case. First plaintiff has sought specific performance of Ex.P2. Therefore, it was his duty to prove the same by placing cogent evidence.

24. Admittedly, Power of Attorney or its copy is not produced by the first plaintiff. The Trust has taken a definite stand that Birdhichand was not in service on the date of the agreement i.e., 25.07.1982. The attendance Register shows that Birdhichand has not signed the attendance from 09 to 19 July, 1982. D.W.2 has withstood the cross-examination.

25. Hence, there is absolutely no material on record to infer that Birdhichand was the P.A.Holder. Accordingly, the

point No. (i) is answered in the **negative** and in favour of the Trust.

**Re. Point No. (ii):**

26. Admittedly, the suit property measures about 168 acres and as per plaint averment, the agreed consideration is Rs.17,500/- per acre in 1982 which would work out to about Rs.29.40 Lakhs. It is first plaintiff's case that he has paid Rs.14,68,750/- in cash on the date of execution of Ex.P2. P.W.1 has been cross-examined with regard to payment of consideration. He has stated that he along with C.N.Aiah had paid Rs.1,30,000/- by cheque and remaining amount in cash to Birdhichand. He has not produced any material to prove that he had cash balance of Rs.14,68,750/-. He has denied a suggestion made during cross-examination that he had created the receipts as per Ex.P3 and P4. The tenor of cross-examination suggests that the Trust has taken a position that the receipts were created.

27. It is averred in the plaint that Rs.16,37,000/- has been paid to the Trust. In Ex.P4 the total amount mentioned is Rs.16 Lakhs. Exs.P3 and P4 are the receipts produced by the first plaintiff. We may record that they are photocopies and not original receipts. P.W.1 has admitted in his cross-examination that he was not aware about the original receipts.

28. The receipts (Exs.P3 and P4) are vague as they do not contain vital corresponding information such as the date of the agreement and details of the property.

29. The most important document namely, the first agreement, the Power of Attorney and the source of Rs.14 Lakhs on which the first plaintiff has built his case are not part of the record. It is not possible to believe that the first plaintiff had entered into an agreement to purchase 168 acres of land for Rs.29 Lakhs and paid Rs.14 Lakhs in cash in 1982 without proper documentation.

30. It is interesting to note that the second plaintiff filed an application dated 16.04.2004 to implead himself on the ground that first plaintiff had assigned his rights and transferred the suit property in his favour as per Assignment Deed dated 28.01.2002. First plaintiff opposed the said application and denied execution of any Assignment Deed. The leaned Trial Judge *vide* order dated 07.03.2006 has allowed the application on the ground that second plaintiff would assist the Court in effective disposal of the case.

31. In his application for impleadment, second plaintiff has stated that Parameshwara was his business partner and he had assigned the agreement in his favour. In his examination-in-chief, he has stated that he had paid Rs.14,68,750/- by cash and Rs.1,34,250/- by cheque to the first plaintiff. In the cross-examination, he has admitted that he had not produced any receipts in respect of the said payments. He has further stated that the first plaintiff was a coolie in railway station in the year 1980.

32. The Trust's case is that after learning about the agreement, it had informed Parameshwara and C.N.Aiah that the agreement was without any authority and unenforceable. Realising that the agreement was unenforceable, Parameshwara and C.N.Aiah had written a letter dated 04.07.1983 (Ex.D6) stating that the agreement stood cancelled and requested for refund of money. The Trust, as a good gesture has refunded Rs.90,000/- to C.N.Aiah and Rs.30,000/- to the Parameshwara as per receipts Ex.D7 and D8. D.W.2 has also produced the statement issued by Canara Bank [Ex.D10(a)]. Ex.D7 is the receipt issued by Parameshwara having received Cheque number 177617 for Rs.30,000/- in full and final settlement. Ex.D8 is the receipt issued by C.N.Aiah for having received Cheque number 177616 for Rs.90,000/- in full and final settlement. Ex.D10 is the Bank statement, it shows clearance of Cheque for Rs.90,000/- issued to C.N.Aiah and another Cheque bearing number 177618 for Rs.30,000/-. D.W.2 has been cross-examined with regard to the Cheque number issued to

Parameshwara. He has explained that as there was a clerical mistake in Cheque number 177617, it was cancelled and a new Cheque number 177618 was issued to Parameshwara. The Trust has also produced the cancelled Cheque number 177617 as Ex.D11.

33. Thus, plaintiffs have not brought any evidence before the Court to prove that they had paid a sum of Rs.14,68,750/- in cash. The first plaintiff and C.N.Aiah have jointly sought for refund as per Ex.D6 and cumulatively received Rs.1,20,000/- in full and final settlement of their accounts as per Exs.D7 and D8. D.W.2 has withstood the cross-examination. Statement issued by Canara Bank as per Ex.D10(a) conclusively establishes that the cheques issued to Parameshwara and C.N.Aiah have been encashed. Therefore, we hold that the plaintiffs have failed to prove payment of any consideration. Accordingly, we answer the point No.(ii) in the **negative** and in favour of the Trust.

**Re. Point No. (iii):**

34. It is first plaintiff's case that he is in physical possession of 168.06 acres. In the cross-examination, it was suggested to him that he was not in the possession of the suit property and he has denied the same, but he has stated that APMC had acquired the property and the possession is with the APMC. Second plaintiff in his examination has stated that he was in the possession of the property from the year 1982. It is relevant to note that though the suit is based on an agreement of the year 1982, the second plaintiff has claimed that he had given the entire sale consideration to Parameshwara. He has not chosen to enforce the agreement on his own. On the other hand, he has filed an application for impleadment in the year 2004, based on Assignment Deed alleged to have been executed by Parameshwara in 2002. Parameshwara has opposed the application denying the Assignment Deed. Suffice to note that second plaintiff who claims to be in possession has remained complacent with

regard to the transaction which originated in the year 1982 for 22 years.

35. The Trust has taken a definite stand that it is in possession of the suit property. It has produced the RTC records to prove the same. D.W.2 has asserted in his cross-examination that the land is in the possession of the Trust.

36. The learned Trial Judge has held that as per the terms of the agreement, it must be 'presumed' that first plaintiff continued in possession of the property. This finding is based on the 'presumption' of the learned Trial Judge and not based on evidence. Therefore, we hold that plaintiffs have failed to prove that they are in possession of the suit property and answer point No.(iii) in the **negative** and in favour of the Trust.

37. Following five applications are pending adjudication:

- i. I.A.No.6/2016 and I.A.No.3/2023 filed by one Shri. Muniswamy seeking to implead himself on the ground that a Deed of Transfer of Rights of

the agreement dated 25.07.1982 was executed by Parameshwara in his favour. The said Transfer deed is dated 23.12.1991. He has stated in his affidavit dated 01.07.2023 that Parameshwara had filed the instant suit without bringing to the notice of the Trial Court about the Assignment Deed and he was made as a party. It is further stated that since he was not made as a party, his rights were affected by the Impugned judgement. That he has also filed R.F.A. No. 1927/2013. That he has also filed O.S. No.9280/2013 in the City Civil Court against Parameshwara and second plaintiff seeking specific performance. In view of the findings recorded by us hereinabove and applicant's averment that he has filed a separate suit against the plaintiffs, I.A.No.6/2016 and I.A.No.3/2023 do not merit

any consideration and are liable to be dismissed.

- ii. I.A.No.1/2018 filed by one Dr.Aravind Desai seeking to implead himself in this appeal on the ground that Parameshwara had executed a Will dated 10.06.2013 in his favour and that he has absolute right and interest in the suit property. In view of the findings recorded by us hereinabove and applicant's right is based on a Will, in our opinion, I.A.No.No.1/2018 does not merit any consideration and is liable to be dismissed.
- iii. I.A.No.3/2021 and I.A.No.4/2021 are by the Trust for additional grounds and to produce additional evidence. In view of the findings recorded by us hereinabove the said applications are unnecessary.

**Re. Point No. (iv):**

38. The instant suit is one for specific performance of 'Agreement to Sell'. The first agreement is not produced. The second agreement is not proved. Payment of consideration is not proved. Parameshwara has admitted that he has not even got a legal notice issued in a sale transaction of 168 acres of land in Bengaluru. The alleged second agreement is of the year 1982 and the instant suit is filed in 1994 after a lapse of 12 years. The suit has been decreed based on learned Trial Judge's 'inference' and 'presumption' and therefore, unsustainable in law. Hence, we answer the point No.(iv) in the ***affirmative***.

39. We may record that this is a classic case of speculative litigation causing huge loss of judicial time. The defendant Trust has been compelled to defend its cause for nearly 30 years. Therefore, in our considered view, this appeal deserves to be allowed with exemplary cost. Hence, the following:

**ORDER**

(i) Appeal is **allowed** with costs throughout payable to the Trust and an additional cost of Rs.5,00,000/- payable jointly and severally by the legal representatives of respondents No.1 and 2 to the Registrar General of this Court.

(ii) Judgement and decree in O.S No. 641/1994 dated March 23, 2013 is **set-aside** and the suit is **dismissed**.

(iii) I.A. No.6/2016 and I.A.No.3/2023 are **dismissed** with cost of Rs.1,00,000/- payable by the applicant to the Registrar General of this Court.

(iv) I.A. No.1/2018 is **dismissed** with cost of Rs.1,00,000/- payable by the applicant to the Registrar General of this Court.

(v) I.A.No.3/2021 and I.A.No.4/2021 by the Trust are ***disposed of***.

*Before parting with this judgment, this Court places on record its deep appreciation for the research and assistance rendered by its official Research Assistants-cum-Law Clerks, Ms. Preksha R. Lalwani and Ms. Pooja Umashankar.*

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**