

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2026

(Arising out of Special Leave Petition (Civil) No.17922 of 2023)

ASIF ALI & OTHERS

APPELLANTS

VERSUS

RAJESAB & OTHERS

RESPONDENTS

ORDER

Leave granted.

2. The instant SLP has been preferred against the impugned judgement and order dated 10.02.2023 passed by the High Court of Karnataka at Dharwad Bench in R.S.A. No.100340/2015.

3. The brief facts of the case are that in a suit for specific performance of contract being O.S. No.370/2005 filed before the Court of the III Additional Civil Judge (Senior Division), Belgaum (for short “Trial Court”), the plaintiff(s) of whom the respondents herein are Legal Representatives (LRs), alleged that appellant No.1 on his behalf and on behalf of appellant No.5 as his minor guardian and appellant Nos.2 to 4 agreed to sell the suit property, bearing Plot No.28 measuring 1800 Sq. Feet now bearing CTS No.9700 out of the land bearing R.S. No.1002/1, for a

consideration amount of Rs.5,25,000/- by receiving the advance amount of Rs.1,00,000/- but failed to execute a sale deed thereafter. Per contra, the appellants-defendants contended that they were not absolute owners in respect of the suit property and that in any case the description of the suit property in the plaint was incorrect.

4. On 25.07.2009, the Trial Court decreed the suit and held that the appellants-defendants are the owners of the suit property and had entered into a valid registered agreement of sale dated 10.07.2003 by receiving earnest money of Rs.1,00,000/-. Hence, all the appellants-defendants were liable to execute a registered sale deed.

5. Aggrieved, the appellants-defendants filed R.A. No.446/2009 on the file of I Additional District Judge, Belagavi. However, the learned District Judge dismissed the appeal vide order dated 28.01.2015.

6. The appellants-defendants then preferred an Appeal being R.S.A. No.100340/2015 before the High Court of Karnataka, Dharwad Bench. On 10.02.2023, the High Court by way of the impugned judgment also dismissed the appeal of the appellants-defendants finding that the appeal raised no substantial question

of law. Aggrieved, the appellants-defendants are now before this Court by filing the instant SLP.

7. We have heard Sri P. Vishwanatha Shetty, learned senior counsel for the appellants and Sri Ravi Prakash, learned senior counsel for the respondents.

8. Section 20 of the Specific Relief Act, 1963 prior to its amendment reads as under:

“20. Discretion as to decreeing specific performance.- (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:-

- (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or
- (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or
- (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.- Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.- The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

9. A reading of sub-section (1) of Section 20 of the aforesaid Act would make it apparent that the discretion to be exercised in a case for specific performance of a contract must be sound and reasonable and not arbitrary. Even if it is lawful to grant the relief, it may not be granted by the court of law in exercise of its discretion judiciously.

10. In the instant case, it is noted that the total consideration under the agreement to sell was Rs.5,25,000/- out of which a sum of Rs.1,00,000/- only was paid by the respondents to the appellants herein. It is also the contention that the appellant

Nos.2 to 4 were minors at the time when the agreement to sell was entered into.

11. In the above circumstances, since major portion of the consideration amount was not paid by the respondents to the appellants, we do not think that the discretion can be exercised in favour of the appellant herein. So as to direct the appellants to execute sale deed in favour of the respondents, we find that in the facts and circumstances of the case, justice would be served if the alternative relief is granted to the respondents rather than granting the relief by directing the appellants to execute the sale deed.

12. We dispose of this appeal by setting aside the impugned judgments of the High Court, the first Appellate Court as well as the Trial Court and dispose of the respondent-plaintiffs' suit by granting the alternative relief sought by them in O.S. No.370/2005. Accordingly, the sum of Rs.1,00,000/- (Rupees One Lakh only) paid by the respondents-plaintiffs to the appellants-defendants shall be returned by the appellants-defendants together with interest at the rate of 18% per annum from the date of the agreement being 10.07.2003 till the date of realisation rounded off to Rs.5,50,000/- being the minimum amount. The

said amount shall be returned within a period of two months from today without driving the respondents-plaintiffs to file any execution petition.

13. Since it is stated by learned senior counsel for the respondents-plaintiffs that a sum of Rs.4,25,000/- (Rupees Four Lakhs and Twenty-Five Thousand Only) was deposited by them in the Executing Court, the same shall be returned to them with accrued interest, if any.

14. It is needless to observe that in the event an application for seeking refund of the said amount along with the accrued interest, if any, is made by the respondents herein before the Executing Court, the said application shall be considered and ordered as expeditiously as possible.

15. The appeal is allowed in the aforesaid terms.

No costs.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

**NEW DELHI;
JANUARY 19, 2026.**

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 17922/2023
[Arising out of impugned final judgment and order dated 10-02-2023
in RSA No. 100340/2015 passed by the High Court of Karnataka
Circuit Bench at Dharwad]

ASIF ALI & OTHERS

Petitioner(s)

VERSUS

RAJESAB & OTHERS

Respondent(s)

(IA No. 147620/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 19-01-2026 This matter was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Mr. P Vishwanatha Shetty, Sr. Adv.
Mr. Shankar Divate, Adv.
Mr. Sanjay Arya, Adv.
Mr. Puneet Chopra, Adv.
Mrs. Anjlika Chopra, Adv.
Mr. Shankar Divate, AOR

For Respondent(s) Mr. Ravi Prakash, Sr. Adv.
Mr. Samir Malik, Adv.
Mr. Mahip Singh Sikarwar, Adv.
Ms. Ayushi Pandey, Adv.
M/S. D.S.K. Legal, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeal is allowed in terms of the signed order.
3. Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)

ASTT. REGISTRAR-cum-PS

(DIVYA BABBAR)

COURT MASTER (NSH)

(Signed order is placed on the file)