IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CIVIL REVISION PETITION NO. 200002 OF 2025

BETWEEN:

MOHD. SHAFEEQUE-UR-RAHEMAN
S/O MOHD. ABDUL RAHEMAN,
AGED ABOUT 44 YEARS,
OCC: AGRICULTURE,
R/O: FLAT NO.T-7(B) BLOCK,
3RD FLOOR, DR. ABID SR RESIDENCY,
OPPOSITE TO DR. L.S. RATHI HOSPITAL,
OLD JEWARAGI ROAD, KALABURAGI – 585 102.

…PETITIONER

(BY SRI R.S.SIDHAPURKAR, ADVOCATE)

AND:

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

1. T.B. VISHNUMURTHY
   S/O LATE T. BABURAYA,
   AGED ABOUT 50 YEARS,
   OCC: AGRICULTURE,
   R/O: VENKATESH NAGAR,
   KALABURAGI – 585 102.

2. MR. SANGAMANATH
   S/O LATE BASAWARAJ BIRADAR
   AGED ABOUT 50 YEARS,
   OCC: AGRICULTURE,
   R/O: VILLAGE HADGLI HARUTI,
   TQ: AND DIST: KALABURAGI – 585 102.

3. GURUSHANTH
S/O BASAWARAJ
AGED ABOUT 50 YEARS,
OCC: AGRICULTURE,
R/O: VILLAGE HADGLI HARUTI,
TQ: AND DIST: KALABURAGI – 585 102.

4. SHARANBASSAPPA
S/O LATE SHANKAR
AGED ABOUT 40 YEARS,
OCC: AGRICULTURE,
R/O: VILLAGE HADGLI HARUTI,
TQ: AND DIST: KALABURAGI – 585 102.

5. SIDRAMAPPA @ SIDDANNA
S/O LATE SHANKAR
AGED ABOUT 40 YEARS,
OCC: AGRICULTURE,
R/O: VILLAGE HADGLI HARUTI,
TQ: & DIST: KALABURAGI – 585 102.

6. PRADEEP
S/O GANESH SANGA
AGED ABOUT 38YEARS,
OCC: AGRICULTURE,
R/O: H.N.2-B WING,
ASIAN RESIDENCY,
OPP: GUDA OFFICE,
KALABURAGI – 585 102.

Deleted as per Court order dated 14.02.2025.

…RESPONDENTS

(BY SRI RAMACHANDRA K., ADVOCATE FOR R1;
SRI CHAITANYAKUMAR C.M., ADVOCATE FOR R4;
R2 AND R3 ARE SERVED)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE, PRAYING TO SET ASIDE THE ORDER DATED 24.06.2022 PASSED IN O.S.NO.119/2019 BY THE LEARNED I ADDITIONAL SENIOR CIVIL JUDGE AT KALABURAGI AND ALLOW I.A.NO.5 CONSEQUENTLY DISMISS THE SUIT AS BARRED BY LIMITATION.

THIS CIVIL REVISION PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL ORDER

(PER: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE)

Heard the learned counsel appearing for the petitioner and learned counsel for the respondents.

2. This petition is filed aggrieved by the order dated 14.11.2022 passed on preliminary issue No.6 in O.S.No.119/2019 on the file of I Additional Senior Civil Judge at Kalaburagi. Additional issue No.6 is relating to the limitation.

3. The Trial Court after considering the materials on record has concluded that the issue raised is a question of law and fact and it cannot be decide as a preliminary issue.

4. Learned counsel appearing for the petitioner taking to the facts of the case would submit that initially a suit was filed by the plaintiff in O.S.No.552/2014 on the file of the Civil Judge (Jr. Division) at Gulbarga, against two defendants, where the relief sought is for injunction in respect of an immovable property. In the said suit, the plaintiff claimed that he had

entered into an agreement for sale dated 28.05.2010, to purchase the property from the defendants. It is further stated in the said plaint, that a civil dispute is pending between the defendants and some others and for this reason, the sale deed is not yet executed and apprehending alienation of the property, the suit is filed to restrain the defendants from alienating or creating any third parties charges over the suit property.

5. In the said suit, the present petitioner got himself impleaded as defendant No.6. After getting impleaded defendant No.6 took the contention that the original defendants in O.S.No.552/2014 are not the owners and defendant No.6 has already purchased the said property (during the pendency of the suit in O.S.No.552/2014), and prayed for dismissal of the suit.

6. Since defendant No.4 took a stand that there is already a sale deed, and the plaintiff filed an application to withdraw the suit and to file a fresh suit based on the cause of action.

7. The said application to withdraw the suit was allowed and the plaintiff was permitted to withdraw the suit and to file a fresh suit based on the same cause of action.

8. Thereafter, the plaintiff filed the suit in O.S.No.119/2019 for specific performance of contract, wherein, the plaintiff has challenged the sale transaction in favour of defendant No.4 in the earlier suit, who is defendant No.6 in the present suit. The plaintiff in the said suit has alleged that the said transaction in favour of defendant No.6 doesn't bind the plaintiff and the vendor of defendant No.6 is not the owner of the property and the plaintiff asserted that defendants No.1 and 2 are the owners of the property.

9. In the said suit, an application is filed under Order VII Rule 11 of Code of Civil Procedure (for short 'Code') to dismiss the suit for want of cause of action and also on account of limitation. The said application was dismissed by the Trial Court on a premise that application under Order VII Rule 11 of the Code is not maintainable, as sufficient averments are made out in the plaint to try the suit on merits. Said order is not questioned and has attained finality.

10. Thereafter, the defendant filed one more application to hear issue No.6 relating to limitation as a preliminary issue. The Trial Court rejected the said application on premise that issue is a mixed question of law and fact.

11. Learned counsel appearing for the petitioner would submit that Trial Court could not have rejected the application to consider issue No.6 as preliminary issue and it is his contention that issue relating to the limitation goes to the root of the matter and should have been treated as a preliminary issue and the Trial Court should have dismissed the suit on the account of limitation.

12. This Court is not convinced the submission made at the Bar.

13. Admittedly, the suit is filed for specific performance of the agreement for sale dated 28.05.2010. The agreement does not stipulate any time limit to execute the registered sale deed.

14. The relief sought against defendants No.1 & 2 who according to the plaintiff are the owners of the property and plaintiff contends that the vendors of the defendant No.6 are

not the owners of the property and the sale deed executed by vendors of defendant No.6 is not binding on the plaintiff.

15. It is relevant to notice that the sale transaction in favour of defendant No.6 has taken place during the pendency of the earlier suit in O.S.No.552/2014. Thereafter, an application is filed in the said to withdraw the suit and file a separate on the same cause of action. Since the plaintiff is seeking a specific performance of contract which is executed in the year 2010 and though the suit is filed in 2019, what is required to be notice is the agreement does not stipulate any time limit to perform the contract. Thus, the limitation starts from the date of cause of action. And more importantly, defendant No.6 cannot be raise a contention relating to limitation as he claims to be purchased the property from the different vendors and the plaintiff asserts that the vendors of defendant No.6 are not the owners of the property. If the plaintiff is able to establish that defendants No.1 & 2 are the owners of the property, then defendant No.6 does not acquire any title over the property. Even if defendant No.6 is said to be in possession of the property pursuant to sale deed which is executed in the year 2015, the suit cannot be said to be time

barred as the plaintiff can seek possession in the property in case defendant No.6 is in possession and said defendant is not the owner.

16. Thus the issue relating to limitation in the present case is a mixed question of law and fact. Under these circumstances, the finding of the Trial Court does not call for any interference.

17. Accordingly, the petition is ***dismissed.***

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

TMP
List No.: 1 Sl No.: 42