

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 19TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CIVIL REVISION PETITION NO.100101 OF 2025

BETWEEN:

MALAPPA
S/O. MARITAMMAPPA AMARSHETTY,
AGE. 80 YEARS, OCC. AGRICULTURE,
R/O. AMMINABHAVI,
TQ. AND DIST. DHARWAD-580 201.

... PETITIONER

(BY SRI. ABHISHEK KALLED, ADVOCATE)

AND:

1. M/S. ALLIED BUILDERS,
DIAMOND CORNER,
DESHPANDE NAGAR,
HUBBALLI-580 020,
REPRESENTED BY ITS PARTNER,
MUKHESH HARIJIVANDAS PATADIA,
R/O. ADARSH NAGAR,
HUBBALLI-580 035.
2. JAKKAVVA W/O. BASAVANEPPA KAMPLI,
AGED ABOUT: 64 YEARS, OCC: HOUSEHOLD,
R/O. SANGATIKOPPA, TQ: KALAGHATAGI,
DIST: DHARWAD-581 204.
3. SAVAKKA W/O. CHANNABASAPPA SULLAD,
AGED ABOUT: 60 YEARS, OCC: HOUSEHOLD,
R/O. GANESHPETH, TQ: HUBLI,
DIST: DHARWAD-580 020.



4. DYAMAVVA
W/O. BASAVANNEPPA SATYAPPANAVAR,
AGE: 62 YEARS, OCC: AGRICULTURE,
R/O. PUDAKALAKATTI,
TQ. AND DIST: DHARWAD-581 206.
5. NEELAVVA W/O. BASAPPA BENNI,
AGED ABOUT: 62 YEARS,
OCC: HOUSEHOLD,
R/O. AKKI ONI, TQ: SAVADATTI,
DIST: BELAGAVI-591 126.
6. SEEMA W/O. SANJEEV PUJAR,
AGE: 37 YEARS, OCC: HOUSEHOLD,
R/O. MAYUR PARK, YALAKKI SHETTAR ONI,
DHARWAD-580 004.
7. SANJEEV S/O. HANUMANTHAPPA PUJAR,
AGE: 47 YEARS, OCC: ADVOCATE,
R/O. MAYUR PARK, YALAKKI SHETTAR ONI,
DHARWAD-580 004.
8. SHILPA D/O. CHANNABASAPPA SULLAD,
AGE: 41 YEARS, OCC: PRIVATE JOB,
PRESENTLY R/O. SULLAD COMPOUND,
LAMINGTON ROAD, HUBLI-580 020.
9. SIDDARAMAPPA
S/O. CHANNABASAPPA SULLAD,
AGED ABOUT: 35 YEARS, OCC: BUSINESS,
PRESENTLY R/O. SULLAD COMPOUND,
LAMINGTON ROAD, HUBLI-580 020.
10. BASAVARAJ S/O. CHANNABASAPPA SULLAD,
AGED ABOUT: 35 YEARS, OCC: AGRICULTURE,
PRESENTLY R/O. SULLAD COMPOUND,
LAMINGTON ROAD, HUBLI-580 020.
11. ARUN S/O. LAXMANRAO NEELOPANT,

AGE: 67 YEARS, OCC: ADVOCATE,
R/O. SRI NIKETANA, 1ST MAIN JAYANAGARA,
DHARWAD-580 001.

... RESPONDENTS

(BY SRI. ASHOK HARANALLI, SENIOR COUNSEL FOR
SRI. AMRUTH V. JOIS, ADVOCATE FOR R1;
SRI. MALLIKARJUNASWAMY B. HIEMATH, ADVOCATE FOR
R4 AND R5;
SRI. ROSHAN SAHEB CHABBI, ADVOCATE FOR R2, R3,
R6 TO R10;
SMT. KAVITA S. JADHAV, ADVOCATE FOR R11)

THIS CRP IS FILED UNDER SECTION 115 OF THE CODE
OF CIVIL PROCEDURE, PRAYING TO SET ASIDE THE
IMPUGNED ORDER DATED 22.09.2025 PASSED ON I.A. NO.4
BY THE TRIAL COURT AND CONSEQUENTLY ALLOW THE I.A.
NO.4 IN O.S. NO.319/2025 BY REJECTING THE PLAINT
PENDING ON THE FILE OF II ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, HUBBALLI AS PER ANNEXURE-F BY
ALLOWING THE PETITION AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED
FOR ADMISSION ON 12TH DECEMBER 2025 AND COMING ON
FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED
THE FOLLOWING:

CORAM: HON'BLE MR.JUSTICE ANANT RAMANATH HEGDE

CAV ORDER

The petitioner is assailing the order rejecting the application filed under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (Code). The petitioner contends that the suit filed before the Senior Civil Judge is not maintainable and urges that only the Commercial Court constituted under the Commercial Courts Act, 2015 (the Act, 2015) is competent to try the suit.

2. Put briefly, the suit is:

- a) To declare that the decree dated 23.04.2019 in O.S. No. 2/2009 before the I Additional Senior Civil Judge, Dharwad is not binding on the plaintiff-firm.
- b) To declare that the transactions, viz., Gift Deeds and Sale Deeds said to have taken place between defendants No. 1 to 11 in respect of the suit item No. 1 property, are not binding upon the plaintiff-firm and the suit properties.

- c) For Specific Performance of the contract dated 05.05.2007 and to direct defendant No. 1 to execute the registered sale deed in respect of the suit property.
- d) In the alternative, for a refund of the earnest money along with interest.
- e) In the alternative, to direct the defendants to hand over possession of the suit properties to the plaintiff-firm for the development and sale of the suit properties as per the terms and conditions of the Registered Agreement for Development and Sale dated 29.03.2008 and the registered General Power of Attorney dated 28.03.2008.
- f) And for a permanent perpetual injunction against the defendants, or any person claiming through or under them, restraining them from changing the nature of the suit properties in any manner whatsoever.

3. The learned counsel appearing for the petitioner/ defendant No.1 raised the following contentions:

- (i) The plaint refers to an alleged development and sale agreement between defendant No. 1 and the plaintiff dated 29.03.2008, which replaced an earlier agreement for sale dated 05.05.2007 between the parties. One of the alternative reliefs is to enforce the development and sale agreement; as such, the dispute is a commercial dispute.
- (ii) The registered General Power of Attorney dated 28.03.2008 enables the power of attorney holder/plaintiff to sell the developed property in terms of the registered agreement dated 29.03.2008. Since the transaction is a commercial transaction relating to construction and development, the suit can be tried only by the Commercial Court.

4. Elaborating on the submission, the learned counsel for the petitioner invited the attention of the Court to Section 2(1)(c), sub-clauses (vi), (vii), and (xi), and the explanation to the said Section 2(1)(c) of the Act, 2015.

5. In support of the contention, the learned counsel for the petitioner also relied on the following judgments:

[1] M/s. Kiran Builders, Bengaluru v. M. Surya Babu¹,

[2] Sri R.J. Dayananda v. Smt. Narasamma and others²,.

[3] Blue Nile Developers Private Limited v. Movva Chandra Sekhar and Others³.

[4] Blue Nile Developers Private Limited v. Movva Chandra Sekhar and Others,⁴.

[5] Sushil Kumar Agarwal v. Meenakshi Sadhu and Others⁵,

[6] Aase Ram v. Amit Kumar⁶,.

6. The learned Senior counsel appearing for the contesting respondent defended the impugned order and submitted that:

¹ **2024 (2) KCCR 1256**

² **W.P. No. 28536/2024 (Karnataka High Court)**

³ **2021 SCC OnLine AP 3964 (Andhra Pradesh High Court DB)**

⁴ **SLP(C) No. 3819/2022 (Supreme Court of India)**

⁵ **(2019) 2 SCC 241.**

⁶ **Civil Appeal No. 9481/2005 (Supreme Court of India), decided on 14.07.2025**

- (i) The dispute raised before the Trial Court does not attract the provisions of the Act, 2015.
- (ii) The “construction and infrastructure” contracts referred to in Section 2(1)(c)(vi) of the Act, 2015 do not include agreements of the nature referred to in the suit before the Trial Court, and the said document cannot be construed as a construction and infrastructure contract.
- (iii) The suit is one for specific performance of a contract to enforce the agreement to sell dated 05.05.2007 and not to enforce the construction and development agreement dated 29.03.2008, as the relief sought with respect to the construction and development agreement dated 29.03.2008 is sought in the alternative, and the said alternative relief is only for possession of the property and nothing more.

7. The Court has considered the contentions raised at the Bar and perused the records.

8. The Act, 2015 provides for the adjudication of commercial disputes by a Commercial Court. The expression

“commercial dispute” is defined in Section 2(1)(c) of the Act, 2015.

9. The Trial Court held that the plaintiff sought for specific performance of contract and alternative relief is only the relief of possession of the suit schedule property as per the terms and conditions of the registered agreement for development and sale dated 29.03.2008 and the General Power of Attorney dated 28.03.2008. It further held that there is no dispute as to the agreement dated 29.03.2008 and consequently rejected the application.

10. The Trial Court is of the view that the plaintiff-firm has not made any assertion regarding compliance or non-compliance with the terms of the development agreement and has also not complained of any breach in respect of the terms and conditions stipulated in the development agreement dated 29.03.2008. The Trial Court observed that any commercial dispute would commence only if the development agreement is put into execution.

11. The relevant portion of the alternative relief sought by the plaintiff reads as under:

*"e)the Hon'ble Court be pleased to direct the defendants to hand over the possession of the suit properties to the plaintiff firm for **development and sale of the suit properties as per terms and conditions of the Registered Agreement for Development and Sale dated 29.03.2008** registered vide Doc No. HBL-1-00024-2008-09 stored in CD No. HBLD95 dated 04.04.2008 and the registered General Power of Attorney dated 28.03.2008 registered vide document No. HBL-4-00002-2008-09 stored in CD No. HBLD95 dated 01.04.2008."*

(Emphasis supplied)

12. Thus, the prayer is to direct the defendants to hand over possession of the suit properties to the plaintiff-firm for the development and sale of the suit properties as per the terms and conditions of the registered agreement for development and sale dated 29.03.2008 and the registered General Power of Attorney dated 28.03.2008.

13. In paragraph No. 11 of the plaint, the plaintiff extracted Clauses (a) to (p) of the terms and conditions of the agreement dated 29.03.2008. Said clauses in the agreement, read with the clauses in the General Power of Attorney, clearly demonstrate that the plaintiff-firm is enabled to **construct a commercial/residential complex** on the property covered by the said agreement. The plaintiff is also enabled to sell the developed property after construction, except for a 10,000 square foot built-up area on the 3rd floor. Said 10,000 square feet, in terms of the agreement dated 29.03.2008, which is said to be the share of defendant No. 1.

14. Thus, if the alternative relief is granted, it would enable the plaintiff to put up construction and develop the property into a residential/commercial complex and the plaintiff-firm would be competent to sell the same, except for the 10,000 square foot built-up area on the 3rd floor.

15. This being the position, the Court is of the view that the Trial Court erred in holding that the relief sought by the plaintiff is only for specific performance of contract and for possession in the alternative and does not attract the

provisions of the Act, 2015. The Trial Court did not notice that the alternative relief of possession is not merely a relief of possession but a relief to put the plaintiff in possession pursuant to a registered development and sale agreement, which enables the plaintiff to develop the property and build a commercial and residential complex.

16. The next question is whether the registered development and sale agreement dated 29.03.2008, read with the registered General Power of Attorney dated 28.03.2008, would fall under the category of **"construction and infrastructure contracts, including tenders,"** as defined under Section 2(1)(c)(vi) of the Act, 2015.

17. The learned Senior counsel appearing for the respondent/plaintiff urged that the agreement in question cannot be construed as an "construction and infrastructure agreement" but is only a construction agreement. It is urged that to attract Section 2(1)(c)(vi) of the Act, 2015, the agreement must be for the construction and development of infrastructure. Since the agreement does not fulfil the

aforementioned requirement, it is urged that the dispute cannot be termed a commercial dispute.

18. It is noted that the expressions "construction and infrastructure," "construction," or "infrastructure" are not defined under the Act, 2015.

19. The object of the Act, 2015 is to provide a separate forum for the speedy adjudication and resolution of "commercial disputes." Section 2(1)(c) of the Act, 2015, which defines the expression "commercial disputes," refers to several commercial transactions and contracts. Since the expression "construction and infrastructure contracts" is not defined in the Act, 2015, as a normal rule, one must refer to the dictionary meanings of the terms "construction" and "infrastructure."

20. As per the Oxford Learner's Dictionary the word "construction" is described as under:

"the process or method of building or making something, especially roads, buildings, bridges, etc."

21. As per the Cambridge Dictionary "construction" is described as under:

"the work of building or making something, especially buildings, bridges, etc."

22. As per the Oxford Learner's Dictionary the word "infrastructure" is described as under:

"the basic systems and services that are necessary for a country or an organization to run smoothly, for example buildings, transport and water and power supplies."

23. As per the Cambridge Dictionary "infrastructure" is described as under:

"the basic systems and services, such as transport and power supplies, that a country or organization uses in order to work effectively".

24. It is also relevant to notice in the definition under Section 2(1)(c)(vi) of the Act, 2015, the Parliament has not used the expression as "construction of infrastructure contracts, including tenders" but has used the expression as "construction and infrastructure contracts, including tenders".

Thus, it is evident that the Parliament intended to include the contracts relating to construction as well as infrastructure.

25. The contention on behalf of the plaintiff is that the “construction and infrastructure” contracts referred to in Section 2(1)(c)(vi) of the Act, 2015 should be understood as a single expression, and the contract must include both construction and infrastructure activities to fall under Section 2(1)(c)(vi) of the Act, 2015.

26. The Division Bench of the Andhra Pradesh High Court in **Blue Nile Developers Private Limited** (*supra*) held (in paragraph No. 20) that if the expression “construction and infrastructure” is read as one, it would exclude exclusive “construction contracts” or “infrastructure contracts” from the purview of Section 2(1)(c)(vi) of the Act, 2015. The Division Bench held that such an interpretation is not permissible.

27. The object of the Act, 2015 is to ensure the speedy resolution of disputes involving commercial transactions. *That being the position, the Court is of the view that if the expression “**construction and infrastructure contracts,***

including tenders” in Section 2(1)(c)(vi) of the Act, 2015 were considered a single conjunctive expression—meaning the contract must be for both construction and infrastructure—it would defeat the object of the Act, 2015.

28. The Court is of the view that the expression “construction and infrastructure contracts including tenders” in Section 2(1)(c)(vi) of the Act, 2015 need not necessarily be read conjunctively; it can also be read disjunctively. In other words, the expression “construction and infrastructure contracts, including tenders” in Section 2(1)(c)(vi) of the Act, 2015 includes construction contracts, infrastructure contracts, combined construction and infrastructure contracts, and tenders for either.

29. As per the terms of the contract dated 29.03.2008, the developer is enabled to demolish the old building and construct a commercial/residential complex.

30. Though the agreement under scrutiny does not specifically use the word “infrastructure,” for the reasons discussed above, the Court is of the view that the contract

dated 29.03.2008 for the construction of a commercial/residential complex—enabling the developer to construct and sell the property—does fall under Section 2(1)(c)(vi) of the Act, 2015.

31. It is noticed that application I.A. No. IV was filed to reject the plaint by invoking Order VII Rule 11(d) of the Code. Merely because a suit is filed before the wrong forum, it is not a ground to reject the plaint. The proper course is to return the plaint, even though the prayer was for rejection under Order VII Rule 11.

32. For the aforementioned reasons, the impugned order must be set aside.

33. Hence the following:

ORDER

- (i) The petition is ***allowed in part.***
- (ii) The impugned order dated 22.09.2025 on the file of II Additional Senior Civil Judge, Hubballi in I.A.No.IV in O.S.No.319/2025 is set aside.

- (iii) The plaint is ordered to be returned to the plaintiff with a direction to present the same before the jurisdictional Commercial Court.
- (iv) The Court fee already paid if sufficient, shall be treated as Court fee paid before the Commercial Court in case the plaint is presented before the Commercial Court.
- (v) If the suit is presented before the Commercial Court, the plaintiff is also permitted to make necessary changes in the new plaint to meet the requirements of the pleadings in the commercial suit. The plaint returned to the plaintiff shall be annexed to the plaint in commercial suit, for reference.
- (vi) The interim order if any granted by the Senior Civil Judge will be in force for 20 days from today.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

GVP/CHS.