



IN THE COURT OF III ADDL. CIVIL JUDGE AND JMFC
AT KADUR

PRESENT : Sri. Thahakaleel K.A. B.A. LL.B

III Addl., Civil Judge and JMFC., Kadur.

Dated: This 28th day of July 2026

OS No.450/2023

Plaintiff : **Sri. Suresha S/o Late. Lakshmana,**
Aged about 47 years, Agriculturist,
R/o Ramadevaragudi Road, Kalidasa
Nagara, Kadur Town,
Now R/at Sri. Devikere
Beeralingeswara Nilaya, 3rd Cross,
Maruthi Badavane, Malleshwara
Village, Kadur Post, Kadur Taluk,
Chikkamagalur District.

(Rep. by Sri. M.S.L. Advocate)

V/s.

Defendants : **Smt. Sharadamma,**
W/o Parameshwarappa,
Aged about 64 years, Agriculturist,
R/o Chikkagowja Village, Lakya
Hobli, Chikmagalur Taluk,
Chikmagalur District.

(Rep. by Sri. M.O.J. Advocate)

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|---|---------------------------------|----------------------|
| 1 | Date of Institution of the suit | 24.07.2023 |
| 2 | Nate of the Suit | Specific Performance |
| 3 | Date of recording of Evidence | 23.01.2024 |



4	Date of which judgment pronounced	28.07.2026			
5	Total Duration	Years	Month	Day	
		03	00	04	

Sd/-
(Thahakaleel K.A)
III Addl., Civil Judge & JMFC.,
Kadur.

:: J U D G M E N T ::

The plaintiff has instituted the present suit against the defendant seeking a decree for specific performance directing the defendant to execute and register the sale deed in respect of the suit schedule property in terms of the registered Agreement of Sale dated 20.06.2021, registered on 25.06.2021, and to deliver vacant possession of the suit schedule property to the plaintiff. In the alternative, the plaintiff has sought a decree directing the defendant to refund the advance sale consideration of Rs. 3,00,000/- together with interest at the rate of 16% per annum from



the date of the agreement till the date of realization, along with such other reliefs as this Court deems fit to grant.

2. The brief facts of the plaint averments are as follows:

It is the case of the plaintiff that he and the defendant are well acquainted with each other. The suit schedule property bearing Survey No. 153, measuring 0-02.08 guntas, situated at Kadur Village, Kasaba Hobli, Kadur Taluk, more fully described in the plaint schedule, belongs to the defendant, and the revenue records stand in her name. The defendant is stated to be the absolute owner in lawful possession and enjoyment of the said property.

3. According to the plaintiff, the defendant approached him stating that she was in urgent need of money for her family necessities and for the medical treatment of her son. She expressed her intention to sell the suit schedule property and requested the plaintiff to purchase the same. After verifying the title documents and



upon negotiations, the plaintiff agreed to purchase the suit schedule property for a total sale consideration of Rs.4,00,000/-, which was accepted by the defendant.

4. Pursuant thereto, the defendant executed a registered Agreement of Sale dated 20.06.2021, which came to be registered on 25.06.2021 as Document bearing S.R. No. 1377/2021-22. On the date of the agreement, the plaintiff paid a sum of Rs.3,00,000/- to the defendant as advance sale consideration, and the defendant acknowledged receipt of the same. The defendant further agreed to obtain and furnish all revenue and title records pertaining to the suit schedule property, including the latest RTC and other relevant documents, and thereafter execute a registered sale deed in favour of the plaintiff on receipt of the balance sale consideration of Rs.1,00,000/-. It was also agreed that possession of the suit schedule property would be delivered to the plaintiff at the time of execution and registration of the sale deed.



5. The plaintiff contends that he has always been ready and willing to perform his part of the contract by paying the balance sale consideration and getting the sale deed executed. Despite repeated requests and demands made by the plaintiff, the defendant postponed the execution of the sale deed on one pretext or another.

6. Thereafter, the plaintiff caused a legal notice dated 17.12.2022 to be issued to the defendant calling upon her to execute the registered sale deed in respect of the suit schedule property and deliver possession thereof. Though the notice was duly served, the defendant issued a false and untenable reply denying the plaintiff's claim and failed to comply with the demands made therein. Even thereafter, the defendant neither produced the necessary documents nor came forward to execute the sale deed, thereby committing breach of the terms and conditions of the registered Agreement of Sale dated 20.06.2021. Accordingly, alleging that the defendant has failed to honour her



contractual obligations despite the plaintiff being ready and willing to perform his part of the contract, the plaintiff has instituted the present suit seeking the reliefs of specific performance and, in the alternative, refund of the advance sale consideration with interest.

7. Upon service of summons, the defendant appeared through her husband and General Power of Attorney (GPA) holder, represented by learned counsel, and filed her written statement.

8. In the written statement, the defendant has admitted that she is the owner and is in possession of the suit schedule property. However, she has denied the material averments of the plaint except those specifically admitted. It is contended that the plaintiff and the husband of the defendant are well acquainted with each other. During the COVID-19 pandemic, the defendant's son by name Sri. Suresh contracted Coronavirus and required medical treatment. Owing to the financial exigency, the



husband of the defendant approached the plaintiff seeking a hand loan of Rs. 3,00,000/-. According to the defendant, the plaintiff agreed to advance the said amount only on the condition that the defendant should execute an agreement of sale in respect of the suit schedule property as security for the loan transaction. Accordingly, the defendant executed the registered Agreement of Sale solely as a security for repayment of the hand loan and never intended to sell the suit schedule property to the plaintiff. It is further contended that the transaction was purely a loan transaction and not an agreement for sale intended to be specifically enforced.

9. The defendant further asserts that interest on the loan amount of Rs. 3,00,000/- at the rate of 15% per annum was regularly paid to the plaintiff till the year 2023. Thereafter, disputes arose within the defendant's family. It was decided that the widow of late Sri Suresh, the defendant's deceased son, should discharge the loan



liability, as the amount had been borrowed for the medical treatment of her husband. However, she failed to repay the loan amount. Taking advantage of the situation, the plaintiff has allegedly misused the Agreement of Sale, which was executed only as a security for the loan, and has instituted the present suit for specific performance. It is further contended that the market value of the suit schedule property has increased substantially, and with an intention to unlawfully appropriate the valuable property of the defendant, the plaintiff has filed the present suit by misusing the security document. On these grounds, the defendant has sought dismissal of the suit with costs.

10. On the basis of the rival pleadings of the parties, this Court has framed the following issues for its consideration:

1. Whether the plaintiff proves that the defendant agreed to sell the suit schedule property in his favour under the registered Agreement of Sale dated 20.06.2021 for a sum of Rs. 4,00,000/-, and that the



defendant received a sum of Rs. 3,00,000/- as part sale consideration under the said agreement?

2. Whether the defendant proves that she executed the registered Agreement of Sale dated 20.06.2021 in favour of the plaintiff as a security for the loan amount of Rs.3,00,000/- availed from the plaintiff?
3. Whether the plaintiff proves that he has always been ready and willing to perform his part of the contract?
4. Whether the plaintiff is entitled to the relief of specific performance of the contract?
5. What order or decree?

11. In order to substantiate his case, the plaintiff examined himself as PW-1 by filing his affidavit evidence in lieu of examination-in-chief. In support of his case, he has produced six documents, which have been marked as Exhibits P-1 to P-6.

12. Exhibit P-1 is the registered Agreement of Sale dated 20.06.2021 executed by the defendant in favour of the plaintiff and registered on 25.06.2021. Exhibit P-2 is the RTC pertaining to the suit schedule property, which stands



in the name of the defendant. Exhibit P-3 is the Mutation Register (MR) Extract evidencing the manner in which the defendant acquired title to the suit schedule property. Exhibit P-4 is the office copy of the legal notice dated 17.12.2022 issued by the plaintiff to the defendant calling upon her to execute the sale deed. Exhibit P-5 is the postal receipt evidencing dispatch of the said legal notice. Exhibit P-6 is the reply notice issued by the defendant in response to the legal notice. The plaintiff has also examined Sri K.R. Jaga @ Jagadisha as PW-2, who is one of the attesting witnesses to the registered Agreement of Sale dated 20.06.2021, in support of the execution of the said agreement.

13. Despite sufficient opportunities having been granted, including after the imposition of costs, the defendant failed to cross-examine PW-1 and PW-2. Accordingly, the cross-examination of PW-1 and PW-2 was taken as nil.



14. Despite affording sufficient opportunities, the defendant also failed to adduce any oral or documentary evidence in support of her defence. Consequently, the defendant's evidence was taken as nil.

15. This Court has heard the arguments advanced by the learned counsel for the plaintiff and has carefully perused the oral and documentary evidence available on record. Despite sufficient opportunities, the defendant did not come forward to address arguments. Accordingly, the arguments on behalf of the defendant were taken as not addressed.

16. The findings of this Court on the above issues are as follows:

Issue No. 1 : In the Affirmative.

Issue No. 2 : In the Negative.

Issue No. 3 : In the Affirmative.

Issue No. 4 : In the Affirmative.



Issue No. 5 : As per the final order, for the following:

:: R E A S O N S ::

17. ISSUE NOS.1 TO 3: As Issue Nos. 1 to 3 are interconnected and arise out of the same set of facts and evidence, they are taken up together for common discussion in order to avoid repetition of facts and evidence.

18. The burden of proving the execution of the Agreement of Sale, payment of part sale consideration and the plaintiff's readiness and willingness to perform his part of the contract lies upon the plaintiff. In order to discharge the said burden, the plaintiff has examined himself as PW-1 and one of the attesting witnesses to the Agreement of Sale, namely, Sri K.R. Jaga @ Jagadisha, as PW-2. The plaintiff has also relied upon the documentary evidence marked as Exhibits P-1 to P-6.

19. The foundation of the plaintiff's claim is Exhibit P-1, the registered Agreement of Sale dated 20.06.2021,



which came to be registered on 25.06.2021 before the jurisdictional Sub-Registrar. A perusal of Exhibit P-1 clearly discloses that the defendant agreed to sell the suit schedule property for a total sale consideration of Rs.4,00,000/- and acknowledged receipt of Rs.3,00,000/- as advance sale consideration from the plaintiff. The document further stipulates that the balance consideration of Rs.1,00,000/- was to be paid at the time of execution of the regular sale deed. The recitals of Exhibit P-1 further reveal that the defendant agreed to execute the registered sale deed after securing the necessary revenue records and to deliver possession of the suit schedule property at the time of registration.

20. The execution of Exhibit P-1 has not been denied by the defendant. On the contrary, in the written statement, the defendant has specifically admitted that she executed the registered Agreement of Sale. However, her defence is that the said document was executed only as security for a



hand loan of Rs.3,00,000/- and that there was never any intention to sell the property.

21. Such a defence cannot be accepted merely on the basis of a bald plea. It is a settled principle of law that a registered document carries a strong presumption regarding its due execution and genuineness. Once the execution of a registered document is admitted, the burden shifts upon the person disputing the nature of the transaction to establish, by cogent and convincing evidence, that the document does not represent the real intention of the parties. In the present case, except making a plea in the written statement, the defendant has not entered the witness box nor has she produced any documentary evidence to substantiate her contention that Exhibit P-1 was executed only as a security for a loan transaction.

22. It is also pertinent to note that the defendant has pleaded that she borrowed Rs.3,00,000/- as a hand loan and agreed to execute the sale agreement merely as



security. Such a plea is wholly inconsistent with the ordinary course of commercial transactions and is unknown to law. When money is borrowed by creating security over an immovable property, the recognised mode under law is to create a mortgage in accordance with the provisions of the Transfer of Property Act, 1882. Execution of a registered Agreement of Sale as a mere security for a loan, without any intention to transfer the property, is an unusual transaction requiring strict proof. No such proof is forthcoming in the present case.

23. The defendant has further contended that she had paid interest at the rate of 15% per annum till the year 2023. However, no receipt, account extract, bank statement or any other documentary evidence has been produced to establish either the payment of interest or the existence of a loan transaction. Even the alleged widow of late Sri Suresh, who according to the defendant was liable to repay the loan, has not been examined before the Court. Therefore, the



entire defence remains a mere assertion without any evidentiary support.

24. It is equally significant that though sufficient opportunities were granted, including after imposition of costs, the defendant failed to cross-examine PW-1 and PW-2. Consequently, the oral testimony of PW-1 regarding the execution of Exhibit P-1, payment of advance sale consideration and his readiness and willingness has remained unchallenged. Likewise, the evidence of PW-2, being one of the attesting witnesses to the registered Agreement of Sale, has also remained uncontroverted. It is a settled proposition that where the testimony of a witness remains unshaken in cross-examination or is not subjected to cross-examination at all, the Court is entitled to place reliance upon such unrebutted evidence unless it is inherently improbable. In the present case, nothing has been brought on record to discredit the testimony of PW-1 and PW-2.



25. The conduct of the defendant throughout the proceedings also assumes significance. After filing the written statement, she neither cross-examined the plaintiff's witnesses nor entered the witness box to substantiate her defence. It is well settled that where a party possessing special knowledge of the facts deliberately abstains from entering the witness box, an adverse inference under Section 114 illustration (g) of the Indian Evidence Act, 1872, is liable to be drawn against such party. The defendant alone was competent to explain the circumstances under which Exhibit P-1 came to be executed. Having failed to depose on oath, the plea taken in the written statement cannot be treated as proof.

26. The plaintiff has also produced Exhibit P-2, the RTC, and Exhibit P-3, the Mutation Register Extract, which establish that the suit schedule property stood in the name of the defendant on the date of execution of the agreement. These documents lend assurance to the recitals contained



in Exhibit P-1 regarding the ownership of the defendant over the suit property.

27. The plaintiff has further produced Exhibit P-4, the legal notice dated 17.12.2022, calling upon the defendant to execute the sale deed by receiving the balance sale consideration. Exhibit P-5 evidences dispatch of the said notice, and Exhibit P-6 is the reply notice issued by the defendant. These documents demonstrate that even before institution of the suit, the plaintiff had asserted his willingness to perform his part of the contract and had called upon the defendant to execute the sale deed. The present suit came to be instituted well within the period of limitation prescribed under Article 54 of the Limitation Act, 1963. Thus, the suit cannot be said to be barred by limitation.

28. The contention that the agreement relates to only a small extent of land and therefore cannot be acted upon is equally devoid of merit. Exhibit P-1 discloses that the entire



extent owned by the defendant in Survey No.153, measuring 0-02.08 guntas, was agreed to be sold. It is not a case where only a fragment of a survey number was sought to be transferred so as to attract any prohibition relating any law. Therefore, the said contention is wholly untenable.

29. The evidence on record further establishes that the plaintiff has continuously expressed his readiness and willingness to perform his obligations under the contract. The issuance of the legal notice, the filing of the suit within a reasonable time and the consistent stand taken before the Court clearly establish his readiness and willingness as contemplated under Section 16(c) of the Specific Relief Act, 1963. There is absolutely no material on record to infer that the plaintiff was ever unwilling or incapable of paying the balance sale consideration of Rs.1,00,000/-.

30. On an overall appreciation of the oral and documentary evidence, this Court is of the considered opinion that the plaintiff has successfully proved the due



execution of the registered Agreement of Sale dated 20.06.2021, payment of Rs.3,00,000/- as part sale consideration and his continuous readiness and willingness to perform his part of the contract. On the other hand, the defendant has miserably failed to establish that the registered Agreement of Sale was executed merely as a security for a loan transaction. Accordingly, Issue Nos.1 and 3 are answered in the Affirmative and Issue No.2 is answered in the Negative.

31. ISSUE NO.4: In view of the above, I proceed to pass following;

:: ORDER ::

The suit of the plaintiff is hereby decreed with costs.

The defendant is directed to execute and register a regular sale deed in favour of the plaintiff in respect of the suit schedule property in pursuance of the registered



Agreement of Sale dated 20.06.2021, registered on 25.06.2021 as S.R. No.1377/2021-22, on receipt of the balance sale consideration of Rs.1,00,000/-.

The plaintiff shall deposit the balance sale consideration of Rs.1,00,000/- before this Court within sixty (60) days from the date of this judgment.

The defendant shall execute and get the sale deed registered in favour of the plaintiff within one month from the date of deposit of the balance sale consideration.

Upon execution and registration of the sale deed, the defendant shall deliver vacant and peaceful possession of the suit schedule property to the plaintiff.

In the event the defendant fails to execute the sale deed within the time



stipulated above, the plaintiff shall be at liberty to get the sale deed executed through due process of Court in accordance with Order XXI Rule 32 of the Code of Civil Procedure.

Draw decree accordingly.

(Judgement transcribed through AI- Adalath software, corrected by me and then pronounced in open court on 28th day of July 2026)

Sd/-

(THAHAKALEEL K.A.)
III Addl. Civil Judge & JMFC
Kadur.

ANNEXURE

1. List of Witnesses Examined on behalf of the Plaintiff:-

PW.1 : Sri. Suresha

PW.2 : Sri. K.R. Jaga @ Jagadeesha

2. List of Witnesses Examined on behalf of the Defendants:-

-Nil-

**3. List of Documents Marked on behalf of the Plaintiff:-**

Exhibit No.	Particulars
Ex.P1 :	Sale Agreement dated:20.06.2021
Ex.P2 :	RTC Extract
Ex.P3 :	Mutation Register Extract
Ex.P4 :	Legal Notice dated:17.12.2022
Ex.P5 :	Postal Receipt
Ex.P6 :	Reply Notice dated:04.01.2023

4. List of Documents Marked on behalf of the Defendants:-

-Nil-

Sd/-

**(THAHAKALEEL K.A.)
III Addl. Civil Judge & JMFC
Kadur.**

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