

KABG010044972021



IN THE COURT OF PRL. DISTRICT JUDGE, AT BELAGAVI

DATED THIS THE 09th DAY OF JUNE, 2026

PRESENT : **SHRI MANJUNATH NAYAK**
B.A.L. LL.B.
Prl. District & Sessions Judge
Belagavi.

REGULAR APPEAL No.51/2021

**APPELLANT/
DEFENDANT:** Sri Ramesh S/o Bhimappa Lamani,
Age: 52 years, Occ: Agriculture,
R/o: Channapur DLT-591123,
Tal: Ramdurg, Dist: Belagavi.

(By Sri R.C.Ingalagi, Advocate)

Vs.

**RESPONDENT
PLAINTIFF:** Sri Yamanappa S/o Arjunappa Horahatti,
Age: 48 years, Occ: Agriculture,
R/o : Betageri, Tal: Gokak,
Dist: Belagavi

(By Sri N.B. Ambiger, Advocate)

1.	Date of institution of the appeal	31.08.2021
2.	Date on which judgment was pronounced	09.06.2026
5.	Duration	Year/s Months Day/s 04 09 09

J U D G M E N T

This appeal is filed by the above named appellant/defendant under Order 41 Rule 1 and Section 96 of the Code of Civil Procedure, 1908, challenging the legality and correctness of the judgment dated 30.07.2019 passed by the learned Senior Civil Judge, Ramdurg, in O.S.No.21/2015, in decreeing the suit filed by the plaintiff claiming the decree for specific performance of contract. For the sake of convenience, parties are referred in this appeal as per their ranks/status before the trial court.

2. Brief Facts leading to filing of this Appeal are as follows:

The plaintiff has filed a suit in OS No.21/2015 claiming the decree for specific performance of contract on the basis of sale agreement dated 23.02.2012 and alternatively for refund of the sale advance of Rs.5,00,000/-. The suit property described in the plaint is 04 acres of land, out of 26 acres 25 guntas, in RS No.149 of Channapur village. The defendant is the owner of the suit property. During the year 2012, defendant brought the suit property for sale,

as he was in need of money for his family necessities and for repayment of family debts. The plaintiff offered Rs.6,00,000/- and defendant accepted the same and executed a registered sale agreement dated 23.02.2012. The defendant received a sum of Rs.5,00,000/- as sale advance from the plaintiff and agreed to receive balance sale consideration of Rs.1,00,000/- at the time of execution of the sale deed. About 15 days before filing this suit, the plaintiff called upon the defendant to execute the sale deed and the defendant postponed the same. The plaintiff issued a legal notice on 12.09.2013 calling upon the defendant to execute the sale deed. The defendant has given reply and denied the contents of the notice and contended that agreement was executed as a security for the hand loan transaction between them. The plaintiff is ready to perform his part of sale agreement and also ready to pay balance sale consideration of Rs.1,00,000/-. On all these grounds, the plaintiff claimed a decree for specific performance of contract and alternatively for refund of the sale advance.

3. In response to the summons, defendant appeared before the trial court through his counsel and filed written

statement and categorically denied all the plaint averments, including his absolute ownership over the suit property and the sale transaction between them, execution of sale agreement and receipt of sale advance of Rs.5,00,000/- from the plaintiff. According to the defendant, he borrowed an amount of Rs.1,00,000/- from the plaintiff and as a security for the same, the plaintiff got executed a document from the defendant. The defendant is completely blind and his signatures were obtained for the document by taking him to the Sub-Registrar office. The suit property is an ancestral property and the defendant has no absolute right over the same. The mother, sisters and children of the defendant have also got right over the suit property. The value of the suit property is Rs.12,00,000/- per acre. Therefore, the question of defendant selling 04 acres of land for Rs.6,00,000/- will not arise. The plaintiff has created the sale agreement by taking disadvantage of the blindness of the defendant. On all these grounds, defendant prayed for dismissal of the suit with costs.

4. On the basis of the above pleadings of both the parties, learned trial court has framed the following issues:

1. Whether the plaintiff proves that, the defendant had executed agreement of sale on 23.02.2012 in respect of suit landed property bearing R.S.No.149 measuring 26 acres 25 guntas out of it 4 acres situated at Channapur village of Ramdurg Taluka and agreed to sell the property for valuable consideration of Rs.6,00,000/-?
2. Whether the plaintiff further proves that, as on the date of executing the agreement of sale, the defendant had received the earnest money of Rs. 5,00,000/-?
3. Whether the plaintiff further proves that, the defendant had agreed to receive balance amount of Rs.1,00,000/- and execute the registered sale deed after correction of documents of suit schedule property and clearance of encumbrance?
4. Whether the defendant proves that, the agreement of sale executed for the purpose of security to the hand loan of Rs.1,00,000/- availed by the defendant from the plaintiff, as contended in para 9 of the WS?
5. Whether the plaintiff further proves that, he is ready and willing to perform his part of contract?
6. Whether the plaintiff is entitled for the relief of specific performance of contract, as sought for?
7. What order or decree?

5. To prove issues and to substantiate their respective contentions, plaintiff examined before the trial court as PW1 and 04 witnesses on his behalf as PW2 to PW5 and got marked Exs.P1 to P10 documents. On the other hand, defendant examined as DW1 and got marked Exs.D1 and D2 documents.

6. The learned trial court, by appreciating evidence of both the parties, proceeded to decree the suit and directed the defendant to execute the sale deed in favour of the plaintiff by receiving balance sale consideration of Rs.1,00,000/-. Challenging the said judgment, the defendant has preferred this appeal on the following grounds:

GROUND OF APPEAL

1. The very judgment and decree passed by the learned court below is totally erroneous and one sided and passed without applying judicious mind.
2. The Learned Court below has not properly considered the facts and circumstances of the case and erroneously passed the impugned judgment.

3. The Learned Court below has blindly believed the evidence of PW-1 and his witnesses. It has erroneously accepted the documents produced by the plaintiff marked as Ex.P-1 to P-10.
4. The Learned Court below has totally neglected the evidence adduced by the defendant, though it is trustworthy. The Learned Court has also neglected the evidentiary value of Ex.D-1 and D-2 produced by the defendant, in mechanical manner.
5. The learned court below has erroneously replied issue Nos. 1 to 3 in affirmative, believing the story of the plaintiff on presumptions and assumptions.
6. The Learned Court below has replied issue No.4 in negative erroneously.
7. The learned court below has also erroneously replied issue Nos. 5 and 6 in the affirmative.
8. The learned court below has not understood the spirit of Section 34 of the Specific Relief Act, in a proper manner. Though the right of property has been considered as one of the fundamental rights under the constitution of India, the learned court below has denied it, so

far as the claim of the defendant is concerned. Thus the very judgment and decree passed by the learned court below is ultra-virus of the constitution of the constitution. It is totally against the fundamental rights guaranteed by the constitution of India.

9. The learned court below, though observed in Para No.15 on Page No.10 of the impugned judgment that, "PW-5- Bengaluru Ramalingappa Shambulingappa, deposed that, the defendant and his wife have signed on the agreement of sale after receiving the money, but due to the software problem the portion pertaining to receiving of amount in the agreement is left blank at page No.2, backside of the agreement of sale", but the same has not been confirmed by any independent witnesses or documents on record.
10. The learned court below has neglected Ex.D-1 and D-2, produced by the defendant in Para No.16 on Page No.10 of the impugned judgment and the story narrated by the defendant. It has been clearly deposed by DW-1 that, he is blind and illiterate and in order to gulf the suit property, the plaintiff, colluding

with others, has created an agreement of sale before the Sub Registrar, Ramdurg. He never intended to sell the suit property, since it is his ancestral joint family property, and he is not the absolute owner, he is having father by name Bhimappa, mother by name Rukmavva, sisters by names 1] Muttawwa 2] Sakkubai, 3] Shantabai and 4) Bharati and wife by name Smt. Mahadevi and son by name Prakash and daughter by name Deepa. They are also having right, interest over the suit property. The defendant and his family members are entirely dependent upon the suit property and except it they do not have any other lands. The plaintiff, by taking undue advantage of his blindness, got created agreement of sale. He never received Rs.5,00,000/-and never agreed to sell the suit property for meager amount of Rs.6,00,000/-, as the valuation of the said area during 2012 is more than Rs. 12,00,000/-per acre.

11. The learned court below has erroneously observed in Para No.18 on Page No.13 of the impugned judgment that, "when the signature is admitted and execution of registered

agreement of sale is admitted, it is having presumptive value in the eyes of law". The Learned Court below has further wrongly observed that, PW-1 to PW-5 have clearly stated regarding execution of registered agreement of sale and receiving earnest money of Rs.5,00,000/-.

12. It is respectfully submitted that, no-where the plaintiff has clarified that, how he has made payment of Rs.5,00,000/- on the date of agreement of sale to the defendant. Whether it was in cash or through cheque? Whether he has that much of amount on that day and whether he is having any documents to prove the same. Further the learned court below has neglected that, a transaction of more than Rs.20,000/- is not permissible under law and it is against the provisions of Income Tax Act. On this count itself, the learned court below ought to have refused the testimony of the PW-1.
13. So far as Para No.19 on Page No.14 of the impugned judgment is concerned, it is clear that, the Learned Court below has accepted the testimony of PW-5- the Sub Registrar Ramdurg, who has no-where deposed regarding payment

of the amount of advance sale consideration and its denominations. Further the learned court below has wrongly considered the reply given by the defendant through his Advocate Shri. M.Y. Sanapuji under Ex.P-8, wherein he has admitted regarding receipt of Rs.50,000/- only. The same has been questioned by the Learned Court below that, when in the written statement the defendant has admitted receipt of Rs.1,00,000/-, how he can say that, he has received only Rs.50,000/- under Ex.P-8? It is clear that, the defendant is an illiterate, blind person, and he is unable to see and read any documents. So, if there was any contradictory statement given by the defendant, it cannot be considered as otherwise against his interest. But this dictum of law has not been properly looked into by the learned court below.

14. In the same paragraph the learned court below observed that, "On perusal of Ex.P-4, the wife of the defendant is not blind and she is also party to the said transaction. The defendant has not adduced any contrary evidence to prove that, the plaintiff has obtained agreement of sale fraudulently". It is

respectfully submitted that, the wife of the defendant is also illiterate. She has signed the agreement of sale, at the instance of her husband and other interested persons, without reading its contents. It does not mean that, she has consented for the same.

15. As per the depositions of DW-1, it is clear that, the suit property is ancestral joint family property and not available for sale, without the consent of co-sharers. But this dictum of law has been totally neglected by the learned court below.
16. It is respectfully submitted that, in Para No.20 on Page No.15 of the impugned judgment, the learned court below has observed that, under Ex.P-9 and P-10, FIR and Complaint were booked against the defendant by the Ramdurg Police in C.R.No.13/2019 for the offence punishable U/Sec.87 of the K.P. Act, wherein the defendant has been shown as accused No.6 and it discloses that, he is involved in criminal case and the defence set out by him is not trustworthy. This observation of the learned court below is totally against section 52 of the Indian Evidence Act. The character of a person

has no consideration under the CPC and it has no relevancy. But this dictum of law has been totally neglected by the learned court below, so far as legal questions are involved.

17. The learned court below in para No.21 on page No. 16 of the impugned judgment has observed regarding sections 66 and 68 of the Indian Evidence Act and wrongly come to the conclusion that, "since the witnesses have seen the executant signing the agreement of sale and it is sufficient to hold that, the document is proved". It is patently wrong and against the spirit of constitution of India.
18. The learned court below has wrongly considered in para No.22 on page No.16 of the impugned judgment that, "the defendant has not denied the execution of the agreement of sale". In the same paragraph it has further wrongly observed that, "postal receipt and acknowledgment under Ex.P-6 and P-7 clearly goes to show that, the plaintiff is ever ready and willing to perform his part of contract". In the same paragraph, it has been wrongly considered by the learned court below that, "the defendant has not placed any evidence by

way of reply notice nor examined any witnesses to prove his case".

19. The learned court below has wrongly considered issue No.5 so far as Para No.23 on Page No. 17 of the impugned judgment is concerned.
20. The learned court below has improperly considered regarding the agreement of sale in Para No.24 on Page No. 18 of the impugned judgment and come to an erroneous conclusion that, it is an agreement of sale rather than loan transaction and document was not signed as a security towards the loan amount.
21. So far as limitation is concerned, the learned court below has wrongly considered that, the suit is well within time. In the same paragraph the learned court below has observed regarding the willingness of the plaintiff for performing the part of contract, going against the spirit of constitution.
22. The learned court below has made erroneous observations in Para No.25 on Page Nos. 19 and 20 of the impugned judgment.

23. So far as Para No.26 on Page No.20 of the impugned judgment is concerned, though the learned court below has admitted that, "the defendant alone is not the absolute owner of the suit property". Still then, based upon the R/R of the suit property, it has come to the conclusion that, the defendant is the owner of the suit property to the extent of 4-acres.
24. So far as Para No.28 on Page No.21 of the impugned judgment is concerned, the learned court below has come to the conclusion that, "Section 20 of the Specific Relief Act is a discretionary relief and based on the principle of equity". Still then, without considering the only source of income of the defendant and his family members and the hardship that would be caused to him and others, the learned court below has unnecessarily decreed the suit and thereby caused great injustice, hardship and irreparable economic loss.
25. The learned court below, in Para No.30 on Page No.22 of the impugned judgment has observed that, "the recitals of the agreement of sale shows that, the suit land is not irrigated land and with of the defendant Smt. Mahadevi has

also signed to the agreement of sale". Based upon this observation, the Learned Court below has decreed the suit, further observing that, except their contention the defendant has not produced any iota of evidence, when it is fetching more than Rs. 12,00,000/- per acre.

26. In Para No.31 on Page No.24 of the impugned judgment, the learned court below has observed regarding escalation of price and come to the conclusion that, it is not a ground to refuse the discretionary relief, based upon the ruling reported in [2004] 8 SCC 689, and other citations.
27. In Para No.31 on Page No.25 of the impugned judgment, the learned court below has again hampered upon the conduct of the defendant, facts and circumstances of the case and came to an erroneous conclusion that, "plaintiff will be put to greater hardship". It is totally against the guidelines of the Hon'ble Apex Court of India.
28. From the prima-facie facts and circumstances of the case. It is clear that, an illiterate, blind, poor person-defendant and his wife have been systematically cheated by the plaintiff, they

were not properly represented by their concerned Advocate, before the Learned Court below and thereby hardship, mental agony and irreparable economic loss has been caused to them, which cannot be compensated by any other means.

29. Due to the impugned wrong judgment and decree passed by the learned court below, the appellant/defendant and his family members have been put under economic loss per annum.

7. In response to the notice, the respondent/plaintiff appeared before this court through his counsel. This court secured the entire file relating to OS No.21/2015 from the learned Senior Civil Judge, Ramdurg.

8. I have heard the arguments of both the parties.

9. The points that arose for my consideration are :

1. **Whether the plaintiff proves that the defendant has executed agreement dated 23.02.2012 by agreeing to sell the suit property for Rs.6,00,000/- and paid sale advance of Rs.5,00,000/- to the defendant ?**

2. **Whether the defendant proves that the document dated 23.02.2012 was got executed from him as security for the loan transaction by taking disadvantage of his blindness?**
3. **Whether the plaintiff proves his readiness and willingness to perform his part of the contract?**
4. **Whether the impugned judgment is against the law, facts, evidence and probability of the case and liable to be intervened by this court?**
5. **What Order or decree?**

10. My answer for the above points are in the following, because of my below discussed reasons:

Point No.1: **IN THE NEGATIVE**

Point No.2: **IN THE AFFIRMATIVE**

Point No.3: **IN THE NEGATIVE**

Point No.4: **PARTLY IN THE AFFIRMATIVE**

Point No.5: **AS PER THE FINAL ORDER**

REASONS

11. **Point No.1 to 4:** To avoid the repetition of my discussion on facts, I have taken these points together for determination. The plaintiff filed the suit in OS No.21/2015 before

the learned Senior Civil Judge, Ramdurg claiming the decree for specific performance by directing the defendant to execute the sale deed and alternatively for refund of sale advance of Rs.5,00,000/-. The suit property described in the plaint schedule is 04 acres of land, out of 26 acres 25 guntas, in RS No.149 of Channapur village. The plaintiff claims that the defendant has executed the registered agreement of sale on 23.02.2012 by agreeing to sell the suit property for Rs.6,00,000/- and received sale advance of Rs.5,00,000/- from the plaintiff. According to the plaintiff, he is ready and willing to perform his part of contract, whereas, the defendant failed to perform his part of the contract and refused to execute the sale deed even after issuance of the legal notice, which made him to file the present suit.

12. The defendant has categorically denied the plaint averments, including his absolute ownership over the suit property, execution of sale agreement and receipt of sale advance from the plaintiff. It is the case of the defendant that suit property is thier ancestral property and his mother, sisters, wife and children have got right over the same. According to the defendant,

he borrowed hand loan of Rs.1,00,000/- from the plaintiff and as a security for the same, his signatures were obtained and registered sale agreement was executed. The defendant further contended that the market value of the suit property during the year 2012 was Rs.12,00,000/- per acre. Hence, he selling 04 acres of land for Rs.6,00,000/- appears to be unbelievable and unacceptable.

13. To prove the issues and to substantiate his contention, plaintiff examined himself as PW1 and 04 witnesses on his behalf as PW2 to PW5 and got marked Exs.P1 to 10 documents. On the other hand, the defendant examined himself as DW1 and got marked Exs.D1 and Ex.D2 documents. The learned trial court, by appreciating the oral and documentary evidence of both the parties, has proceeded to decree the suit and directed the defendant to execute the sale deed in favour of the plaintiff by receiving the balance sale consideration of Rs.1,00,000/-. Challenging the said judgment, plaintiff preferred the present appeal.

14. It is evident from the trial court records that the originally defendant failed to appear before the trial court and

placed exparte. Accordingly, learned trial court, vide exparte judgment dated 30.11.2015, has decreed the suit. Thereafter, the defendant filed Miscellaneous No.02/2016 before the trial court and succeeded in setting aside the exparte judgment and decree passed against him and thereafter suit was restored. The defendant filed the written statement and after recording the evidence of both the parties, the present judgment was rendered.

15. In order to prove the sale transaction between them and execution of the sale agreement, plaintiff, apart from examining himself as PW1, examined 4 witnesses as PW2 to PW4. PW2 is the witness for the sale agreement. PW3 is also a witness for the sale agreement. PW4 is an Advocate, who has prepared and drafted the sale agreement. The witness examined as PW5 is the official of the Sub-Registrar Office, Ramdurg, who has registered the said sale agreement.

16. The plaintiff produced the registered sale of agreement dated 23.02.2012 as per Ex.P4 and also produced RTC of the suit property as per Exs.P1 to P3. The copy of the legal notice addressed to the defendant is marked as per Ex.P5. Postal receipt

and postal acknowledgment are marked as per Exs.P6 and P7. Reply given by the defendant is marked as per Ex.P8. Even in the said reply the defendant denied the sale transaction between them and execution of the sale agreement. The defendant contended that he has borrowed the loan of Rs.50,000/- from the plaintiff and as a security for the said financial transaction his signatures were obtained and sale document was created by taking advantage of his total blindness and illiteracy. By leading all these evidence, the plaintiff has discharged the initial burden placed upon him to prove the execution of Ex.P.4 sale agreement. Now the onus shifts upon the defendant to prove his defence.

17. Thumb impression of the defendant and his wife appearing on the sale agreement is not in dispute. The defendant, who was examined before the trial court as DW1, admitted during the course of his cross-examination that, he and his wife have put thumb impression on Ex.P4 sale agreement. However, the defendant/DW1 specifically said that he has never executed the sale agreement by agreeing to sell the suit property to the plaintiff. The contention of the defendant in this regard has to be

considered from the point that the defendant is illiterate person, who is putting his thumb impression and 100% blind. The defendant is a blind and he produced the medical certificate as per Exs.D1 and D2, which shows that he is 100% blind. Ex.P4 sale agreement also contain thumb impression of the defendant's wife, who is also illiterate. So it is case of execution of a documents from illiterate and blind man. Therefore, the defence of the defendant has to be considered by keeping these aspects in the back ground.

18. If I draw my attention to Ex.P4 sale agreement, out of the total sale consideration of Rs.6,00,000/-, Rs.5,00,000/- was paid as the sale advance. So even according to the plaintiff, more than 80% of the sale consideration amount has been paid to the defendant on the date of so-called sale agreement. Of course, said sale agreement is a registered document and presumption has to be attached to the said document regarding execution of the same. However, apart from proving the execution of sale agreement and signatures, plaintiff is required to independently prove that the transaction between them is exclusively sale transaction and not a monetary transaction and execution of

document is a genuine sale agreement and not a document executed as a security for the monetary transaction.

19. If I draw my attention to the recitals of the sale agreement, nowhere in the sale agreement, actual period, date and time for repayment of the balance amount and execution of the sale deed has been recited. This is one of the circumstances, which creates doubt in the mind of this court, regarding genuineness of Ex.P4, so as to term it as a sale agreement. When the plaintiff has paid more than 80% of the sale consideration amount, one cannot accept execution of sale agreement without specifying the date, time and period for execution of the registered sale deed. One cannot accept the parties postponing the execution of registered sale deed for indefinite period, when more than 80% of the sale consideration amount has been paid by the plaintiff. It has been simply stated in the sale agreement that balance amount of Rs.1,00,000/- has to be paid at the time of registration of sale deed and same has to be executed after preparation of the sketch. No date, time and period has been stated in Ex.P.4 to do and perform all these acts.

20. No reasons are forthcoming in the sale agreement for postponement of execution of registered sale deed for indefinite period. No prudent purchaser, who paid more than 80% of the sale consideration amount, will agree to postpone the registration of the sale deed for indefinite period, if really it is a genuine sale transaction between them. It appears that, since it is not a genuine sale transaction and document is executed as a security for the loan, the plaintiff has agreed for postponement of the registered sale deed for indefinite period, without fixing any date and time as the outer limit for payment of balance sale consideration amount and for execution of the registered sale deed.

21. It is pertinent to note here that there was no legal hurdle as such for registration of the sale deed when the sale agreement was executed on 23.02.2012. Neither the sale agreement nor the plaint averments disclose about any legal hurdle for registration of the sale deed. Normally, a sale agreement is executed and registration of the sale deed is postponed, if there was any legal hurdle for registration of the sale

deed or if purchaser is not having full sale consideration amount with him for making payment. It is not the case of the plaintiff that he was not having balance sale consideration of Rs.1,00,000/- with him, due to which the registration of the sale deed was postponed. In spite of plaintiff having balance sale consideration amount with him and that there was no legal hurdle as such for registration of the sale deed, still postponement of registration of sale deed for indefinite period, also gives an indication that it is not a genuine sale transaction.

22. It is pertinent to here that 04 acres of land agreed to be sold for Rs.6,00,000/-. According to the defendant the market value of the land during the year 2012 was Rs.12,00,000/- per acre. Of course, the defendant has not produced any document to show that the market value of the land during the year 2012 was Rs.12,00,000/- per acre. At the same time, the plaintiff has also not produced any document to show that value of 04 acres of land during the year 2012 was Rs.6,00,000/- per acre. The suit land is valuable land and the market value of the same during the year

2012 as Rs.1,50,000/- per acre appears to be improbable and unbelievable for this court.

23. Apart from that, the defendant owns only 04 acres of land, as it was allotted to his share in the family partition. One cannot believe the defendant, who is depending upon 04 acres of land, agreeing to sell entire 04 acres of land to the plaintiff for a sum of Rs.6,00,000/-. The legal necessity for selling entire 04 acres of land belonging to the family is also not established before the court. If really there was some need for the defendant to sell the property to meet financial exigencies, he would have sold portion of 04 acres of land and not the entire 04 acres of land, which is owned by his family. All these aspects also creates doubt in the mind of this court regarding genuineness of Ex.P4 and to call the same as a genuine sale agreement.

24. It is pertinent to note here that though Ex.P4 sale agreement was executed on 23.02.2012, till issuance of legal notice dated 20.02.2015, plaintiff has not taken any action against the defendant to get the sale deed from him. For the period of almost 03 years the plaintiff kept quite without initiating any action on the

basis of Ex.P4 sale agreement. No prudent purchaser, who paid more than 80% of the sale transaction amount, will kept quite for 03 years, without initiating any action demanding the registration of sale deed. The plaintiff failing to take steps to make payment of balance sale consideration amount and for execution and registration of sale deed in these 03 years also gives an indication that the transaction between them is not a genuine sale transaction. Considering all these aspects, I have to say that there is serious and strong cloud cast upon the genuineness of Ex.P4 sale agreement to call it as a genuine sale agreement.

25. The plaintiff failure to take action for 03 years and issuing the legal notice just 03 days before expiry of 03 years term goes to show that he has not ready and willing to perform his part of the contract. Merely by issuing legal notice just before completion of 03 years the plaintiff can not demonstrate his ready and willingness, when he has paid more than 80% of the sale transaction amount. The period of limitation to file the suit for specific performance may be 3 years. That has nothing do with the ready and willingness. The ready and willingness has to be

demonstrated by the plaintiff from the date of sale agreement till the date of filing the suit. Merely by filing the suit within the period of limitation plaintiff can not prove that he is ready and willing to perform his part of the contract. The plaintiff was totally silence for 03 years and not initiated action to demonstrate his readiness and willingness to perform his part of the contract. So there is serious doubt about the plaintiff readiness and wiliness to perform his part of the contract.

26. The RTC of the suit land produced as per Exs.P1 to P3 goes to show that the land bearing Sy.No.149 of Channapur village consisting of more than 26 acres of land belonging to the defendants' family, out of which 04 acres of land was allotted to the share of the defendant as per the family partition. The column No.9 and 10 of the RTC goes to show that the defendant got 04 acres of land on the basis of the family partition. When the defendant has got property on the basis of the family partition, it cannot be his absolute and exclusive property. The admission on the part of the plaintiff goes to show that the defendant has got mother and sisters, who are also having share over the suit

property. Apart from that, the defendant has got children, who are also having right of share over the suit property. Under such circumstances, the defendant having exclusive title and ownership over entire 04 acres of land, so as to sell the same to the defendant, cannot be accepted.

27. If the defendant has agreed to sell portion of the property, one would have accepted the sale agreement because such a sale will be valid to the extent of undivided share of the defendant. But the plaintiff claims that the defendant has agreed to sell entire 04 acres of land, which was allotted to his share in the family partition. Therefore, the defendant having absolute and exclusive title and ownership over the entire 04 acres of land it also not proved before the court. Under such circumstances, decreeing the suit for specific performance will invite further litigation.

28. It is pertinent to note that, as per recitals of Ex.P4 sale agreement, possession of suit property was not delivered to the plaintiff and it was remained with the defendant. It is also one of the circumstance, which indicates that the transaction between them is not a pure sale transaction. If the parties were intended to

sell the property and more than 80% of sale consideration amount was paid by the plaintiff, plaintiff would have insisted for delivery of possession as part performance of contract. Non delivery of possession of the suit property in pursuance to the sale agreement, even after payment of 80% sale consideration amount, also gives an indication that it was not a pure sale transaction between them. Considering all these aspects, this court is of the opinion that there is serious doubt as to the actual transaction between the plaintiff and the defendant, as a pure sale transaction. Even though Ex.P4 is styled as sale agreement and it was registered instrument, intention of the parties appears to be not the sale transaction. It appears that as a security for the loan transaction Ex.P4 agreement has been executed.

29. The learned trial court has failed to consider all these points, which were borne out from the evidence and records, while appreciating oral and documentary evidence of both the parties. The learned trial court failed to consider the fact that the defendant is 100% blind and illiterate and a sale agreement has been executed from him in respect of ancestral and joint family

property. The trial court also failed to notice that the entire 04 acres of land belong to the defendant's family was agreed to be sold, without retaining any property with their family. The trial court also failed to note that even though more than 80% of the sale consideration amount has been paid, date, time and period has not been prescribed in the so-called sale agreement for payment of balance sale consideration amount and also for execution of the registered sale deed.

30. The trial court also failed to note that there was no legal hurdle as such for execution and registration of sale deed and postponement of execution of registered sale deed, that too for indefinite period. More importantly the trial court failed to note that the plaintiff, who paid more than 80% of the sale consideration amount, has kept quiet for almost 03 years without initiating any action to get the sale deed registered from the defendant. The trial court has also failed to consider that valuable 04 acres of land was agreed to be sold for a price of Rs.6,00,000/-, which appears to be on the lower side considering the market value of the landed properties in those days. It is because of all

these reasons, the trial court has landed into a wrong conclusion in holding the transaction between them as sale transaction and decreeing the suit for specific performance. Therefore, this court has to intervene with the said findings of the trial court.

31. The plaintiff has also sought for the relief of refund of sale advance, as an alternative relief for the relief of specific performance. The transaction between the plaintiff and defendant is not in dispute. The defendant, in his written statement claimed that he borrowed Rs.1,00,000/- from the plaintiff. However, while giving reply for the legal notice as per Ex.P8, defendant contended that he received sum of Rs.50,000/- from the plaintiff as hand loan and as a security for the loan amount, his thumb impression was obtained for a document and the sale agreement has been created. There is registered instrument as per Ex.P4, which shows that the defendant received a sum of Rs.5,00,000/- from the plaintiff. There is evidence of the witnesses to prove the same. Of course, oral evidence of the plaintiff and his witness to say that it is a sale transaction cannot be accepted because of all the above explained circumstances. But the the evidence of plaintiff and his

witness regarding payment of Rs.5,00,000/-, can be accepted, when the monitory transnaction has been admitted by the defendant.

32. There is contradiction in the stand taken by the defendant, in between his reply to the legal notice and pleadings, regarding actual amount received by him. In the reply notice, defendant claimed that he received RS.50,000/- from the plaintiff, where as in his written statement, he pleaded that he received Rs.1,00,000/- from the plaintiff. Regarding the receipt of Rs.50,000/- only from the plaintiff, there is no pleadings. Therefore claim of the defendant that he received the loan amount of Rs.50,000/- or Rs.1,00,000/- from the plaintiff can not be accepted by this court. Under these circumstances this court has to accept plaintiffs versions about he paying Rs.5,00,000/- to the defendant, as there is registration document to prove the same. Therefore, suit has to be decreed for the alternative relief to repay the said amount with interest at the rate of 10% p.a. from the date of execution and registration of Ex.P4 agreement.

33. It is brought to the notice of this court during the course of arguments that the impugned judgment in decreeing the suit for specific performance has been executed before the trial court by filing the execution petition and execution of registered sale deed and also by delivering the possession of the suit property. It is also brought to the notice of this court that the plaintiff filed execution petition and got executed the registered sale deed by appointing the court commissioner and by issuing delivery warrant and possession has been delivered and memo is also filed in the said execution petition about the full satisfaction of the decree. Because all these reasons, the learned counsel for the plaintiff argued before me that when the decree has been executed, impugned judgment can not be set aside or modified.

34. On the other hand, the learned counsel for the defendant has argued before me that the defendant has not actually executed the registered sale deed and not delivered the possession. It is also submitted that, by got appointing the court commissioner sale deed was executed and registered and delivery warrant has been issued and report has been received for having

delivered the possession during the pendency of this appeal, even though pendency of the appeal was brought to the notice of the trial court. The learned counsel for the defendant further argued before me that the execution of the decree will not come in the way of this court in considering the legality and propriety of the impugned judgment on merits.

35. In this regard, it is necessary to refer Section 144 of the Civil Procedure Code, 1908, which deals with the provisions relating to restitution. As per the above provision, if the decree is verified or reversed in any appeal, subsequent to it was executed, an application for restitution can be filed. The reading of above provision gives an indication that, the appellate court has to independently consider legality and concreteness of the judgment on merits. During the pendency of the appeal, if the impugned judgment and decree is executed before the trial court and if the appellate court reverses the judgment, there is a provision for restitution under Section 144 of Civil Procedure Code.

36. In this regard, it is necessary to refer judgment of Hon'ble Supreme Court reported in **(2009) 14 SCC 663**

(Inderchand Jain Vs. Motilal). In para No.22 of the said decision, it was held that the decree holder can get the decree executed during pendency of the appeal, if the decree is not stayed. However, the execution of decree shall be subject to restitution of property in the event of appeal is allowed and decree is set aside.

37. Another decision which can be referred on this point is the decision of Hon'ble High Court of Karnataka reported in **ILR 2004 Kar. 2338 (Smt.Sanjeevamma and others Vs. G.Krishna and othes)** In that particular case, the first appellate court has dismissed the appeal simply on the ground that during pendency of the appeal, decree was fully executed before the trial court. The Hon'ble High Court has set aside the said order of the first appellate court and matter was remanded back to the first appellate court for fresh consideration by observing that, if the appellate court has found grounds to set aside the judgment, it has got power to allow appeal and set aside the impugned judgment. In the mean while, if the decree is executed, appellants are entitled to invoke Section 144 of Civil Procedure Code and request the executing court for restitution.

38. Considering the above provision and the ratio laid down in the above decisions, merely because decree has been executed during the pendency of the appeal, it cannot be a ground to dismiss the appeal. This court is empowered to consider the appeal on merits. Since the impugned judgment in decreeing the suit for specific performance is requires to be set aside and suit is to be decreed for refund of sale advance, it is open for the appellant/defendant to invoke Section 144 of Civil Procedure Code, before the executing court and apply for restitution. However, the restitution can be ordered only when the defendant repay amount of Rs.5,00,000/- to the plaintiff with interest.

39. Considering all these aspects, I am of the opinion that the impugned judgment has to be interfered and decreeing the suit for specific performance has to be set aside. The learned trial court, without properly appreciating the facts, pleadings and evidence of both the parties, has landed into a wrong conclusion in decreeing the suit for specific performance. The suit is to be decreed for the relief of refund of earnest money with interest. Therefore, to that extent, the impugned judgment has to be

interfered. Accordingly, I answer the point No.1 and 3 **in the negative**, point No.2 **in the affirmative** and point No.4 **partly in the affirmative**.

40. **Point No.5:** In view of my findings on above points, the appeal filed by the appellant/defendant is deserves to be partly allowed. Hence, I proceed to pass the following:

ORDER

The appeal filed by the appellant/defendant under Order 41 Rule 1 and Section 96 of Civil Procedure Code, is partly allowed.

The impugned judgment dated 30.07.2019 passed by the learned Senior Civil Judge, Ramdurga in O.S.No.21/2015 is modified.

The impugned judgment in decreeing the suit for the relief of specific performance is set aside.

The suit filed by the plaintiff is decreed for the alternative relief for refund of sale advance.

The defendant is directed to repay a sum of Rs.5,00,000/- to the plaintiff.

The plaintiff is entitled to recover the said amount with interest at the rate of 10% per annum, from 23.02.2012 till the repayment of the entire amount.

Only after the repayment of the above amount with interest, defendant is entitled for the restitution of the already executed the decree of the trial court, as provided under Sec.144 of the CPC.

I direct both the parties to bear their respective costs of the appeal.

Send back the trial court records along with the copy of this judgment forthwith.

(Dictated to the Stenographer Grade-III, after transcription, computerized and print out taken by him, corrected, signed and then pronounced by me in the Open Court on this **09th day of June, 2026**)

**(Manjunath Nayak),
Prl. District & Sessions Judge,
BELAGAVI.**