

KABG500007122022



**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE,**  
**GOKAK**

**Present: Shri. Umesh S. Atnure**  
**B.Com., LL.B.(Spl)**  
**Prl.Senior Civil Judge, Gokak**

**ORIGINAL SUIT No.394/2022**

**DATED ON THIS 09<sup>th</sup> DAY OF JULY-2026**

1. Smt. Rajashree W/o. Ningappa Kuri,  
Age: 45 years, Occ: Agriculture,  
R/o: Maratha Galli, Gokak,  
Tq: Gokak, Dist: Belagavi.

**...PLAINTIFF**

**- V/S -**

1. Mhadev S/o. Bhimnaik @ Bhimappa Naik @ Nayik,  
Age: 34 years, Occ: Agriculture,  
R/o: Hadaginal, Tq: Gokak, Dist: Belagavi.
2. Indravva W/o. Bhimnaik @ Bhimappa Naik @ Nayik,  
Age: 48 years, Occ: Agriculture,  
R/o: Hadaginal, Tq: Gokak, Dist: Belagavi.

**...DEFENDANTS**

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**Plaintiff by Sri.L.S.B., & Sri.P.M.H., Advocates**

**Defendants by Sri.M.R.B., Advocate**

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|-----------------------------|----------------------------------|
| Date of Institution of Suit | 07.06.2022                       |
| Nature of Suit              | Specific Performance of Contract |

|                                                   |                                                             |
|---------------------------------------------------|-------------------------------------------------------------|
| Date of commencement of recording of the evidence | 26.05.2023                                                  |
| Date on which Judgment is Pronounced              | 09.07.2026                                                  |
| Total duration                                    | Year/s<br><b>04</b> Month/s<br><b>01</b> Day/s<br><b>02</b> |

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

1. This is a suit for specific performance of contract directing the defendants to receive the balance sale consideration amount of Rs.84,000/- and executed the sale deed as per the terms and conditions of the agreement of sale dated 26.07.2017 and alternative relief of refund of earnest amount of Rs.5,16,000/- along with interest at the rate of 18% per annum.

2. **The brief facts of the plaintiff's case is as follows;**

It is the case of the plaintiff that the father of the defendant No.1 by name Bhimappa Huchachappa Naik was the owner of the suit property bearing R.S.No.26/1 measuring 03 acres 08 guntas, out of it 01 acre 24 guntas. During his lifetime to meet out his family legal necessity and for payment of other hand loan and for other family problems he intended to sell the property, the plaintiff was interested to purchase the suit property. Thereafter deceased Bhimappa Huchachappa Naik

approach the plaintiff along with the elderly persons express his intention to sell the suit property, sale talks were held in the presence of the elders and it was agreed that the sale consideration amount is Rs.6,00,000/- and it was also agreed that at the time of executing the agreement of sale an amount of Rs.5,16,000/- is to be paid as an advance sale consideration amount and in remaining amount of Rs.84,000/- will be paid at the time of registration of the sale deed after making partition, preparing 11-E map and free from encumbrances within three years. Accordingly agreement of sale was executed on 11.07.2017 on the same day Bhimanaik received Rs.5,16,000/- as earnest money from the plaintiff before the elders and the document is registered on 26.07.2017 at Sub-Registrar Office, Gokak. The Bhimanaik Huchachappa Naik died 20.08.2019, after his death defendants No.1 and 2 being the class-I legal heirs of Bhimanaik, they got entered their names in the record of rights of the suit property as class-I legal heirs and thereafter they give assurance by making partition, preparing 11-E map and clearing the all encumbrances they will be executed the registered sale deed. The plaintiff all the while ready and willing to perform her part of contract since from the

beginning. She approached and requested the defendants with remaining sale consideration amount along with elders so many occasions but the defendants have not executed the registered sale deed in her favour by receiving balance sale consideration amount and postpone the same on one or the other reason but instead of performing their part of contract as promised by the deceased father of the defendants, the defendants did not come forward to execute the registered sale deed and not perform their part of contract as such, she got issued legal notice on 05.04.2022 calling upon the defendants to receive the balance sale consideration amount of Rs.84,000/- and executed the registered sale deed in her favour. The defendants have refused to take the said notices and not executed the registered sale deed as per the terms and conditions of the registered agreement of sale. Now the defendants are trying to alienate the suit property to the strangers without her knowledge and consent as such, she filed this suit.

3. The defendants appeared through their counsel and filed their written statement by denying entire contentions of the plaintiff. Further they contended that the plaintiff relied on suit agreement of sale dated 11.07.2017 which was registered

on 26.07.2017 and alleged period as per the agreement of sale is within three years. The Bhimnaik died on 20.08.2019 during his lifetime no efforts were made by the plaintiff to get execute the sale deed and no notice was issued to the Bhimanaik. After his death the plaintiff relying upon the notice dated 09.04.2022 and 11.04.2022 thereby the claim of the plaintiff is barred by time and the plaintiff has not complied the provision of 16(c) of Specific Relied Act as such, the suit is not maintainable one. Further they contended that the father of the Bhimanaik by name Balappa acquired the suit property, R.S.No.9/1 and 10/1 of Bagaranal village by virtue of Will deed in the year 1936 and accordingly ME.No.382 was certified. The Balappa died in the year 1954 and thereafter name of his wife Laxmavva W/o. Balappa Naik was mutated to the suit property, R.S.No.9/1 and 10/1 as per ME.No.1081 of Bagarnal village. In the year 1986 the said Laxmavva W/o. Balappa Naik transferred the suit property i.e., R.S.No.26/1 and R.S.No.9/1 and 10/1 infavour of her daughters namely Ningavva W/o. Bhimappa Naik who is the mother of the plaintiff and Chinnavva W/o. Bhimanaik Naik who is the wife of the deceased Bhimnik Huchappa Naik, accordingly ME.No.2295 was certified. After the death

of Chinnavva W/o. Bhimanaik Naik the name of Bhimanaik is mutated to the suit property. After death of Bhimanaik the name of defendants are mutated to the suit property to their joint  $\frac{1}{2}$  share along with another co-owner Ningavva who is the mother of the plaintiff. Now the name of the mother of the plaintiff and defendants are jointly appearing to the entire extent of 03 acres 08 guntas of land. The suit property is the ancestral property and the name of Ningavva along with defendants are appearing as per MR.No.T-166/2021-22, no partition was effected in between Ningavva and defendants, as such the plaintiff cannot purchase the suit property stating that the suit property is situated towards Eastern side of her mother's share. The mother of the plaintiff is not signatory to the alleged agreement of sale. The family of the defendants owned other lands and thereby Bhimanaik was not having any occasion to execute the alleged agreement of sale infavour of the plaintiff and defendant No.2 is not the signatory to the alleged agreement of sale. The family of the Bhimanaik was having sound financial capacity and he has no occasion to execute agreement of sale on 11.07.2017 which was registered on 26.07.2017 of its alleged execution. The Bhimanaik has no

legal authority to transfer the suit property infavour of the plaintiff for meager consideration amount of Rs.6,00,000/-. As the market value of the suit property which is irrigated land, in the year 2017 was Rs.20,00,000/-. The alleged agreement of sale dated 11.07.2017 which is registered on 26.11.2017 is not signed by any independent witnesses and it is clear that the plaintiff without paying any single pai to the Bhimanaik created the alleged agreement of sale dated 11.07.2017 and got registered on 26.07.2017 by taking undue advantage of old age of Bhimanaik and created the agreement of sale dated 26.07.2017. Further the defendants contended that Bhimanaik and defendants are constituted joint Hindu family and they were getting sufficient income from the suit property and other properties, as such they are not having any financial difficulties and there was no occasion was arose to them to sell or execute the agreement of sale infavour of the plaintiff. During the lifetime of Bhimanaik, the plaintiff has not taken any steps nor not issued any notice to the Bhimanaik and even after his death the plaintiff has not taken any steps within stipulated period of three years and the plaintiff has not averred in the plaint that she is ready and willing to perform her part of contract

since from the date of agreement of sale. For the first time the plaintiff got issued notice after lapse of more than five years which clearly reveals that the plaintiff never ready and willing to perform her part of contract. As the suit property is the ancestral property, the Bhimanaik has no absolute right to execute the alleged agreement of sale infavour of the plaintiff hence, the plaintiff is not entitled for decree of specific performance of contract. The plaintiff in active collusion with the scribe got created the agreement of sale dated 26.07.2017 by taking undue advantage of her relationship with the Bhimanaik and also the old age of the Bhimanaik as such, the defendants prayed to dismiss the suit.

4. Based on the above pleadings, the following issues have been framed;

**:: I S S U E S ::**

1. Whether plaintiff proves that the deceased Bhimanaik Huchachappa Naik had agreed to sell the suit schedule property in her favour for valuable consideration amount of Rs.6,00,000/- by receiving an amount of Rs.5,16,000/- towards the advance sale consideration amount and agreed to execute the



registered sale deed within three years by receiving the balance sale consideration amount and executed a registered agreement of sale on 26.07.2017?

2. Whether plaintiff proves that she is always ready and willing to perform her part of contract?
  3. Whether the defendants prove that the suit of the plaintiff is barred by law of limitation?
  4. Whether plaintiff is entitled for the relief of specific performance of contract?
  5. Whether the plaintiff is entitled for the alternative relief of refund of earnest money?
  6. Whether the plaintiff is entitled for the reliefs claimed?
  7. What Order or Decree?
5. In support of the case of the plaintiff, plaintiff got examined herself as PW-1 and she got marked Ex.P1 to 21 and got examined the scribe of agreement of sale as PW2 and got examined two witnesses as PW3 and 4 and closed their side. The defendant No.1 is examined as DW1 and he got marked Ex.D1 to 6 and closed their side.

6. Heard the arguments of both side and perused the material available on record.
7. My answer to the above issues and additional issues are as follows;

|            |    |                                          |
|------------|----|------------------------------------------|
| Issue No.1 | :- | In the Affirmative                       |
| Issue No.2 | :- | In the Negative                          |
| Issue No.3 | :- | In the Negative                          |
| Issue No.4 | :- | In the Negative                          |
| Issue No.5 | :- | In the Affirmative                       |
| Issue No.6 | :- | Partly in the Affirmative                |
| Issue No.7 | :- | As per final order for<br>the following; |

**:: REASONS ::**

8. **Issue No.1:-** In support of the case of the plaintiff, the plaintiff got examined herself as PW1, in her examination-in-chief she deposed as per contentions taken by her. She got marked original registered agreement of sale dated 11.07.2017 registered on 26.07.2017 as per Ex.P1. RTC extracts of the suit property as per Ex.P2 to 6, death certificate of Bhimanaik as per Ex.P14, MR.No.T-166/2021-22 as per Ex.P15, certified copy of the order sheet in OS.No.487/2012 as per Ex.P16.

9. It is the contentions of the plaintiff that the deceased Bhimanaik Huchachappa Naik was the owner of the suit property bearing R.S.No.26/1 measuring 03 acres 08 guntas out of it he is the owner of  $\frac{1}{2}$  extent i.e., 01 acre 24 guntas, for his family and legal necessity he put the said property for sale and accordingly the plaintiff was agreed to purchase the same for Rs.6,00,000/- as per the sale talks took in presence of the elders and out of the said fixed sale consideration amount she paid earnest amount of Rs.5,16,000/- and it was agreed in between the parties that balance sale consideration is to be paid at the time of the registration of the sale deed and Bhimanaik was agreed to receive the sale consideration amount with three years after effecting partition, preparing 11-E sketch and removing the encumbrance from the RTC extract but the Bhimanaik died on 20.08.2019, thereafter the defendants being the son and daughter succeeded to the suit property as legal heirs of deceased Bhimanaik Huchachappa Naik and to the said alleged agreement of sale the defendant No.1 and his wife are the witnesses, they have put their signature to the said agreement of sale by receiving earnest amount of Rs.5,16,000/- and executed the registered agreement of sale marked as per Ex.P1.

10. The defendants are contended that the Bhimanaik Huchachappa Naik was not having any family or legal necessity to alienate the suit property and the suit property is their ancestral property, apart from suit property their family is having other irrigated lands and the suit property is also irrigated land through which they are getting sufficient income, at any point of time the deceased Bhimanaik was not having any legal or family necessity to alienate the suit property, as such the alleged agreement of sale marked as peer Ex.P1 is a false document and at no point of time alleged Bhimanaik nor the defendant No.1 and his wife are having any intention to sell the suit property and it is also the contention of the defendants that by taking undue advantage of the old age of the Bhimanaik and also by taking undue advantage of relationship the plaintiff without paying single pai got executed the alleged agreement of sale as per Ex.P1.
11. Further it is the contentions the defendants that as per the recitals of the Ex.P1 the said document is executed on 11.07.2017 and registered on 26.07.2017, there is a gap of 15 days in between the alleged execution of Ex.P1 and registration of the same and 11.07.2017 nor 26.07.2017

deceased Bhimanaik nor the present defendants have not received any amount from the plaintiff and there is no consideration amount is passed under the Ex.P1 as such the Ex.P1 is not reliable one.

12. In order to prove the execution of Ex.P1, the plaintiff got examined herself as PW1 and got examined the scribe as PW2 and got examined one of the elder person who was presented at the time of sale talks.
13. In this case it is an admitted fact that the suit property was came to the deceased Bhimanaik Huchachappa Naik form his mother. The paternal grandmother of the deceased Bhimanaik Huchachappa Naik was the owner of the suit property bearing R.S.No.26/1 which is totally measuring 03 acres 08 guntas. She was having two daughters by name Ningavva W/o. Bhimappa Naik who is the mother of the plaintiff and another daughter by name Chinnakka who is the wife of deceased Bhimanaik Huchachappa Naik. Out of the 03 acres 08 guntas the mother of the plaintiff is having 01 acre 24 guntas and wife of deceased Bhimanaik is having 01 acre 24 guntas each in R.S.No.26/1 and in the RTC extract which is marked as per Ex.P2 the entire extent 03 acres 08 guntas of land in R.S.No.26/1 is standing jointly in the name

of the mother of the plaintiff and defendants No.1 and 2. Hence, it is clear that the wife of Bhimanaik and mother of the plaintiff are having  $\frac{1}{2}$  share each in the land bearing R.S.No.26/1 which is totally measuring 03 acres 08 guntas.

14. In the cross-examination of the PW1, she deposed that Ningavva Bhimappa Naik is her mother and in the RTC extract of the suit property the name of her mother and defendants No.1 and 2 are jointly appearing and she further admitted that her mother was filed a suit in OS.No.487/2012 against Bhimanaik seeking partition and in that suit her mother was filed an interim application restraining the defendants from alienating the suit property and accordingly injunction was granted restraining the defendants from alienating the suit property and same is reflecting in RTC extracts which are marked as per Ex.P3 to 5.
15. It is the contentions of the defendants that at the time of the execution of the alleged agreement of sale stay order operating in OS.No.487/2012, as such Bhimanaik was not having any right to execute the agreement of sale. No doubt in Ex.P3 to 5 a stay granted in OS.No.487/2012 is appearing but as per Ex.P16 the suit filed by the mother of the plaintiff against Bhimanaik in OS.No.487/2012 was dismissed for

non-prosecution on 07.08.2014. When the suit itself is dismissed along with this suit the temporary injunction will lose its value but in the RTC extract of the suit property the stay order granted by the court is continued. In view of the dismissal of the suit in OS.No.487/2012 the stay granted in the said suit will not be in operation after 07.08.2014. Hence, the contention of the defendants that at the time of execution of the Ex.P1 the stay order was reflecting in the RTC extract of the suit property, as such the agreement of sale cannot be executed is not acceptable one.

16. Further the PW1 in her cross-examination deposed that in R.S.No.26/1 her mother is having 01 acre 24 guntas of land and Bhimanaik was having 01 acre 24 guntas of land and towards the Eastern side of the suit property she has mentioned land of Ningavva Bhimanaik and towards West it is mentioned as Bhimanaik Huchachappa Naik land but she has not produced any documents to show the boundaries of the suit property. Further she deposed that at the time of execution of agreement of sale elderly persons by name Mahadev Bhimappa Naik, Bhimappa Naik, Saraswati Bhimappa Mahadev Naik were present. Out of them Mahadev Bhimappa Naik is the defendant No.1 and

Saraswati is the wife of the defendant No.1. Further she admitted that the defendant No.2 is the daughter of Bhimanaik Huchachappa Naik. Further she deposed that the defendant No.2 has not put her signature to the agreement of sale.

17. By perusing the agreement of sale marked as per Ex.P1 it is clear that the defendant No.1 who is the son of Bhimanaik Huchachappa Naik is one of the witness to the said agreement of sale and his wife Saraswati is also another witness to the agreement of sale. Further she deposed that the suit property is a dry land and further she admitted that in Ex.P3 the source of irrigation is mentioned as Well and Borewell but she deposed that there is a Well but there is no borewell. Hence, from the evidence of PW1 it is clear that the suit property is an irrigated land and in the RTC extract marked as per Ex.P2 to 5 it is mentioned as irrigated land and further in Ex.P1 also the land is mentioned as irrigated land. Hence, it is clear that the suit property is an irrigated land.
18. Further she deposed that on 26.07.2017 she paid Rs.5,16,000/- to the Bhimanaik and she kept the said amount in her house. At the time of paying the said amount one



Basappa Halannavar, Varashankar Tigadi, Deepak Kalloli, Chinnavva Kalloli were present and she further admitted that the above said persons are not witnesses to the Ex.P1. Further when it was suggested to her that apart from 26.07.2017 she has not paid any amount to the defendants, she admitted the same. Further she deposed that the Ex.P1 is written on 26.07.2017. Further she deposed that she paid the advance sale consideration amount in her house and not in the presence of the scribe of Ex.P1. Further she deposed that as she has paid advance sale consideration amount on 26.07.2017 to the defendants, as such they have put their signature to the Ex.P1 on 26.07.2017. Further she deposed that as she has paid advance sale consideration amount on 26.07.2017 but the defendants have not executed the sale deed, as such she filed this suit. Further by seeing Ex.P1, she deposed that in Ex.P1 it is mentioned that on 26.07.2017 she has paid Rs.5,16,000/- to the deceased Bhimanaik Huchachappa Naik. Further she deposed that the Ex.P1 was written on 11.07.2017 and in Ex.P1 it is mentioned that an amount of Rs.5,16,000/- is received by deceased Bhimanaik and she admitted that in Ex.P1 it is not mentioned in whose presence and where the Bhimanaik was received the advance

sale consideration amount. Further she deposed that the deceased Bhimanaik was got prepared the Ex.P1 on 11.07.2017 and after 15 days the said document was came to be registered and she further admitted that from 11.07.2017 to 26.07.2017 several documents were registered in the Sub-Registrar office. Further she deposed that as this transaction is their family transaction, as such deceased Bhimanaik Huchachappa Naik was not took the signature of the other witnesses on the Ex.P1. Further she admitted that her mother was not signed the Ex.P1. Further she deposed that she has not mentioned in her examination-in-chief what is the reason for not registering the agreement of sale till 26.07.2017. She further deposed that from 11.07.2017 to 26.07.2017 the agreement of sale was in the office of the scribe by name Anand Gotadaki. Further she deposed that as there was server problem in the Sub-Registrar office the agreement of sale was not registered till 26.07.2017. Further she deposed that prior to one month of the execution of the agreement of sale, sale talks were took place in her house. On 11.07.2017 and 26.07.2017 Basappa Halannavar, Varashanka Tigadi, Deepak Kalloli, Chinnavva Kalloli were came to the office of the scribe and Sub-Registrar officer.

They came to the Sub-Registrar office late as such they went back and the above said persons have not given any statement before the Sub-Registrar stating that at the time of sale transaction they were present.

19. From the cross-examination of PW1 it is clear that agreement of sale was prepared on 11.07.2017 and it was registered on 26.07.2017. The PW1 clearly deposed that prior to one month of the execution of the agreement of sale the sale talks were took place in her house, at that time Basappa Halannavar, Varashannkar Tigadi, Deepak Kalloli and Chinnavva Kalloli were present and in their presence she paid Rs.5,16,000/- in her house to deceased Bhimanaik Huchachappa Naik on 26.07.2017. It is the contention of the defendants that the agreement of sale was executed on 11.07.2017 and it was registered on 26.07.2017 on 11.07.2017 no consideration amount was paid by the plaintiff to deceased Bhimanaik, so also on 26.07.2017 the plaintiff never paid any sale consideration amount to deceased Bhimanaik. Hence, no sale consideration amount is paid by the plaintiff under Ex.P1, but from the evidence of PW1 it shows that on 26.07.2017 she paid advance sale consideration amount of Rs.5,16,000/- out of total sale consideration amount of

Rs.6,00,000/- in the presence of Basappa Halannavar, Varashankar Tigadi, Deepak Kalloli and Chinnavva Kalloli.

20. Further the plaintiff got examined one of the elderly person by name Varashankar Mallappa Tigadi who was present at the time of sale talks. In his examination-in-chief he deposed that the deceased Bhimanaik Huchachappa Naik, his son and daughter-in-law in order to meet out their family loan and hand loan, they put the suit property for sale and after sale talks Rs.6,00,000/- was fixed as a sale consideration amount and for that the deceased Bhimanaik Huchachappa Naik, his son and daughter-in-law were agreed of 25-30 days of the said sale talks on 11.07.2017 the defendant No.1, his wife and deceased Bhimanaik were brought the current year RTC extract and gave information to the scribe and the scribe prepared the agreement of sale on 11.07.2017. On 26.07.2017 Bhimanaik, his son and daughter-in-law were received Rs.5,16,000/- from the plaintiff at that time himself, Basappa Halannavar, Deepak Kalloli, Chinnavva Kalloli were present, the said amount was paid in the plaintiff's house. Thereafter the deceased Bhimanaik, defendant No.1 and his wife were put their signatures to the agreement of sale agreeing to receive balance sale consideration amount of

Rs.84,000/- within three years after preparing the sketch and other necessary documents.

21. In his cross-examination he deposed that the suit property is jointly standing in the name of defendants No.1 and 2 and plaintiff's mother and till today no partition was effected in between them and the deceased Bhimanaik nor the defendants have brought any documents to show that 01 acre 24 guntas is standing in the name Bhimanaik at the time of execution of the agreement of sale and there is no document to show that towards Eastern side of 01 acre 24 guntas of land shown in Ex.P1 the land of Ningavva Bhimappa Naik is situated. He admitted that the said Ningavva Bhimappa Naik is the mother of the plaintiff. He don't know how many loan was obtained by Bhimanaik Huchachappa Naik and defendants and from whom. Further he admitted that the suit property is an irrigated land. Further he deposed that prior to one month of execution of the agreement of sale dated 11.07.2017 the sale talks were took place in the house of the plaintiff on that day no amount was paid by the plaintiff to the Bhimanaik. Further he admitted that himself, Deepak Kalloli, Chinnavva Kalloli were not signed the agreement of sale. Further he deposed that the

Bhimanaik Huchachappa Naik were told them that they are the family members, as such there is no need of signatures of the outside of the family, as such they have not sign the agreement of sale. Further he admitted that he was present at the time of preparing the agreement of sale and registration of the agreement of sale and according to him on 26.07.2017 the defendants have received Rs.5,16,000/- from the plaintiff and on 11.07.2047 the defendants have not received Rs.5,16,000/- from the plaintiff but in Ex.P1 it is mentioned on 11.07.2017 Rs.5,16,000/- was received. Further when it was questioned to him as they were not signatory to the agreement of sale how they came to know that on 26.07.2017 the agreement of sale was executed, for that he deposed that at that time he was present. Further he deposed that on 26.07.2017 the plaintiff in her house paid Rs.5,16,000/- to the defendants and he denied that he is falsely deposing that on 11.07.2017 the agreement of sale was prepared on 26.07.2017 the defendants have received Rs.5,16,000/- from the plaintiff and registered the agreement of sale. He further denied that the Bhimanaik, his son, his daughter-in-law never put the suit property for sale. He

denied that as he was knows the plaintiff from last 20 years to help the plaintiff, he is deposing falsely.

22. From the cross-examination of PW4 it is clear that himself, Deepak Kalloli, Chinnavva Kalloli were present when the sale talks were took place and they were also present when agreement of sale was prepared and also they were present when the plaintiff paid Rs.5,16,000/- to the Bhimanaik in the house of the plaintiff and they were also present at the time of registration of Ex.P1. In the cross-examination of PW4 nothing contrary is brought on record to disbelieve his evidence. The PW1 clearly deposed that prior to one month of execution of the agreement of sale, sale talks were took place in her house and she paid advance sale consideration amount of Rs.5,16,000/- on 26.07.2017 in her house in the presence of the PW4, Deepak Kalloli and Chinnavva Kalloli. The PW4 is also deposed that prior to one month of execution of the agreement of sale the sale talks were took place at that time Bhimanaik Huchachappa Naik, his son, his daughter-in-law, themselves were present and on 11.07.2017 the agreement of sale was prepared at that time also they were present and he further deposed that on 26.07.2017 the plaintiff paid Rs.5,16,000/- to the Bhimanaik, his son and

daughter-in-law in her house at that time they were present. Hence, it is clear from the evidence of PW1 and 4 that the deceased Bhimanaik, defendant No.1 and his wife were received Rs.5,16,000/- from the plaintiff towards advance sale consideration amount of the suit property and they have executed the agreement of sale marked as per Ex.P1.

23. Further the plaintiff got examined the scribe of the Ex.P1 as PW2. From the evidence of PW2 it is clear that as per the information given by the deceased Bhimanaik, his son and daughter-in-law, he prepared the agreement of sale in their presence and at that time the plaintiff, Varadashankar Tigadi, Deepak Kalloli, Chinnavva Kalloli were present and he read over the contents of the agreement of sale to them, after understanding the same the Bhimanaik Huchachappa Naik, defendant No.1, his wife and plaintiff put their signatures. To disbelieve the evidence of PW2 to nothing contrary is brought on record to show that the Bhimanaik, defendant No.1, his wife were not executed the agreement of sale marked as per Ex.P1.

24. The defendants contended that there is a gap of 15 days in execution of the agreement of sale and registration of agreement of sale, as such it creates doubt with regard to



execution of the alleged agreement of sale. From the evidence of PW1, PW2 and PW4 it clearly goes to shows that the agreement of sale was prepared on 11.07.2017 and it was registered on 26.07.2017. On the date of registration the plaintiff has paid advance sale consideration of Rs.5,16,000/- to the deceased Bhimanaik Huchachappa Naik in her house. Merely delay of 15 days in registering the Ex.P1 it does not falsify the contention of the plaintiff. It is the contention of the defendants that without paying a single pai the plaintiff taking undue advantage of old age of the deceased Bhimanaik and in her relationship with their family she got created the Ex.P1. If that was the case the defendant No.1 who is the son of the Bhimanaik, he is the one of the witness to the Ex.P1 and not only that the wife of defendant No.1 is also one of the witness to the said agreement of sale the defendant No.1 and his wife would have questioned the registering authority for taking their signatures on a document and registering the said document but the defendant No.1 and his were not questioned the registering authority at the time of registration of the said document and it is also not the case of the defendants that the plaintiff has cheated him and obtained his signature on Ex.P1. No doubt

the defendant No.1 has denied his signature on Ex.P1 in his cross-examination but by perusing the signatures of defendant No.1 appearing on vakalata Nama, deposition from bare eye it is clear that the signature marked as per Ex.P1(b) is signature of the defendant No.1 and the signature marked as per Ex.P1(b) and the signature of the defendant No.1 appearing in the written statement and his deposition are one and the same. If at all the plaintiff was got created the Ex.P1 and the wife of defendant No.1 was not signed the said agreement of sale nothing was prevented the defendant No.1 to examine his wife to prove that the signature marked as per Ex.P1(c) is not her signature. Further more the Ex.P1 is the registered document it has got evidencery value in the eye of law. When the defendant No.1 is disputing the execution of the Ex.P1, he has to prove that by taking undue advantage of old age of Bhimanaik, the plaintiff got created the Ex.P1 but no such evidence is led by the defendant No.1. Mere denying his signature is not sufficient to disprove the Ex.P1. Hence, the contention of the defendant No.1 that the Ex.P1 is got created by by the plaintiff is not acceptable one and also the contention of the defendants that they have not

received advance sale consideration amount of Rs.5,16,000/- from the plaintiff is not acceptable one.

25. The defendant No.1 got examined himself as DW1, in his examination-in-chief he deposed as per contentions taken by him. He got marked Ex.D1 to 6, the documents which are produced by the defendant No.1 will not disprove the execution of the Ex.P1 and further from the evidence of DW1 nothing worth is brought on record to show that the plaintiff has got created the Ex.P1. Hence, the oral and documentary evidence adduced by the defendant No.1 is not acceptable one.
26. As the Ex.P1 is a registered document and it was duly executed by deceased Bhimanaik Huchachappa Naik and the defendant No.1 and his wife are the witnesses to the agreement of sale, now the defendant No.1 cannot deny his signature appearing on Ex.P1. Further it was contended by the plaintiff that the defendant No.1 knows the Kannada language to read and write and in the cross-examination of DW1, he has admitted the said fact and he has also admitted that before putting the signature to any document he will read the contents of the document understand the contents of the document then he will put his signature. The Ex.P1 is

the registered document written in Kannada Language wherein the signature of the defendant No.1 is appearing and it shows that prior to putting the signature he has read over the contents of the Ex.P1, after understanding the same he put his signature to the Ex.P1. The learned counsel for the plaintiff relying on the authority reported in *2007 (3) KCCR 2049 in between Sri. M. N. Ramchandrayya and another Vs. The State of Karnataka and another* contended that as per Section 74 of Registration Act the word execute means execution of a document by understanding the contents of the document and in the said authority it is held that the word “execute” found in Section 74 of Registration Act, has been interpreted by different High Courts case law considered. Law is well settled. Execution of a document does not mean merely signing, but signing by way of assent to the terms of contract embodied in the document. Execution is a solemn act it consists of signing the document written out, read over and understood, and does not consist of merely signing a name upon a blank sheet of paper. It is also held that the Registrar can find out only about the due execution of the deed for the purpose of the registration. From the above said authority it is clear that execute means and includes signing

the written document after reading and understanding its contents and it does not include mere signing the name upon a blank sheet of paper. In this present case on hand also the signature of the defendant No.1 is appearing on Ex.P1 and he knows the Kannada language to read and write and he admitted that before putting the signature he will read over the contents of the document if it is found correct then only he will put the signature. In this case also it clearly goes to show that prior to execution of Ex.P1 as a witness the defendant No.1 read over the contents, understood the same and thereafter put his signature to the Ex.P1. The defendant No.1 denied his signature marked as per Ex.P1(b) but to show that the Ex.P1(b) is not his signature, he has not adduced or produced any acceptable evidence. In the absence of such evidence the contention of the defendant No.1 that he has not put his signature to the Ex.P1 is not acceptable one. Further it is not the case of the defendant that the signature marked as per Ex.P1(a) is not the signature of the deceased Bhimanaik Huchachappa Naik. Hence, by considering entire oral and documentary evidence adduced by the plaintiff, I am of the considered view that the deceased Bhimanaik Huchachappa Naik agreed to sell the suit property to the

plaintiff for valuable sale consideration amount of Rs.6,00,000/- and received Rs.5,16,000/- towards advance sale consideration amount and agreed to execute the registered sale deed within three years by receiving balance sale consideration amount and executed the agreement of sale dated 11.07.2017 it was registered on 26.07.2017. **Hence, I answered the Issue No.1 in the Affirmative.**

27. **Issue No.2:-** The plaintiff contended that the Bhimanaik, his son and daughter-in-law were executed the agreement of sale as per Ex.P1 agreeing to receive balance sale consideration amount of Rs.84,000/- within three months after effecting the partition, preparing the 11-E sketch and removing the encumbrance over the suit property and she is ready and willing to perform her part of contract. During lifetime of deceased Bhimanaik many a time she approach him with request to receive the balance sale consideration amount and execute the sale deed and even after his death, she approach the defendants to asked them to receive balance sale consideration amount of Rs.84,000/- and executed the sale deed but the denial is on the part of the defendants.

28. The plaintiff contended that she is always ready and willing to perform her part of contract but denial is on the part of the defendants as such she got issued legal notice to the defendants on 05.04.2022 through her counsel by registered post but the defendants have refused to receive the said notice and they have not complied their part of contract. The plaintiff has produced the copy of the legal notice as per Ex.P7, postal receipts as per Ex.P8 and 9, returned envelop covers as per Ex.P10 to 13. By perusing these documents they clearly goes to shows that the plaintiff got issued legal notice to the defendants on 05.04.2022 i.e., nearly after 4 years 08 months of execution of the agreement of sale.
29. In this case the Bhimanaik Huchachappa Naik died on 20.08.2049 i.e., nearly after two years of execution of the agreement of sale. The plaintiff contended that during the lifetime of Bhimanaik Huchachappa Naik, she approached him and requested him to receive the balance sale consideration and executed the sale deed but he postpone the same. Even after the death of Bhimanaik Huchachappa Naik, she approach the defendants No.1 and 2 and requested them to receive the balance sale consideration amount and execute the sale deed but they are also postponed. Apart

from issuing legal notice as per Ex.P7 on 05.04.2022 the plaintiff has not adduced any acceptable material evidence to show that during the lifetime of deceased Bhimanaik Huchachappa Naik, she approached him and requested him to receive the balance sale consideration amount and execute the sale deed. So also the plaintiff has not adduced any acceptable material evidence to show that even after the death of Bhimanaik Huchachappa Naik, she approach the defendants and requested them to execute the sale deed by receiving balance sale consideration amount and there is no explanation or evidence is put forth by the plaintiff why she has got issued the legal notice to the defendants after 04 years 08 months of the execution of the agreement of sale. As per the terms and conditions of the agreement of sale within three years from execution of the agreement of sale the plaintiff has to pay balance sale consideration amount and by receiving the same the deceased Bhimanaik Huchachappa Naik has executed the sale deed but Bhimanak is died on 20.08.2019. Even immediately after the death of Bhimanaik, the plaintiff has not approach the defendants with a request to complete their part of contract by receiving balance sale consideration amount from her. It is clear that



nearly after 02 years 08 months death of Bhimanaik the plaintiff has issued legal notice to the defendants. What prevented the plaintiff to issue legal notice to the defendants immediately after the death of the Bhimanaik is not stated by her and no acceptable evidence is put forth by the plaintiff why she has kept quite from 26.07.2017 to 05.04.2022 to complete her part of contract and there is no acceptable explanation is put forth by the plaintiff why she has not taken any steps for completion of her part of contract during the lifetime of Bhimanaik Huchachappa Naik and after his death. The plaintiff has issued legal notice to the defendants after 04 years 08 months of execution of the alleged agreement of sale, it shows that within the period of three years the plaintiff has not taken any steps to complete the terms of contract on her part. It shows that the plaintiff is not ready and willing to perform her part of contract within the stipulated period of three years from the date of execution of the agreement of sale. Hence, it creates doubt that the plaintiff is and was ever ready to perform her part of contract. Further in the plaint and so also in the cross-examination of the DW1 nothing worth is brought on record what are the efforts made by her to complete her part of

contract during the lifetime of deceased Bhimanaik and after his death. Under such circumstances, I am of the considered view that the plaintiff is failed to prove that she is ready and willing to perform her part of contract. **Hence, I answered the Issue No.2 in the Negative.**

30. **Issue No.3:-** The defendants contended that as per the terms of the agreement of sale three years period is fixed and the plaintiff got issued the legal notice in the year 2022 i.e., on 05.04.2022 i.e., nearly after five years from the date of execution of the agreement of sale, as such the suit is barred by limitation. The Ex.P1 was registered on 26.07.2017 wherein three years time is fixed for completion of the contract from the date of registration of the agreement of sale. Hence, it is clear that the time is the essence of the contract. The Article 54 of Limitation Act, applicable regarding the limitation to file suit for specific performance. The period of limitation is three years when the date is fixed for performance or if no date is fixed when the plaintiff has notice that performance is refused from that date the cause of action arose to the plaintiff. In this case the agreement of sale was came to be executed on 11.07.2017 registered on 26.07.2017. Three years period expires on 11.07.2020 and

from 11.07.2020 within three years i.e., within 11.07.2023 the plaintiff has to file the suit for specific performance of contract. This present suit is filed by the plaintiff on 07.06.2022. Hence it is clear that the suit is filed well within the period of limitation. Hence, the contention taken by the defendants is not acceptable one.

31. The learned counsel for the plaintiff contended that as per the terms and conditions of the agreement of sale, from the date of agreement of sale within three years partition is to be effected, 11-E sketch is to be prepared and encumbrance is to be removed from the RTC extract and thereafter receive the balance sale consideration amount and execute the sale deed but the defendants are not completed their terms of contract and within three years from the date mentioned in the agreement of sale they have filed this suit hence, the suit is well within time. In support of this contention the learned counsel for the plaintiff relied on the authority reported in *2005 (3) KCCR 1881 in between Smt. Sarasawatamma Vs. H. Sharath Shrikande and others*, wherein it is held that when a promiser himself has undertaken in the contract to do something before completion of sale, the limitation for specific performance will not start running until that act is

performed by the promiser, even though there is a fixed date in the agreement of performance. In this present case on hand also the deceased Bhimanaik Huchachappa Naik was agreed to make partition, prepare 11-E sketch and remove all encumbrance for the suit property within three years but until his death he has not done so and so also after his death his legal heirs were also not done so and after completion of the three years mentioned in the agreement of sale cause of action starts for the plaintiff and within three years the plaintiff has filed this suit. Hence, I am of the considered view that the authority relied by the plaintiff is applicable to the present case on hand. Hence, I am of the considered view that the defendants are failed to prove that the suit is barred by limitation. **Hence, I answered the Issue No.3 in the Negative.**

32. **Issue No.4 to 6:-** The plaintiff has proved that the deceased Bhimanaik Huchachappa Naik executed the agreement of sale dated 11.07.2017 registered on 26.07.2017 by agreeing to sell the suit property for Rs.6,00,000/- and received Rs.5,16,000/- as an advance amount and executed the registered agreement of sale as per Ex.P1 but the plaintiff is failed to prove that she is always ready and willing to

perform her part of contract. Hence, the plaintiff is not entitled for relief of specific performance of contract.

33. Further the defendants have contended that the suit schedule property is their ancestral property and same is standing jointly in the name of defendants No.1 and 2 and mother of the plaintiff. The boundaries mentioned in the agreement of sale are not based on any documents and until effecting the partition in between the mother of the plaintiff and defendants No.1 and 2 it cannot be said that which portion of the land will fall to the defendants and the mother of the plaintiff as such, the agreement of sale cannot be enforced directing the defendants to execute the registered sale deed. The plaintiff got examined her mother as PW3, she deposed that originally the suit property belongs to her mother and her mother was given the suit property jointly in her favour and infavour of her sister who is the wife of deceased Bhimanaik Huchachappa Naik and she also admitted in her cross-examination that till today no partition was effected in between herself and her sister by way of registered partition deed or by decree of court but she deposed that before the elders the partition was took place and accordingly in 01 acre 24 guntas having boundaries

mentioned in the agreement of sale is in the possession of the defendants and another 01 acre 24 guntas is in her possession and both of them are cultivating their respective shares separately. Further she also deposed that she is not having any objections for executing the registered sale deed infavour of the plaintiff to an extent of 01 acre 24 guntas of land as per the agreement of sale as per Ex.P1. Admittedly the land bearing R.S.No.26/1 totally measuring 03 acres 08 guntas out of which the mother of the plaintiff is having 01 acre 24 guntas and defendants are having 01 acre 24 guntas and in the RTC extract their names are jointly appearing to an extent of 03 acres 08 guntas. Until and unless a partition was effected by metes and bounds wither by way of decree of court or by way of registered partition deed the shares of the mother of the plaintiff and defendants No.1 and 2 will not be identified and there is no certainty which portion of the land will fall to the defendants No.1 and 2 and which portion of the land will fall to the share of the mother of the plaintiff. When the boundaries of the suit property is not sure then the sale deed cannot be executed. Even though the mother of the plaintiff deposed that she is not having any objections to execute the sale deed in respect of 01 acre 24 guntas

mentioned in Ex.P1 infavour of her daughter but in the RTC extract the entire extent of RS.No.26/1 measuring 03 acres 08 guntas is jointly standing in the name of defendants and mother of the plaintiff. Under such circumstances, sale deed only to an extent of 01 acre 24 guntas without effecting partition in between the mother of the plaintiff and defendants sale deed cannot be executed.

34. Further the defendants contended that the suit schedule property is their ancestral property. The wife of deceased Bhimanaik Huchachappa Naik acquired the suit property from her mother and after the death of the wife of Bhimanaik the name of Bhimanaik was mutated to the suit land along with the name of the plaintiff's mother and after the death of Bhimanaik the names of defendants No.1 and 2 are jointly mutated to the suit property and defendant No.2 is sister of defendant No.1 and she was not the signatory to the alleged agreement of sale marked as per Ex.P1. Admittedly the suit property is their ancestral property till today no partition was effected in between deceased Bhimanaik, his son and daughter. Under such circumstances the Bhimanaik alone was not having right to execute the agreement of sale infavour of the plaintiff and the defendants cannot be

directed to execute the sale deed as per the terms and conditions of the Ex.P1. The learned counsel for the defendants relied on the authority reported in 2121(2) *Kar.L.R 79(DB) in between V.Manjunath Vs., Beereddy Dasaratharami Reddy and Another*. Where in it is held that In the absence of any agreement executed by other coparceners, merely because one of the member of the joint family executed the agreement, even assuming that it is an agreement, which cannot be enforced in view of the provision of Section 17 of Specific Relief Act. In this case on hand also the defendant No.2 is the one of the coparcener of family of defendant No.1 she is not signatory to the agreement of sale, hence the agreement of sale cannot be executed. The authority relied by the learned counsel for the defendants is applicable to the case on hand. Hence, I am of the considered view that the plaintiff is not entitled for relief of specific performance of contract.

35. Further the plaintiff has sought the alternative relief of refund of earnest amount, if the agreement of sale is not executable for any legal hurdle, in that event directing the defendants to return the earnest amount of Rs.5,16,000/- along with interest at the rate of 18% per annum from the



date of execution of the registered agreement of sale till realization of entire amount.

36. The plaintiff has proved that under the Ex.P1 she has paid earnest amount of Rs.5,16,000/- to the deceased Bhimanaik in the presence of defendant No.1 and his wife who are son and daughter-in-law of deceased Bhimanaik and they have jointly receive the said amount. She paid said amount to the deceased Bhimanaik, defendant No.1, his wife in her house in the presence of elders by name Basappa Halannavar, Varadashankar Tigadi, Deepak Kalloli, Chinnavva Kalloli. The plaintiff has also got examined one of the witness who was present at the time of sale talks and paying advance sale consideration amount of Rs.5,16,000/- to the deceased Bhimanaik, defendant No.1 and his wife he clearly deposed that on 26.07.2017 the plaintiff paid Rs.5,16,000/- to deceased Bhimanaik, his son and his daughter-in-law at that time himself and other three witnesses were present. Under such circumstances it is clear that the deceased Bhimanaik, defendant No.1 and his wife jointly received Rs.5,16,000/- from the plaintiff. The defendants contended that without paying any single pai by taking undue advantage of old age of deceased Bhimanaik, the plaintiff has got created Ex.P1

but the defendant No.1 is one of the witness to the Ex.P1 and in his cross-examination he clearly deposed that only after the reading the contents of the document he will put his signature. Hence, it is clear that after reading the contents of the Ex.P1 and only after understanding the contents of the Ex.P1 the defendant No.1 has put his signature as a witness to the Ex.P1, not only that the wife of defendant No.1 is also another witness to the Ex.P1 and she has also put her signature only after reading and understanding the contents of the Ex.P1. Hence, it is clear that the defendants have received Rs.5,16,000/- and the plaintiff is failed to prove her ready and willingness to perform her part of contract. Under such circumstances, the defendants are bound to return to advance sale consideration amount of Rs.5,16,000/- to the plaintiff.

37. The plaintiff contended that in the event of the sale deed is not executable for any legal hurdles the defendants have to be directed to refund of earnest amount of Rs.5,16,000/- along with interest at the rate of 18% per annum. The rate of interest is claimed by the plaintiff appear to be exorbitant and it is more than the bank rate of interest. The plaintiff has paid the advance sale consideration amount on

26.07.2017 and it is nearly nine years have lapsed. If the plaintiff deposited the said amount in FD in any of nationalized bank she will accrued some interest for the said amount. Hence, by considering the long period of nine years if the defendants are directed to pay interest at the rate of 9% per annum on Rs.5,16,000/- from the date of execution of the agreement of sale till realization of the entire amount it will not cause any loss or injury to the defendants and it will also not cause hardship to the plaintiff. Hence, I am of the considered view that the plaintiff is entitled for refund of earnest amount along with interest at the rate of 9% per annum from the date of execution of agreement of sale i.e., 26.07.2017 till realization of its entire amount. The defendants are directed to refund earnest amount of Rs.5,16,000/- along with 9% interest per annum from 26.07.2017 till payment of the entire amount within three months. **Hence, I answered the Issue No.4 in the Negative, Issue No.5 in the Affirmative and Issue No.6 partly in the Affirmative.**

38. **Issue No.7:-** In view of above discussions made on the above issues, I proceed to pass the following;

**:: ORDER ::**

The suit is partly decreed with costs.

The relief of specific performance of contract is dismissed.

The plaintiff is entitled for alternative relief of refund of earnest money along with interest.

The plaintiff is entitled for recovery of earnest amount of Rs.5,16,000/- from the defendant along with interest at the rate of 9% per annum from the date of agreement of sale i.e., 26.07.2017 till realization of the entire amount.

The defendants No.1 and 2 are hereby directed to refund earnest amount of Rs.5,16,000/- along with interest at the rate of 9% per annum from the date of execution of the agreement of sale dated 26.07.2017 till realization of the entire due amount within three months from the date of judgment and decree.

In the event of failure of the defendants No.1 and 2 to refund the earnest amount of

Ra.5,16,000/- along with interest at the rate of  
9% per annum, the plaintiff is at liberty to  
recover the same by due process of law.

Draw decree accordingly.

(Dictated to the Stenographer transcribed and typed by him, script, script corrected, signed and then pronounced by me in the open court on this the 09<sup>th</sup> DAY OF JULY-2026)

(Umesh S.Atnure)  
Prl.Senior Civil Judge, Gokak.

**:: ANNEXURES ::**

**LIST OF WITNESSES EXAMINED BY THE PLAINTIFF/S :**

|       |    |                                   |
|-------|----|-----------------------------------|
| P.W-1 | :- | Smt. Rajashree W/o. Ningappa Kuri |
| P.W-2 | :- | Anand S. Gotadaki                 |
| P.W-3 | :- | Smt. Ningavva W/o. Bhimappa Naik  |
| P.W-4 | :- | Varashankar S/o. Mallappa Tigadi  |

**LIST OF DOCUMENTS EXHIBITED BY PLAINTIFF/S :**

|                  |    |                                       |
|------------------|----|---------------------------------------|
| Ex.P-1           | :- | Original registered agreement of sale |
| Ex.P-1(a) to (d) | :- | Signatures                            |
| Ex.P2 to 6       | :- | RTC extracts                          |
| Ex.P-7           | :- | Legal notice                          |
| Ex.P-8 & 9       | :- | Postal receipts                       |
| Ex.P-10 to 13    | :- | Returned postal envelopes             |
| Ex.P-14          | :- | T/C of death certificate              |
| Ex.P-15          | :- | Mutation register extract             |
| Ex.P-16          | :- | C/C of order sheet in OS.No.487/2012  |
| Ex.P-17          | :  | Salary details                        |
| Ex.P-18 & 19     | :- | RTC extracts                          |

Ex.P-20 :- Mutation extract

Ex.P-21 :- Encumbrance certificate

**LIST OF WITNESSES EXAMINED BY DEFENDANT/S :**

DW-1 :- Mahadev S/o. Bhimanaik @ Bhimappa Nayik

**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF DEFENDANT/S :**

Ex.D-1 :- RTC extract

Ex.D-2 & 3 :- C/C of mutation register extracts

Ex.D-4 :- Mutation extract

Ex.D-5 :- Application given to the Sub-Registrar, Gokak

Ex.D-6 :- Endorsement given by the  
Sub-Registrar, Gokak

**(Umesh S. Atnure )**  
**Prl.Senior Civil Judge, Gokak**