

KABG500009252023



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

Present: **G. DEEPA, B.A.L., LL.B.,**  
Prl. Senior Civil Judge Gokak

Dated, this the 12<sup>th</sup> day of October 2023

**O.S.NO.453/2023**

Plaintiff: Sri. Muneer  
S/o. Ahamad Khatib.  
Aged about 51 years,  
Agriculturist,  
R/at Awati Galli, Gokak Taluk,  
Belagavi District.

(By Sri.M.K.P, Advocate)

V/S

Defendant: Smt. Imambi  
W/o. Babu @ Baburao Munyal.  
Aged about 66 years,  
Agriculturist and Household,  
R/at Koujalagi, Gokak Taluk,  
Belagavi District.

(Exparte)

|                                               |   |                                                                                        |
|-----------------------------------------------|---|----------------------------------------------------------------------------------------|
| Date of institution of the Suit               | : | 13/07/2023                                                                             |
| Nature of the Suit                            | : | Specific Performance of contract                                                       |
| Date of commencement of recording of evidence | : | 13/09/2023                                                                             |
| Date of pronouncement of Judgment             | : | 12/10/2023                                                                             |
| Total duration                                | : | Years /s      Month/s      Day/s<br>00                      02                      29 |

**(G. DEEPA)**

Prl. Senior Civil Judge, Gokak

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

The plaintiff has filed the above suit against the defendant for the reliefs of Specific Performance of Contract with cost and such other reliefs. In the alternative, the plaintiff has also sought for the refund of earnest money of Rs.9,50,000/- with the interest of the rate of 18% per annum from the date of agreement to till its realization.

2. The brief facts of the plaintiff's case are that the defendant being the owner of the suit schedule property

has put the same for sale for her legal and family and legal necessities and for payment of the hand loan. The plaintiff who is interested in purchasing the suit schedule property has approached the defendant along with the elders. After negotiations in presence of the elderly persons, the defendant has agreed to sell the suit schedule property in favour of the plaintiff for valuable consideration amount of Rs.10,00,000/-. Accordingly, in order to evidence the transaction, the defendant has executed an agreement of sale on 30/12/2022 by receiving an advance amount of Rs.9,50,000/- from the plaintiff and further agreed to execute the registered sale deed within 5 months by receiving the balance sale consideration amount of Rs.50,000/-. The attesting witnesses have evidenced the transaction and attested the document.

3. The plaintiff is ever ready and willing to perform his part of the contract. Accordingly, the plaintiff has approached the defendant with the balance sale consideration amount along with the elderly persons to get

executed the registered sale deed by receiving the balance sale consideration amount. Whereas, the defendant has postponed the same on one or the other pretext. Finally on 15/06/2023, the plaintiff again approached the defendant and requested her to execute the registered sale deed in terms of the sale agreement. Whereas, the defendant postponed the execution of the deed without any reason.

4. Accordingly, the plaintiff has got issued a legal notice to the defendant on 21/06/2023, calling upon her to execute the registered sale deed in terms of the agreement. Though the legal notice served upon the defendant, she has failed either to comply or reply with the notice. Accordingly, the plaintiff constrained to maintain the instant suit and sought for decreeing the suit.

5. Upon service of summons, the defendant has failed to appear before the court. Hence, she was placed *exparte*. Accordingly, in order to prove the averments of the plaint, the plaintiff has examined himself as PW.1 and relied upon

5 documents & also examined two witnesses as PW.2 & 3 and closed his evidence.

6. Heard the arguments of the plaintiff. Perused the material on record.

7. The Points that arise for my consideration are:

- 1. Whether the plaintiff is entitled for the reliefs claimed?**
- 2. What order?**

8. My findings on the above Points are:

**Point No.1:** In the Affirmative

**Point No.2:** As per final order  
for the following:

### **R E A S O N S**

9. **Point No.1:** The material record reveals that the plaintiff has maintained the instant suit against the defendant for the relief of specific performance of the contract and in the alternative, for the refund of the earnest

money with the interest at the rate of 21% per annum on the alleged failure of the defendant to perform her part of contract. Whereas, despite service of summons, she has failed to appear before the court and resist the claim of the plaintiff. However, the fact of failure of the defendant to appear before the court would not absolve the liability of the plaintiff to prove his case as it is the settled law that the party who approaches the court has to prove his case with the cogent and convincing evidence and the weakness of the defendant cannot be used as a trump card.

10. In order to substantiate the case, the plaintiff has examined himself as PW-1 by filing an affidavit in lieu of examination-in-chief and relied upon 5 documents as per Ex.P.1 to Ex.P.5 and also examined two witnesses as PW.2 & 3, who are alleged to be the attestor and scribe of the sale agreement (Ex.P.1) and closed his evidence. The averments of the affidavit of PW-1 filed in lieu of examination-in-chief are nothing but the reiteration of the averments of the plaint. Hence, it requires no discussion.

However, the affidavits filed by the PW.2 & 3 clearly corroborate case of the plaintiff in respect of the due execution of the sale agreement and paying of advance sale consideration amount by the plaintiff in favour of the defendant. Further, the plaintiff/PW.1 has relied upon as many as 5 documents. Among the 5 documents, the Ex.P.1 is the sale agreement and Ex.P.2 is the RTC extract standing in the name of the defendant. The very documents reveal that the defendant being the owner in possession of the suit schedule property has put the suit schedule property for sale and after negotiations, she has agreed to sell the suit schedule property in favour of the plaintiff Rs.10,00,000/- and in order to evidence the transaction, she has executed the sale agreement as per Ex.P.1 by receiving an amount of Rs.9,50,000/- as an advance sale consideration amount, agreeing to execute the registered sale deed within 5 months by receiving an amount of Rs.50,000/- towards balance sale consideration amount. The very averments of the Ex.P.1 and the averments of the affidavits of plaintiff and his witnesses corroborate with

each other which further substantiate the fact of passing of sale consideration amount from the plaintiff to the defendant and also the due execution of the sale agreement by the defendant in favour of the plaintiff.

11. Further, the documents at Ex.P.3 to Ex.P.5 ie., the copy of legal notice, postal receipt and postal acknowledgment further substantiate the contention of the plaintiff in respect of his readiness and willingness to perform his part of the contract. Despite of service of notice of demand to execute the registered sale deed in terms the sale agreement, the defendant has failed either to reply or comply with the notice. The very fact substantiates the case of the plaintiff that the defendant is not ready to perform her part of the contract and the alleged failure of the defendant in performing her part of the contract. The very facts further strengthens the case of the plaintiff in respect of the due execution of the sale agreement by the defendant by receiving an advance sale consideration amount of Rs.9,50,000/-. The failure of the defendant to

appear in response to the summons and maintaining silence inspite of her knowledge about the institution of the suit substantiate the contention of the plaintiff that the defendant is not ready to perform her part of the contract inspite of due execution of the sale agreement. In lieu of the unchallenged evidence, there is nothing to disbelieve the version of the plaintiff. Hence, this court is of the considered opinion that the plaintiff has proved his case and is entitled for the relief of specific performance of the contract. In the circumstances and in the light of the above discussions, the **Point No.1** is answered in the **Affirmative.**

12. **Point No.2:** For the aforesaid findings, I proceed to pass the following:

### **O R D E R**

The suit of the plaintiff is hereby decreed with costs.

Accordingly, the defendant is hereby directed to execute the

registered Sale Deed in terms of registered agreement dtd:30/12/2022 by receiving the balance sale consideration amount of Rs.50,000/- within two months from this day, failing which the plaintiff is at liberty to get executed the registered sale deed through the agency of the Court.

Office to draw decree accordingly.

(Dictated to the Stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in the open Court on this the 12<sup>th</sup> day of October 2023)

**(G. DEEPA)**

Prl. Senior Civil Judge, Gokak.

### **A N N E X U R E**

#### **List of witnesses examined by the Plaintiff:**

- PW.1 : Sri. Muneer A. Khatib.  
PW.2 : Sri. Kadappa D. Mestri.  
PW.3 : Sri. Vishwas P.Sundholi.

**List of documents marked by the Plaintiff:**

- Ex.P.1 : Registered sale agreement.  
Ex.P.2 : RTC extract.  
Ex.P.3 : Copy of legal notice.  
Ex.P.4 : Postal receipt.  
Ex.P.5 : Postal acknowledgment.

**List of witnesses examined by the Defendant:**

**NIL**

**List of documents marked by the Defendant:**

**NIL**

**(G. DEEPA)**

Prl. Senior Civil Judge, Gokak.