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**IN THE COURT OF THE PRL. CIVIL JUDGE &
JMFC.,AT**

CHINTHAMANI

PRESENT:

SRI.SHIVAKUMARA G.J., B.A.L.LB.

Prl. Civil Judge & J.M.F.C.,
Chinthamani.

O.S.No.127/2018

Dated on this the day 7th December of 2021

PLAINTIFF:-

Smt. Nagarathnamma,
W/o Lakshminarasimha Murthy,
Aged about 45 years,
R/at Doddihalli Village,
Kaiwara Hobli,
Chintamani Taluk,
M.G. Road South,
Chikkaballapur District.

(By Sri. R.C.S. Advocate)

-Vs-

DEFENDANTS :-

- 1. Sri. Rathnamma,**
W/o Late Narayanaswamy,
Aged about 45 years,
- 2. Sri. Shankarappa,**
S/o Late Guttappa,
Aged about 40 years,

3. Smt. Kalavathi

W/o Shanarappa,
Aged about 37 years,

4. Master Darshan(Minor)

Aged about 17 years,

5. Master Chikku (Minor)

Aged about 16 years,
Both are minors,
Represented by their natural
guardian shankarappa
All are residing at
Doddihalli Village,
Kasaba Hobli,
Chintamani Taluk,
Chikkaballapur District.

(Sri. H.V. Advocate for D2 & D4)
(D1, D3 and D5 are placed Ex-Parte)

Institution of the suit	:	06.06.2018
Nature of the suit	:	Suit for specific performance of Contract
Recording of evidence	:	07.06.2019
Closing of evidence	:	07.06.2019
Pronouncing of Judgment	:	07.12.2021
		Years Months Days
Total Duration of the Suit	:	03 06 01

(SHIVAKUMARA G.J)

**Prl. Civil Judge & JMFC.,
Chinthamani.**

J U D G M E N T

The plaintiff has filed the suit for specific performance of agreement dated **20.10.2016** and for delivery of possession of suit schedule property to the plaintiff.

2. The brief facts of the plaintiff case is that :-

Plaintiff described the suit property at the schedule of the plaint and same is reproduced here under:

S C H E D U L E

All that piece and parcel of the land bearing Sy.No.28 measuring 20 guntas belonging to you all out of 98 acres 10 guntas situated at Doddihalli Village, Kaiwara Hobli, Chintamani Taluk, Chikkaballapur District, bounded as follows:

East by : Venkatappa and Kadirappa property,

West by : Road,

North by : Vinayaka Land,

South by : Subbamma Land

Hence forth for the sake of convenience the above described property is called as suit property.

3. The brief case of the plaintiff is as under:

According to the plaintiff, on 20.10.2016 he entered into agreement of sale to purchase the suit schedule property from defendant No.1 to 5 for Rs.1,32,000/- by paying advance amount of Rs.1,30,000/-. As per the terms of the sale agreement, the defendants have agreed to execute the registered sale deed after preparation of the necessary documents by supplying all the necessary title deeds and other documents to the Plaintiff. The Plaintiff further submits that after the execution of the said sale agreement dated 20.10.2016, as per the terms of the sale agreement, she (Plaintiff) has approached the defendants and also requested the defendants to execute the regular sale deed. But, the defendants have postponed the execution of the registered sale deed in favour of the Plaintiff on one or the other pretext. The Plaintiff has requested the defendants many times, to execute the registered sale deed, but, the defendants have failed to perform their part of the contract as per the terms of the sale agreement. Hence, she (Plaintiff) was constrained to issue a legal notice dated 11.09.2017 calling upon the defendants to execute the registered sale deed in her (Plaintiff) favour within 15 (Fifteen) days from the date of

receipt of the notice. The said notice were duly served on the defendants. Despite receipt of the said notice, the defendants did not come forward to execute the sale deed in favour of the Plaintiff.

4. The Plaintiff further submits that she was already performed his part of the contract to get the sale deed registered by paying full sale consideration, but the defendants have failed to perform their part of the contract. Hence, this suit. By contending so, the Plaintiff has prayed for judgment and decree as prayed for.

5. After the presentation of the plaint, the suit was registered and suit summons were issued and duly served on the defendant No.1, 3 and 5. The record shows that despite service of summons, the defendant No.1, 3 and 5 did not appear before this Court, hence, they were placed exparte. The defendant No.2 and 4 were appeared before the court and filed written statement. Defendant No.2 admitted the execution of Sale agreement dated: 20.10.2014 in favour of the plaintiff. The defendants are approached the plaintiff for financial help in the month of October 2016 and requested loan of Rs.1,30,000/-. The plaintiff has

insisted the defendants to execute registered agreement of sale for security purpose in respect of the suit schedule property. Without any alternative, the defendants are agreed to execute the agreement of sale for security purpose in respect of suit schedule property in favour for plaintiff for the said hand loan. That on 20.10.2016, the plaintiff had paid hand loan amount of Rs.1,30,000/- to the defendants and the defendants on the same day the defendants has executed the of sale for security purpose in respect of suit schedule property in favour of plaintiff. Hence, the defendants have prayed for dismissal of the suit.

6. To prove the case of the plaintiff, the plaintiff himself examined as PW-1 and produced 9 documents got marked as Ex.P1 to 7.

7. Heard Arguments and perused the records.

8. On the basis of the pleadings, following points arise for the consideration of this court:-

I S S U E S

1. Whether the plaintiff proves that the defendants have executed Registered Agreement of Sale dated 20.10.2016 in

respect of suit schedule property by agreeing to sell it for the sale consideration of Rs. 1,32,000/- and received part sale consideration of Rs.1,30,000/- and agreed to receive Rs. 2,000/- as balance consideration at the time of registration of sale deed ?

2. Whether the plaintiff further proves that he is and was ever ready and willing to perform his part of contract ?

3. Whether the defendants prove that the defendants have execute the registered agreement of sale as a security purpose of loan transaction between plaintiff and defendants ?

4. Whether the plaintiff is entitled for the relief as sought for ?

5. What order or decree ?

9. My findings on the above issues are as under:-

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

Issue No.2 : In the **Affirmative**

Issue No.3 : In the **Negative**

Issue No.4 : In the **Affirmative**

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

REASONS

10. ISSUES NO.1 AND 3:- As the facts involved in these issues are common, they are taken together for consideration.

The plaintiff Smt. Nagarathanamma has filed this suit. According to the plaintiff, the defendant No.1 to 5 had entered into agreement of sale to sell the suit schedule property namely the property comprised in Sy.No.28 measuring 20 guntas of Doddihalli village for Rs.1,32,000/- on 20.10.2016, the defendant No.1 to 5 have executed agreement of sale in her favour by receiving advance amount of Rs.1,30,000/- in the presence of witnesses. The plaintiff further contended that inspite of repeated demands and requests the defendant No.1 to 5 have not executed registered sale deed in respect of suit schedule property in her favour.

11. In this suit, the defendant No.2 and 4, in their written statement they have specifically admitted the agreement of sale dated 20.10.2016 and also receipt of sale consideration amount of Rs.1,30,000/-. However, the defendant No.2 and 4 have specifically admitted the execution of Agreement of sale deed in favour of plaintiff

and but they have taken specific contention that the defendants are approached the plaintiff for financial help in the month of October 2016 and requests loan of Rs.1,30,000/-. The plaintiff has insisted the defendants to execute the registered agreement of sale for security purpose in respect of suit suit property. This is not a sale agreement it is only nominal security loan agreement.

12. To substantiate his contentions, the Plaintiff namely Smt.Nagarathnamma has examined herself as PW.1. The PW.1 has filed her examination-in-chief, wherein she has reiterated the entire plaint averments. Besides, the Plaintiff has also produced the original documents for the consideration of the Court.

13. The Ex-P2 is the Two RTC extracts, which contains information that the Suit Schedule Property is standing in the name of the 2nd defendant Sri. Shankarappa S/o Guttappa. It must be noted that the name of the defendant No.2 does find place in the owner's column of this Ex-P 2. Thus, it supports the stand taken by the Plaintiff. The Ex-P 2 the Records of rights extracts itself is sufficient to buttress the stand taken by the

Plaintiff that the defendants are the absolute owners of the Suit Schedule Property.

14. Further, the Plaintiff has produced the agreement of sale dated 20.10.2016. A perusal of this Ex-P1 namely the Registered agreement of sale dated 20.10.2016 makes it clear that it buttresses the stand taken by the Plaintiff herein. As per the agreement of sale the defendants have agreed to sell the said Suit Schedule Property in favour of the Plaintiff herein for Rs.1,32,000/-. Further, in this Ex-P1 it is also recited that the defendants have received Rs.1,30,000/- as advance sale consideration from the Plaintiff herein. Further, it is also recited that the defendants have agreed to receive the balance sale consideration of Rs.2,000/- at the time of registration of the regular sale deed. Further, it also recited in this sale agreement that the defendants have agreed to execute the regular sale deed in terms of the said Ex-P1 within 3 (Two) years from that date agreement. Therefore, the recitals available in the said Ex-P1 support the stand taken by the Plaintiff.

15. In this suit the defendant No.2 and 4 have nothing to do with the transaction. As the defendant No.2 being one of the party to the agreement of sale, admitted the

execution of agreement of sale and receipt of part of the sale consideration amount of Rs.1,30,000/-, nothing is remained to the plaintiff to establish regarding execution of agreement of sale. According to the well established principles of law when the registered document is produced **"A registered document carries with it a presumption that was validly executed and it is to be presumed that it is a valid document unless the contrary is proved."** Hence, unless disprove the registered documents it is an lawful documents. Generally, a registered instrument can be cancelled or revoked only by a deed of revocation or cancellation duly executed and registered, This documentary evidence of PW1 is not been disputed by defendants on the contrary no documents is produced. Hence, unless disprove the registered documents it is an lawful documents. The registered agreement of sale was executed on 20.10.2016 and registered in the office of the Sub-Registrar, Chintamani, on 20.10.2016. It is true that if the execution of document is denied, it is for the party who alleged the due execution to prove by acceptable evidence. In this case, There is nothing on record to doubt the genuineness of the document Ex.P.1. Therefore, all these evidence clearly establishes that the

plaintiff has proved the due execution of agreement of sale by defendants and the defendant have received earnest money of Rs.1,30,000/-. On the other hand, the defendant No.2 and 4 have failed to prove that Exs.P1 is nominal security deed for purpose of loan transaction. To corroborate such a fact the defendants have to adduced specific evidence, but the defendants have not adduced neither oral evidence or the documentary evidence. In absence of such evidence I am of the opinion that the more weightage will have to be given Exs.P.1 and 2. Accordingly, I answer Issue No.1 in the **Affirmative and Issue No.3 in the Negative.**

16. ISSUE NO. 2 :- The plaintiff has alleged that he was always been ready and willing to perform his part of the obligation. The plaintiff had paid Rs.1,30,000/- as earnest money and there was balance of Rs.2,000/- and as per agreement of sale, there is stipulated period for performance of contract. The plaintiff has contended that he had issued a letter to the defendant on 11.09.2017 calling upon the defendant No.1 to 5 to execute sale deed. The plaintiff has produced the copy of letter dated 11.09.2017, marked as Ex.P3 and in this letter, he had called upon the defendant No1 to 3 to execute sale deed by receiving balance consideration

amount. The said notice was issued through postal service. Therefore, the court has to hold that the plaintiff was always ready and willing to perform her part of contract, that he had paid major sale consideration amount to the defendant No.1 to 5 and only meager amount is remained for payment. But the defendant No.2 and 4 have not produced any document regarding obtaining survey sketch in respect of suit schedule property. Besides, the recitals available in Ex-P1 make it clear that the Plaintiff had already paid more than 98% of the sale consideration. Hence, I conclude that the Plaintiff was already performed his readiness and willingness to perform his part of the contract. Hence, point No-2 is answered in the **Affirmative**.

17. ISSUE NO.4:- While answering point No-1 to 3, I have concluded that the Plaintiff has proved all the ingredients of **Section 16 and Section 20 of Specific Relief Act**, Further the plaintiff proved that the defendant No.1 to 4 have executed the registered agreement of sale deed dated: 20.10.2016, and they have received the balance consideration amount of Rs.130,000/-, and also proved that the defendants are failed execute the sale deed as per the terms of the

Ex.P1. Hence, I conclude that the Plaintiff is entitled for the relief of specific performance of the contract as sought for. Hence, point No-4 is answered in the **affirmative.**

18. ISSUE NO.5:- For the foregoing findings given on Issue No.1 to 4, I proceed to pass the following:-

ORDER

The Suit of the plaintiff for the relief of Specific Performance of the Contract is decreed with cost.

The defendant No.1 to 5 are directed to execute the registered sale deed in favour of the Plaintiff as per the terms of agreement of sale dated 20.10.2016 within 2 (Two) months from today by receiving the balance Rs.2,000/- from the plaintiff.

In case the defendants fails to execute the registered sale deed, then the Plaintiff is at liberty to invoke order 21 rule 35 of CPC.

Draw decree accordingly.

(Dictated to the typist, transcribed and typed by her, corrected and then pronounced by me in the open court this the 7th day of December 2021)

(SHIVAKUMARA G.J)
Prl. Civil Judge & JMFC.,
Chintamani.

ANNEXURE

WITNESS EXAMINED ON BEHALF OF THE PLAINTIFFS:

PW-1 : Nagarathnamma

DOCUMENTS MARKED ON BEHALF OF THE PLAINTIFFS:

Ex.P1 : Original Sale Agreement
dated 20.10.2016

EX.P2 : RTC Extract.

Ex.P3 : Legal Notice

Ex.P4 to 6 : Three Postal Receipts.

Ex.P7 to 9 : Three Track Consignments.

WITNESS EXAMINED ON BEHALF OF THE DEFENDANTS:

-NIL-

DOCUMENTS MARKED ON BEHALF OF THE DEFENDANTS:

-NIL-

(SHIVAKUMARA G.J)

**Prl. Civil Judge & JMFC.,
Chintamani.**

Judgment Pronounced in the open court
(Vide separate Judgment)

ORDER

The Suit of the plaintiff for the relief of Specific Performance of the Contract is decreed with cost.

The defendant No.1 to 5 are directed to execute the registered sale deed in favour of the Plaintiff as per the terms of agreement of sale dated 20.10.2016 within 2 (Two) months from today by receiving the balance Rs.2,000/- from the plaintiff.

In case the defendants fails to execute the registered sale deed, then

the Plaintiff is at liberty to invoke order
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Draw decree accordingly.

(SHIVAKUMARA G.J)
Prl. Civil Judge & JMFC.,
Chinthamani