

KACM210024152015



Presented on : 23-09-2015
Registered on : 23-09-2015
Decided on : 22-10-2021
Duration : 6 years, 0 months, 29 days

IN THE COURT OF III ADDL. CIVIL JUDGE & J.M.F.C.
AT KADUR

PRESENT

Sri Deepu M.T, B.A.L, LL.B.,
III Addl.Civil Judge & JMFC.,
Kadur.

Dated this the 22nd day of October 2021

ORIGINAL SUIT NO. 347/2015

Plaintiff/s: K.G. Manjunatha S/o K.G. Eshwarappa, Aged about 38 years, Agriculturist, R/o Venkateshwara Nagara, Kadur Town, Kadur Taluk, Chikkamagaluru District.

[By Sri D.N.P., Advocate]

V/s

Defendant/s: 1. Smt. Lakshmi W/o R. Doreswamy, Aged about 38 years,
2. R.Doreswamy S/o R. Raju, dead by LR's
D2(a) Kannan Sulochana W/o Kannan, D/o R. Doreswamy, R/o Mogaralli, Kallumanti KRS Road, Srirangapattana Taluk, Mandya District, Hossali Post,
3. D.Prakash S/o R. Doreswamy, Aged about 26 years,
4. D. Raghu S/o R. Doreswamy, Aged about 24 years,
5. Kumari D. Uma D/o R.Doreswamy, Aged about 22 years,
All are Stone merchants and all are residing at

Kalugundi Venkateshwara Nagara, Kadur
Town and Taluk, Chikkamagaluru District.

(D1 to D4 and D2(a) by Sri H.T., D5-Ex-
parte)

Date of Institution of Suit:	23-09-2015
Nature of the suit:	For Specific Performance of Contract
Date of the commencement of recording of the Evidence.	27-04-2017
Date on which the Judgment is pronounced:	22.10.2021
Total Duration	Years Months Days 06 -01- -00-

JUDGMENT

The plaintiff has filed this suit against the defendants for the relief of specific performance of agreement of sale. Description of plaint schedule property is as under:-

: Description Of The plaint Schedule Property :

Property bearing Assessment No. 7415, site No. 14 measuring in total 30x40 feet, out which RCC House measuring 22x18 feet and the remaining its the vacant site, situated at behind Mahalakshi Saw Mill, Venkateshwara Nagara, Kadur Town, Kadur Taluk, bounded on the East by: Site No.13, West by: Site No.15, North by Road, and South by property of Kunjamma W/o Kannappa.

2. The facts of the plaintiff's case in nut shell:

That the defendants are the absolute owners of the plaint schedule property. The defendants are in need of financial assistance

for the purpose of their family benefit, they have approached the plaintiff and they are going to sell the plaint schedule property and demanded the plaintiff to purchase the plaint schedule property. On the demand of the defendants and after verification of the documents, the plaintiff has agreed to purchase the plaint schedule property for valid consideration of Rs.3,00,000/- and defendants have agreed for the same. Thereafter on 10.12.2012 the defendants have executed the registered agreement of sale by agreeing to sell the plaint schedule property for valid sale consideration of Rs.3,00,000/- in favour of plaintiff by putting their signatures on the said agreement of sale on the same day. The defendants have received the entire sale consideration amount of Rs.3,00,000/- from the plaintiff and agreeing to executed the registered sale deed in favour of plaintiff with respect to plaint schedule property and also agreeing to hand over the possession of the plaint schedule property at the time of executing registered sale deed and agreeing to execute the registered sale deed whenever demanded by the plaintiff without fail.

➤ It is further averred that plaintiff always ready and willing to perform his part of contract and made repeated requests and demands with the defendants to come and execute the registered sale deed, but the defendants postponing the matter for one or the other reasons. Hence, the plaintiff was constrained to issue a legal notice dated 10.09.2015 calling upon them to execute sale deed in favour of the plaintiff. However the defendants did not come forward to execute the registered sale deed in favour of the plaintiff. Hence, the plaintiff was constrained to file this suit. 3. After service of suit summons, the defendants No. 1 to 4 have appeared through their counsel. Defendant No.5 remained absent and placed exparte.

Defendant No.1 filed written statement, defendant No.2 to 4 have adopted the same. During the pendency of suit defendant No.2 dead and his remaining legal heir i.e., defendant No. 2(a) is brought on record and she adopts the written statement of defendant No.2. In their written statement defendants have contended that they are in need of financial crises for their family benefit and necessity. Since the plaintiff is doing money lending business, they have approached the plaintiff to lend Rs.3,00,000/- and plaintiff agreed and paid Rs.3,00,000/- to the plaintiff. At the time of lending the amount, the plaintiff demanded the defendants to give the plaint schedule property as security, the defendants have agreed for the same and they told that they are ready to execute the registered mortgage deed. The plaint schedule property is the self acquired property of the defendant No.1. The plaintiff has taken the responsibility of preparing the deed. The defendants are innocent persons, taking undue advantage of the same, the plaintiff in order to deceive and defraud the defendants to grab the plaint schedule property for lesser price, has managed to prepare the deed as registered agreement of sale instead of registered mortgage deed and by misleading the defendants has obtained their signatures and registered the same before the office of the Sub-registrar, Kadur, behind the back of the defendants. At no point of time the defendants intend to sell the plaint schedule property and at no point of time they have executed the agreement of sale. Hence, the question of executing the registered sale deed with respect to the plaint schedule property does not arise at all. On all these grounds prayed to dismiss the suit.

4. On the basis of the material available on record, my predecessor has framed following issues:

ISSUES

1. Whether the plaintiff proves that the defendants have executed a registered sale agreement dated 10.12.2012 in his favour agreeing to sell the suit property for total consideration of Rs.3,00,000/- ?
2. Whether the plaintiff further proves that he has paid and the defendants have received the entire sale consideration?
3. Whether the plaintiff proves that he is always ready and willing to perform his part of contract ?
4. Whether the plaintiff is entitled for the relief of Specific Performance as sought for?
5. What order or decree?

5. In order to prove his case, the plaintiff got examined himself as PW1 and also examined two more witnesses namely Manjappa as PW2 and Prasanna K.S. as PW3 and got marked the documents as per Ex.P1 to P16. In support of the case of the defendants, defendant No.1 got examined himself as DW1 and got marked Ex.D1 and closed their side.

6. Heard both counsel. The counsel for the plaintiff filed written argument. Perused the oral and as well as documentary evidence placed on record.

7. My findings to the above issues are as under:

Issue No.1 : In the Affirmative

Issue No.2 : In the Affirmative

Issue No.3 : In the Affirmative

Issue No.4 : In the Affirmative

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

REASONS

8. **Issues No.1 and 2:-** These issues are inter-related to each other, in order to avoid repetition of facts and discussion these issues are taken up together for common discussion.

9. In order to prove the case of plaintiff, plaintiff himself stepped into the witness box by filing affidavit in lieu of oral examination in chief as PW1 wherein he reiterated the plaint averments and got marked documents at Ex.P1 to Ex.P16. Ex.P1 is the agreement of sale dated 10.12.2012 executed by defendants in favour of plaintiff, which is registered on the same day. Ex.P2 is the copy of legal notice dated 10.09.2015, Ex.P3 is certified copy of assessment extract with respect to plaint schedule property, as per Ex.P3 katha of the plaint schedule property is standing in the name of defendant No.1. Ex.P4 to P8 are the postal receipts, Ex.P9 to P12 are the postal covers, which were returned as not claimed. Ex.P13 to P16 are the copy of legal notice. On perusal of Ex.P9 to P12 it depicts that notice issued to the defendants returned as not claimed. Thereafter the plaintiff was constrained to issue legal notice dated 10.09.2015 to the defendants calling upon them to execute sale deed in favour of plaintiff. However the defendants did not come forward to execute the registered sale deed in favour of plaintiff. Hence, plaintiff constrained to file this suit.

10. In order to substantiate the above said contention of the plaintiff, plaintiff examined one more witness by name Manjappa as PW2, who is a attesting witness to Ex.P1 agreement of sale. He filed affidavit in lieu of examination in chief, wherein he deposed that on 10.12.2012 when he was going in front of Taluk office, the defendants, plaintiff and father of plaintiff called him and defendants told that in order to clear their loans they are ready to sell the plaint

schedule property. For that, the plaintiff and his father was agreed to purchase the plaint schedule property for sale consideration amount of Rs.3,00,000/- and the defendants are also agreed for the same. As per their consent, agreement of sale was prepared and read over. Thereafter the defendants have received Rs.3,00,000/- from the plaintiff and his father and put their signatures to the agreement of sale. Thereafter himself and one Eshwarappa have signed on the said agreement of sale. The deed writer also signed on the said document and it has been registered on the same day.

11. In support of the case of plaintiff, plaintiff also examined another witness by name K.S. Prasanna, who is scribe of Ex.P1/agreement of sale. He deposed that he knows the plaintiff and defendants and facts of this case. That on 10.12.2012 the plaintiff and defendants, Manjappa and Eshwarappa were came to his office and told that defendants are going to sell the plaint schedule property in order to meet their family necessity. The defendants told him that they are ready and intended to sell the plaint schedule property to the plaintiff for the sale consideration amount of Rs.3,00,000/-. As per the consent of parties, he has prepared agreement of sale and read over to them and witnesses. Thereafter the parties to agreement have agreed for the contents of the agreement of sale and received Rs.3,00,000/- from the plaintiff and put their signatures to Ex.P1 Agreement of sale. The said agreement of sale has been registered in S.R.No.4053/2012-13. Further the defendants have agreed to execute the sale deed in favour of plaintiff whenever the plaintiff called for them. The measurement of plaint schedule property is 30x40 feet, which includes RCC house. In order

to nullify the claim of plaintiff the counsel for defendants cross-examined PW1 to PW3, but nothing worthwhile is elicited from the mouth of PW1 to PW3.

12. On the other hand, in order to substantiate the contention of the defendants, the defendant No.1 stepped into the witness box and filed affidavit in lieu of examination in chief as DW1, wherein he reiterated the contents of written statement and got marked Ex.D1 valuation of property issued by the Sub-register, Kadur. Ex.D1 valuation of property from 01.01.2019 and onwards with respect to property situated at Venkateshwara Nagara, Site No.14, RCC house measuring 22x18 feet measuring 14500/-Sq meter. The counsel for plaintiff cross-examined DW1 and succeeded to get vital admissions.

13. To prove the plaint averments, the plaintiff has produced original sale agreement dated 10.12.2012 under Ex.P1. As recited the agreement, all the defendants have executed the sale agreement and agreeing to sale the plaint schedule property in favour of plaintiff for a sale consideration of Rs.3,00,000/- as recited in the agreement itself. The defendants have received entire amount of Rs.3,00,000/- as advance amount from the plaintiff. The plaintiff has also produced assessment register extract at Ex.P3, which discloses that katha of plaint schedule property is standing in the name of defendant No.1 Smt.Lakshmi W/o Doreswamy. It is undisputed fact, that the defendant No.1 is the owner and in possession of the plaint schedule property and defendant No. 2 to 5 are the husband and children of defendant No.1. During the pendency of the suit, defendant No.1, who is husband of defendant No.2 was died and remaining legal heir of the defendant No.2 that is

defendant No.2(a) Kannan Sulochana is brought on record. Defendant No.2(a) appeared through her counsel and not chosen to file written statement and contest the case.

14. To prove due execution of sale deed the plaintiff has examined one Manjappa as PW2, who is a attesting witnesses to Ex.P1 agreement of sale. According to the chief-examination of this witness, he being a attesting witness in the presence of witnesses, both the parties of the agreement have consented and also signed in front of both the parties. Further PW2 has deposed that to the agreement of sale the defendants have agreed to sale the plaint schedule property in favour of plaintiff for a sum of Rs.3,00,000/- and defendants have received entire sale consideration of Rs.3,00,000/- as advance amount. Ex.P1 containing the signature of PW2 in the witness column in his cross-examination PW1 admits that PW2 had put his signature as attesting witnesses of the sale agreement and also admits due execution of Ex.P1. The defendants do not dispute the execution of sale agreement, but it is the defence of the defendants that they have borrowed loan amount of Rs.3,00,000/- from the plaintiff towards the security of the said loan, the defendants have executed Ex.P1 agreement of sale said to be mortgage deed in favour of plaintiff agreeing to repay the loan amount. Hence, the entire burden of proof lies upon the defendants only to prove that they have executed Ex.P1 agreement towards the security of the loan, which was borrowed by them from the plaintiff. In order to prove the said loan transaction, the defendants have not furnished any oral and documentary evidence.

15. During the course of cross-examination of PW1, the defendants taken up a defence that the plaint schedule property is

the self acquired property of defendant No.1. With respect to said contention, the counsel for the plaintiff has relied on the suggestion put by the counsel for the defendants that “ದಾವಾ ಸ್ವತ್ತು 1 ನೇ ಪ್ರತಿವಾದಿ ಖರೀದಿಸಿದ ಸ್ವಂತ ಆಸ್ತಿ ಎಂದರೆ ಸರಿ. ದಾವಾ ಸ್ವತ್ತಿನಲ್ಲಿ 1 ನೇ ಪ್ರತಿವಾದಿ ತನ್ನ ಗಂಡ ಮತ್ತು ಮಕ್ಕಳೊಂದಿಗೆ ವಾಸ ಮಾಡುತ್ತಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ .” On perusal of said suggestion made by the counsel for defendants, it is clear that the plaint schedule property is the self acquired property of the defendant No.1. Further, on perusal of Ex.P1 agreement of sale at Para No.3 mentioned that “ ಈ ಕೆಳಕಂಡ ಸ್ವತ್ತು ನಮ್ಮಗಳ ಪೈಕಿ ಆರ್. ಲಕ್ಷ್ಮಿ ಕೋಂ ಆರ್ ದೊರೆಸ್ವಾಮಿ, ಆದ ನನಗೆ ಕಡೂರು ಎಸ್.ಆರ್.ನಂ. 1091/04-05 ರಂತೆ ದಿನಾಂಕ 18-08-2004 ರಂದು ಕ್ರಯ ಮೂಲಕ ನನ್ನ ಖಾತೆಗೆ ಬಂದು ನಮ್ಮಗಳ ಸ್ವಾಧೀನಾನುಭವದಲ್ಲಿರುವ ಸ್ವತ್ತಾಗಿರುತ್ತದೆ.” Hence, on perusal of recitals of Ex.P1, it is clearly goes to show that the plaint schedule property is the self acquired property of defendant No.1. Hence, it is clear that the defendant No.1 is absolute owner of plaint schedule property. Here, the defendant No.1 and her husband, children have executed agreement of sale in favor of plaintiff.

16. With respect to due execution of agreement, counsel for plaintiff has cross-examined DW1, wherein DW1 deposed as hereunder “ದಾವಾ ಆಸ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಕ್ರಯದ ಕರಾರು ಆದ ನಂತರ ನಾನು ಮತ್ತು ನನ್ನ ಗಂಡ ವಾದಿಯಿಂದ ರೂ.3,00,000/-ರೂ.ಗಳನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿ.” The said admission given by DW1 itself clearly goes to show that the defendants have executed agreement of sale and received entire sale consideration amount of Rs.3,00,000/- from the plaintiff. Further PW1 deposed that “ನಿಪಿ-1 ಕರಾರಿನಂತೆ ದಾವಾ ಆಸ್ತಿ ಕುರಿತಂತೆ ವಾದಿಗೆ ಕ್ರಯಪತ್ರ ಮಾಡಿಕೊಡಲು ನಾವು ಭದ್ರಾಪ್ತರು ಅಂದರೆ ಸರಿಯಲ್ಲ. ಸಾಕ್ಷಿಯು ನಿಪಿ-1 ಕರಾರಿನ ಮೊದಲ ಪುಟದ ಹಿಂಭಾಗದಲ್ಲಿ ಲಕ್ಷ್ಮಿ ಕೋಂ ದೊರೆಸ್ವಾಮಿ ಎಂಬ ಹೆಸರಿನ ಮುಂದೇ ಇರುವ ಫೋಟೋ ಮತ್ತು ಸಹಿ ತನ್ನದು

ಎಂದು ನೋಡಿ ಗುರುತಿಸಿರುತ್ತಾರೆ. ಹಾಗಾಗಿ ಸದರಿ ಫೋಟೋ ಮತ್ತು ಸಹಿಯನ್ನು ನಿಪಿ-1(ಡಿ) ಮತ್ತು ನಿಪಿ-1(ಇ) ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ನಿಪಿ-1 ಕರಾರಿನಂತೆ ದಾವಾ ಆಸ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ವಾದಿಗೆ ಕ್ರಯಪತ್ರ ಮಾಡಿಕೊಡಬೇಕಾಗುತ್ತದೆ ಎಂದು ಸುಳ್ಳು ಪ್ರತಿವಾದ ಪತ್ರ ಸಲ್ಲಿಸಿದ್ದೇನೆ ಅಂದರೆ ಸರಿಯಲ್ಲ” Therefore, it is clear that the defendants have executed agreement of sale in favour of plaintiff. In the written statement as well as evidence DW1 also specifically admits that she has received Rs.3,00,000/-from the plaintiff as loan. But the very contention of the plaintiff that the plaintiff has paid Rs.3,00,000/- as advance and entire sale consideration amount with respect to agreement of sale. Then the burden shifts on the defendants that they have executed Ex.P1 agreement of sale for the security purpose of borrowing loan of Rs.3,00,000/- from the plaintiff. Looking to the pleadings and evidence of defendants, it is specifically seen that the defendants have executed agreement of sale in favour of plaintiff agreeing to sale the plaint schedule property for sale consideration amount of Rs.3,00,000/-. But the defendants have not executed the sale agreement towards the security of loan amount borrowed by them. The contention taken by the defendants that they have executed Ex.P1 for the security purpose has been denied by the plaintiff.

17. In order to prove the contention of the defendants that they have executed Ex.P1 for the security purpose. They have not produced any oral and documentary evidence. Further the defendants have alleged that the plaintiffs have got executed sale agreement under the pretext of mortgage deed and plaintiffs committed fraud on the defendants. With respect to the same, the defendants have not placed any cogent and reliable materials in proof of the same. Under these circumstances, oral evidence to the

said effect is not admissible and terms contained in document at Ex.P1 agreement of sale shall prevail. Therefore, as per Ex.P1 the defendants have executed sale agreement in favour of the plaintiff for sale consideration amount of Rs.3,00,000/- by receiving advance and entire sale consideration amount of Rs.3,00,000/- and agreed to execute the registered sale deed with respect to plaint schedule property whenever demanded by the plaintiff.

18. It is further contention of the defendants that the plaintiff is doing money lending business and the defendants have approached the plaintiff for hand loan of Rs.3,00,000/- then the plaintiff demanded for give security of plaint schedule property towards the loan transaction. For that reason the defendants have entrusted the plaintiff to prepare mortgage deed with respect to plaint schedule property at the said point of time the plaintiff mis-used and concocted the Ex.P1 agreement of sale. Therefore, the defendants are not ready to sell the plaint schedule property to the plaintiff. In order to prove the said contentions, the defendants have not furnished cogent evidence. At this stage, it is relevant to culled out the cross-examination of DW1. The same is reproduced as hereunder:-

"ವಾದಿಗೆ ಕ್ರಯದ ಹಣ ರೂ3,00,000/- ಗಳನ್ನು ವಾಪಸ್ಸು ಕೊಟ್ಟಿರುವುದಿಲ್ಲ. ವಾದಿ ಮತ್ತು ಅವರ ತಂದೆ ಯಾರಿಗೆ ಹಣ ನೀಡಿ ಬಡ್ಡಿ ವ್ಯವಹಾರ ಮಾಡುತ್ತಿದ್ದಾರೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ದಾವಾ ಆಸ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಕ್ರಯದ ಕರಾರು ಆದ ನಂತರ ನಾನು ಮತ್ತು ನನ್ನ ಗಂಡ ವಾದಿಯಿಂದ ರೂ.3,00,000/-ಗಳನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇವೆ ಅಂದರೆ ಸರಿ"

From the perusal of aforesaid deposition, it is clear that the defendants have not stated that there is no knowledge to the defendants that the plaintiff doing money lending business. Further

DW1 admits that she does not return sale consideration amount of Rs.3,00,000/- to the plaintiff and she received Rs.3,00,000/- with respect to sale consideration of plaint schedule property. Therefore, the defence taken by the defendants that they have executed agreement of sale under pretext of mortgage deed is unsustainable.

19. With all these, this court comes to the conclusion that the plaintiff has proved that the defendants have executed a registered sale agreement dated 10.12.2012 in favour of plaintiff agreeing to sale the plaint schedule property for total consideration amount of Rs.3,00,000/- and the plaintiffs have paid entire sale consideration amount to the defendants and defendants have received the entire sale amount of Rs.3,00,000/- from the plaintiff. Further the defendants have failed to prove that they have executed Ex.P1 agreement of sale under the pretext of mortgage deed for borrowing loan of Rs.3,00,000/- from the plaintiff. Accordingly, Issues No. 1 and 2 are answered in the Affirmative.

20. **Issue No.3:-** In the plaint, it was averred that, the plaintiff is ever ready and willing to perform his part of contract to get the sale deed registered in his favour. But the defendants did not come forward to perform their part of contract. As reflect in Ex.P2 dated 10.09.2015, the plaintiff got issued legal notice to defendants calling upon them to execute the registered sale deed by virtue of registered sale agreement dated 10.12.2012. In the legal notice, it has been stated that the defendants have come and to execute the registered sale deed in favour of plaintiff, but for one or the other pretext they are avoiding to execute the registered sale deed in favour of the plaintiff. The notices issued by the plaintiff are returned as not claimed by the defendants. Hence, the service of

notice to the defendants is treated as deemed service. In spite of issuing notice to the defendants, the defendants have not come forward to execute the registered sale deed with respect to plaintiff schedule property in favour of the plaintiff as per Ex.P1 agreement of sale. After filing of the suit, the defendants have appeared through their counsel and took contention that they have borrowed loan of Rs.3,00,000/- from the plaintiff and for the security purposes they have executed Ex.P1 agreement of sale under the pretext of mortgage deed, but the same has not been proved by the defendants. In this regard the learned counsel for the plaintiff argued that, after issuance of legal notice the defendants have not given any reply and they have not come forward to execute the registered sale deed, but the plaintiff waited for some time to file this suit. The arguments of the learned counsel for the plaintiff may be accepted because the plaintiff has paid Rs.3,00,000/- that is entire sale consideration amount as per Ex.P1 agreement of sale.

21. The counsel for the plaintiff also argued that the defendants have failed to furnish the revenue documents, which are required for getting the sale deed registered. The defendants have sought some time to execute the registered sale deed in favour of plaintiff. Hence, plaintiff was unable to get the sale deed registered in his favour. Whereas the plaintiff has paid entire sale consideration amount to the defendants, it cannot be said that he was/is ready and willing to perform his part of agreement. On appreciation of evidence and facts of the documents, it is seen that the plaintiff was/is ready and willing to perform his part of contract to get the sale deed register and the defendants failed to perform

their part of contract. Accordingly, Issue No.3 is answered in the Affirmative.

22. Issue No.4: The plaintiff has filed this suit for Specific Performance of agreement of sale dated 10.12.2012 with respect to plaint schedule property. The defendants have taken a contention that they have executed Ex.P1 agreement of sale under the pretext of mortgage deed, but the defendants have failed to prove their contention. In the written statement, the defendants have taken a contention that the plaint schedule property is the self acquired property of the defendant No.1 along with defendant No.1 other defendants also executed the agreement of sale with respect to plaint schedule property in favour of the plaintiff. As per agreement of sale, it can be seen that the defendant No.1 was purchased the plaint schedule property by virtue of sale deed dated 18.08.2004 and the defendants have executed agreement of sale dated 10.12.2012 in favour of the plaintiff. On perusal of Ex.P1 agreement of sale there is a recital that defendant No.1 has purchased the plaint schedule property by virtue of sale deed dated 18.08.2004. Therefore, it is clear that the defendant No.1 is the absolute owner of the plaint schedule property. On perusal of Ex.P3 Assessment Register extract, the katha of plaint schedule property is standing in the name of defendant No.1. Therefore, as per recitals found on Ex.P1 and Ex.P3 Assessment Extract the defendant No.1 is the absolute owner of the plaint schedule property. On appreciation of the evidence and facts of this case, other defendants are not the owners of the plaint schedule property, but along with defendant No.1, other defendants have executed agreement of sale in favour of plaintiff. Since the defendant No.1 is the absolute owner and in possession of the plaint

schedule property, there is no hurdle to grant the relief claimed by the plaintiff. In view of the findings given on issues No.1 to 3 the plaintiff has proved readiness and willingness. Moreover, in the present suit the plaintiff has already paid entire sale consideration amount to the defendants. Such being the case there is no hurdle to grant the relief claimed by the plaintiff. Hence, the plaintiff is entitled for the relief of Specific Performance of contract as sought for. Accordingly, issue No.4 is answered in the Affirmative.

23. **Issue No.5:** In view of the discussion and conclusion arrived at issues No.1 to 4, suit of the plaintiff is liable to be decreed. Hence, I proceed to pass the following:

ORDER

The suit of the plaintiff is decreed with costs.

The defendants are hereby directed to execute the registered sale deed in favour of the plaintiff and hand over the possession of plaintiff schedule property to the plaintiff within 3 months from the date of this judgment.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by him the transcript corrected and pronounced by me in the open court on this the 22nd day of October 2021)

Sd/-

(Deepu M.T.)
III Addl.Civil Judge and JMFC.,
Kadur.

ANNEXURE

List of witnesses examined on behalf of the plaintiff:

PW1 : Manjunatha

PW2 : Manjappa

PW3 : Prasanna K.S.

List of documents marked on behalf of the plaintiff:

Ex.P1 : Registered original sale Agreement

Ex.P2 : Copy of Notice

Ex.P3 : Demand register extract

Ex.P4-8 : Postal receipts

Ex.P9 to 12 : Postal covers

Ex.P13 to 16 : Legal notices

List of witnesses examined on behalf of the defendants:

DW1 : Smt.Lakshmi

List of documents marked on behalf of the defendants:

Ex.D1 : Valuation Certificate.

Sd/-

(Deepu M.T.)

III Addl.Civil Judge and JMFC.,
Kadur.