



**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
MUDIGERE.**

Dated this the 24th day of March 2026

**Present : Sri Prakash P.M., M.B.A., LL.B.,
Senior Civil Judge and J.M.F.C.,
Mudigere**

O.S. No. 16/2025

**Plaintiff : Smt. K.K. Jagadish,
Aged about 46 years,
S/o Late Keshave Gowda
R/o Nadvinmadkal Village,
Hesgal Post, Mudigere Taluk**

(Rep. by Sri. S.D., Advocate)

- V/s-

**Defendant : Sri. Sandeep Malagoudanavar,
Aged about 40 years,
S/o Nemagounda,
Residing at House No.1177
Padmakunja,
18th B Main Road
5th block, Rajajinagara,
Bangalore-10**

(By Sri. B.S.S.B., advocate)

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ORDER ON PRELIMINARY ISSUE/ADDITIONAL ISSUE

The plaintiff has filed the present suit against the defendant seeking the relief of declaration that the registered Sale Agreement bearing SR No. 2304/2018-19 dated 07.03.2019, executed between the plaintiff and the defendant, is not binding on the plaintiff and is liable to be declared as null and void.

2. The case of the plaintiff's in brief is as follows:

The plaintiff is the absolute owner of the plaint schedule property. The said property originally fell to the share of the plaintiff's father, late K.K. Keshave Gowda, under a registered Partition Deed bearing No.179/1981-82. Subsequently, the plaintiff, his father and his brother effected a further partition of the ancestral properties under a registered Partition Deed bearing No.339/2000-01 dated 04.07.2000 before the Sub-Registrar, Mudigere, under which the plaint schedule property was allotted to the share of the plaintiff. Accordingly, the revenue records were mutated in the name of the plaintiff and he has been in possession and enjoyment of the same as absolute owner.



2a. It is further the case of the plaintiff that on 07.03.2019 the plaintiff agreed to sell the plaint schedule property to the defendant and accordingly a registered Agreement of Sale bearing No. BK-1-2304/2018-19 dated 07.03.2019 was executed before the Sub-Registrar, Mudigere, for a total sale consideration of Rs.36,11,500/-, out of which the defendant paid a sum of Rs.15,00,000/- through NEFT as advance. As per the terms of the agreement, the sale deed was to be executed on or before 31.12.2019. However, according to the plaintiff, the defendant failed to perform his part of the contract and did not come forward to get the sale deed executed within the stipulated period. The plaintiff contends that the agreement became unenforceable after 08.03.2022 under the law of limitation, but the entry of the said agreement continues in the encumbrance records causing hardship to the plaintiff. Though the plaintiff approached the Sub-Registrar, Mudigere, seeking removal of the encumbrance and issued a legal notice to the defendant, the defendant did not cooperate for cancellation of the agreement. Hence, the plaintiff has filed the present suit seeking declaration



that the registered Agreement of Sale dated 07.03.2019 is not binding on him and for consequential reliefs.

3. After service of summons, the defendant appeared before the court and filed written statement.

4. In the written statement defendant has admitted that the plaintiff is the owner of the suit schedule property but has denied the other averments made in the plaint for want of knowledge and has put the plaintiff to strict proof of the same. The defendant contends that the registered Agreement of Sale dated 07.03.2019 bearing Document No. MGE-1-02304/2018-19 was executed between the parties before the Sub-Registrar, Mudigere, whereby the plaintiff agreed to sell the suit schedule property for a total sale consideration of Rs.36,11,500/-. It is further contended that the plaintiff had delivered physical possession of the property to the defendant on the date of the agreement. Out of the agreed consideration, the defendant paid a sum of Rs.15,00,000/- through NEFT on the date of the agreement and subsequently paid an additional sum of Rs.2,00,000/- on 16.05.2019 at the request of the plaintiff, thereby paying a total amount of Rs.17,00,000/-.



4a. It is the specific contention of the defendant that the plaintiff had earlier mortgaged the suit schedule property in favour of Vijaya Bank, Mudigere Branch, and under Clause 9 of the Agreement of Sale he had agreed to discharge the said loan and produce the discharge deed before execution of the sale deed. According to the defendant, he has been insisting from the beginning that the plaintiff comply with the said condition and execute the sale deed, and that he has always been ready and willing to perform his part of the contract by paying the balance sale consideration of Rs.19,11,500/-. It is further contended that the plaintiff suppressed the fact that the loan had been discharged on 16.03.2023 and thereafter issued a legal notice dated 14.10.2024 seeking cancellation of the agreement, which was suitably replied to by the defendant on 23.10.2024.

4b. The defendant further contends that despite repeated requests and a legal notice dated 09.01.2025 calling upon the plaintiff to execute the sale deed, the plaintiff failed to comply with the terms of the agreement and instead filed the present suit seeking cancellation of



the agreement. It is also contended that the defendant has already instituted a separate suit in O.S. No.30/2025 for specific performance of the Agreement of Sale dated 07.03.2019, which is pending before this Court, and an interim order of temporary injunction has been granted restraining the plaintiff from alienating the suit schedule property.

4c. The defendant has further contended that the Agreement of Sale dated 07.03.2019 is valid, subsisting and enforceable and that the plaintiff has filed the present suit suppressing material facts despite having received a substantial advance amount from the defendant. It is also contended that the suit is not maintainable for want of cause of action and that the plaintiff has not properly valued the suit and has paid insufficient court fee, as the suit ought to have been valued under Section 38 of the Karnataka Court Fees and Suits Valuation Act on the value mentioned in the Agreement of Sale and not under Section 24(d). On these grounds, the defendant has sought dismissal of the suit with exemplary costs.



5. On the basis of above pleadings, this court has framed the following issues:

ISSUES

1. Whether plaintiff proves that the registered sale agreement dated 07.03.2019 has become unenforceable and barred by limitation.?
2. Whether the plaintiff proves that the defendant was not ready and willing to perform his part of the contract under the sale agreement?
3. Whether the court fee paid by the plaintiff is sufficient?
4. Whether plaintiff is entitled for the relief of Cancellation of the registered sale agreement ?
5. What order or Decree?
6. The issue No.3 **“Whether the court fee paid by the plaintiff is sufficient?”** relates to the valuation of the suit and the sufficiency of the court fee paid by the



plaintiff. Since the question pertains to valuation and court fee, the same has been treated as a preliminary issue.,

7. Heard the learned counsel for the plaintiff and defendant on preliminary issue, perused the materials available on record.

8. My answer to the above preliminary issue/ issue No.3 **in the Negative** as for the following:

R E A S O N S

9. Preliminary Issue/Issue No.3: Learned counsel for the defendant has contended that the plaintiff has not properly valued the suit and has paid insufficient court fee. It is argued that the plaintiff seeks a declaration that the registered Agreement of Sale dated 07.03.2019 executed between the parties is not binding on him and is liable to be declared as null and void. According to the defendant, since the plaintiff himself is an executant to the said agreement, the suit in substance amounts to seeking cancellation of a document executed by him and therefore the suit ought to have been valued under **Section 38 of the Karnataka Court Fees and Suits Valuation Act, 1958**, on



the value of the property or the consideration mentioned in the document. It is further contended that the plaintiff has instead valued the suit under **Section 24(d)** of the Act and paid a fixed court fee of Rs.25/-, which according to the defendant is not in accordance with law.

10. Per contra, the learned counsel for the plaintiff has contended that the plaintiff has sought only a declaration that the Agreement of Sale dated 07.03.2019 is not binding on him and therefore the suit has been properly valued under **Section 24(d) of the Karnataka Court Fees and Suits Valuation Act**, which provides for payment of a fixed court fee in suits for declaration where consequential relief is not sought.

11. I have carefully considered the rival submissions and perused the pleadings on record. It is not in dispute that the plaintiff himself is a party to the registered Agreement of Sale dated 07.03.2019. The relief sought in the plaint is to declare that the said registered Agreement of Sale is not binding on the plaintiff and to treat the same as null and void. When a person who is a party to a document seeks to avoid or annul the same, the relief



sought is in the nature of **cancellation of the document.**

12. Here, Section 38 of the Karnataka Court Fees and Suits Valuation Act, 1958 provides that in a suit for cancellation of a decree or other document which creates, declares, assigns, limits or extinguishes any right, title or interest in property, the court fee shall be computed on the value of the subject matter of the suit, and where the suit relates to a document securing money or property, the court fee shall be computed on the amount or value of the property for which the document was executed. In the present case, the Agreement of Sale dated 07.03.2019 mentions a total sale consideration of **Rs.36,11,500/-**, and therefore the court fee ought to have been paid on the said value as required under **Section 38 of the Act.**

13. The contention of the plaintiff that the suit falls under **Section 24(d)** of the Act cannot be accepted, because Section 24(d) applies only to suits for mere declaration where the plaintiff is not a party to the document or where the declaration sought does not amount to cancellation of an instrument executed by the plaintiff. In the present case, the plaintiff himself is the executant of



the Agreement of Sale and seeks to avoid the effect of the said document. Therefore, the relief sought by the plaintiff substantially amounts to cancellation of the document, attracting the provisions of Section 38 of the Act.

14. In view of the above discussion, this Court is of the opinion that the suit has not been properly valued and the court fee paid by the plaintiff is insufficient. Accordingly, the plaintiff is required to value the suit properly under **Section 38 of the Karnataka Court Fees and Suits Valuation Act, 1958** and pay the requisite court fee on the value mentioned in the Agreement of Sale dated 07.03.2019. Hence, **Issue No.3 is answered in the Negative** and I proceed to pass the following:

ORDER

The preliminary issue/issue No.3 is answered in the **Negative**.

It is held that the court fee paid by the plaintiff is insufficient.

The plaintiff is directed to properly value the suit under Section 38 of the Karnataka Court Fees and Suits Valuation Act, 1958 and



pay the deficit court fee on the value mentioned in the Agreement of Sale dated 07.03.2019.

The plaintiff is granted time of 30 days from the date of this order to pay the deficit court fee.

Failing which, the plaint shall stand rejected in accordance with law.

(Dictated to the stenographer directly on computer, corrected and then pronounced by me in the open court on this the 24th day of March 2026)

(Prakash.P.M)
Senior Civil Judge & JMFC.,
Mudigere