



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C. AT.N.R.PURA**

Present : Sri. Raghunatha Gowda K.T., B.Com., L.L.B,
Senior Civil Judge & J.M.F.C., At.N.R.Pura

Dated this the 1st day of July, 2026

O.S. No.36/2023

Plaintiff/s: Sri. D. Umesha,
S/o. Dasegowda,
Aged about 52 years,
R/o. Kunnavalli Village,
Kudumallige Post,
Thirthahalli Taluk.

(By: Sri. G.M.V., Advocate)

V/s

Defendant/s: Sri. M.P. Vargis,
S/o. M.P. Poulus,
Aged about 58 years,
R/o. Gubbiga Village,
N.R.Pura Taluk.

(Represented by Sri. H.A.S., Advocate)

1. Date of institution of the suit: 27.10.2023
2. Nature of the suit: Specific performance
of contract and
alternative relief of refund
of earnest amount



3. Date recording of evidence: 02.04.2024

4. Date of pronouncement of judgment: **01.07.2026**

5. Duration : Year/s Month/s Day/s
02 08 04

(Raghunatha Gowda K.T.)
Senior Civil Judge and J.M.F.C.,
N.R.Pura.

J U D G M E N T

Plaintiff filed this suit against defendant for a relief of specific performance of contract, directing the defendant to execute the registered sale deed in his favour by receiving the balance sale consideration amount of Rs.40,00,000/- and if the Hon'ble Court comes to conclusion that plaintiff is not entitle for relief of specific performance of contract alternatively directing the defendant to return the advance sale consideration amount of Rs.20,00,000/- with interest at the rate 18% per annum from date of execution of the agreement till its realization.

**SCHEDULE**

1) 1 acres 14 guntas of dry land in which the Areca, Coffee and Pepper grown situated in Sy. No.137/2 of Gubbiga Village, Balehonnur Hobli, N.R.Pura Taluk bounded on:

East : Logu Hiduvali Sy. No.1,
West : Logu Hiduvali Sy. No.3,
North : Logu Hiduvali Sy. No.2,
South : Logu Hiduvali Sy. No.2.

2). 1 acres 20 guntas of Government land is annexed to the above said property of Gubbiga Village, Balehonnur Hobli, N.R.Pura Taluk

2. The brief facts of the plaintiff case is as under:

a). It is the case of the plaintiff that defendant is owner of the suit schedule properties and in order to urgent needs of the family, the defendant has intended to sell the suit schedule properties, after negotiation the



plaintiff agreed to purchase the suit schedule properties for total sale consideration amount of Rs.60,00,000/-.

b). Further he contended that in terms agreement the plaintiff has transferred a sum of Rs.50,000/- from the S.B. Account No.84320100005160 of Bank of Baroda, Bijjoli Branch in favour of defendant account No.4259 dated 01.06.2022, he has transferred a sum of Rs.50,000/- from his sister account from Karnataka Bank Account No.7492500100374501 to the defendant account on 02.06.2022, further he has paid a sum of Rs.3,00,000/- through his sister account under the Karnataka Bank cheque No.471407 dated 27.06.2022 and he has paid Rs.3,00,000/- on 15.07.2022 through cheque No.000017 Bank of Baroda. Further he has paid Rs.5,00,000/- on 25.07.2022 and he has paid Rs.8,00,000/- in cash in total plaintiff has paid Rs.20,00,000/- and defendant accepted the payment of the said amount. Further on 25.06.2022 defendant executed an agreement of sale in his favour and agreed to receive the balance sale consideration amount



Rs.40,00,000/- at the time of registration and the time was fixed for period of 4 months.

c). Further plaintiff contended that as per agreement the defendant has not clear loan as agreed in the agreement, inspite of repeated demand the defendant has not furnished N.O.C. to the plaintiff. Further he contended that the election was declared and by understanding of both parties extended the time till completion of election process. Further he contended that after completion of election process he has repeated request the defendant to execute the sale deed, but defendant has postpone the same for one or other pretext reason, in the meantime there was a exchange of legal notice between them and in the reply notice he has clearly stated that he is ready and willingness to purchase the property. Further he contended that he is ready with cash to purchase the property by sold his property and also obtain the loan from friends and relatives, but defendant did not come forward to execute the sale deed in his favour. Hence plaintiff constrain to file this suit for aforesaid relief.



3. In response to the summons, defendant appeared through his counsel and filed the written statement.

4. The contents of written statement of defendant is as under:

a) In the written statement defendant admitted that he is owner of the suit schedule properties and the acquisition of the property. Further he admitted that in order to urgent need of money for the clearance of bank loan and clearance of society loans, he offer to sell the suit property and he admitted the value of the sale consideration amount of Rs.60,00,000/-. Further he admitted receiving of advance sale consideration amount of Rs.20,00,000/- from the plaintiff. Further he denied the other remaining contents of plaint averments.

b) Further he specifically contended that as per terms and conditions of the sale agreement, he is ever ready to register the schedule property in favour of plaintiff, but plaintiff was failed to pay the remaining



balance sale consideration amount of Rs.40,00,000/- within stipulated time. Further he contended that as per terms and condition of agreement of sale he has forfeited the advance sale consideration amount of Rs.20,00,000/- and he got issued a legal notice to the plaintiff on 29.12.2022 for cancellation of the agreement of sale dated 25.06.2022.

c). Further he contended that plaintiff has got no manner of right over the suit schedule property and also advance sale consideration amount. Further he contended that as on date of 24.01.2023 he has got every relevant document i.e., N.O.C. for registration of schedule property in favour of plaintiff and he called the plaintiff to get the register of the property, but the plaintiff himself dodged the payment of remaining sale consideration amount and he assured that he will arrange the suitable party and he will directly sell the suit schedule property to the third party. Further he contended that plaintiff is doing real estate business and he has intended to sold the suit schedule properties for highest sale price.



d). Further defendant contended that on 27.03.2023 he issued a legal notice intimating the plaintiff that plaintiff has failure to perform his part of contract as per agreement of sale dated 25.06.2022 and he has cancel the agreement. Further he contended that on bonafide belief that plaintiff will pay the said remaining sale consideration amount of Rs.40,00,000/- within stipulated period, he has entered into the sale agreement with the other party to purchase the suitable property out of the sale consideration amount and he has paid an amount of Rs.5,00,000/- as advance sale consideration amount. Further he contended that plaintiff has failure to perform his part of contract. Hence he prays to dismiss the suit of plaintiff.

e). Further the plaintiff amend the plaint to seeking alternative relief of return of advance sale consideration amount with interest, defendant filed additional written statement contended that the alternative relief sought by the plaintiff for refund of advance money is ex-facie barred by law of limitation the alleged transaction took place on 25.06.2022 and the right to file suit for refund



expired 3 years from that date. The plaintiff cannot use the relation back to doctrine to review a dead claim. Further he contended that the alternative prayer sought by the plaintiff is belated stage and it will fundamentally changed the nature of the suit and cause of action. Hence he prays to dismiss the suit of the plaintiff.

5. After completion of pleadings I have framed the following:

ISSUES

1. Whether plaintiff proves that on 25.06.2022 the defendant had executed the agreement of sale pertaining to suit schedule property for total sale consideration amount of Rupees 60 lakhs and he has received advance sale consideration amount of Rupees 20 lakhs from various dates?
2. Whether plaintiff further proves that he is readiness and willingness to perform part of his contract?
3. Whether plaintiff is entitled for relief sought in the plaint?



4. What order or decree?

ADDL. ISSUES

1. Whether plaintiff proves that he is entitled for alternative relief of return of advance amount of Rs.20,00,000/- with interest at the rate of 18% p.a.?

6. In order to prove the case, plaintiff examined himself as PW1 and One witness examined as PW2 and 12 documents were marked as Ex. P1 to Ex. P12. Per contra, defendant examined himself as DW1 and 8 documents were marked as Ex. D1 to D8 and close his side.

7. Heard the arguments on both side, both counsels are filed memo with decisions.

8. On careful perusal of the records my findings to above said issues as under;

Issue No.1 & 2 : **In the affirmative.**

Issue No.3 : **Partly affirmative.**

Addl. Issue No.1: **In the partly affirmative.**



Issue No.4 : As per the final order
for the following:

REASONS

9. **Issue No.1:** At the inception of this judgment, the case of the plaintiff and defence of defendant have already stated. Hence without repetition of the same this court proceed to appreciation of material evidence of record.

10. The main contention of the plaintiff that defendant is intended to sell the suit property, the plaintiff agreed to purchase the suit property for total sale consideration amount of Rs.60,00,000/- and on different dates he has paid an amount of Rs.20,00,000/- to the defendant as advance sale consideration amount and he is ready and willingness to perform his part of contract. In order to prove the said issue, plaintiff examined himself as PW1, he has reiterated the contents of plaint avernments in his examination in chief and 12 documents were marked as Ex. P1 to P12. Ex. P1 is the copy of the agreement of



sale dated 25.06.2022, Ex. P2 is the record of rights pertaining to item No.1 of the suit schedule property standing in the name of defendant. Ex.P3 is the certified copy of the mutation register in M.R. No.9/1998-99, Ex.P4 is the office copy of the legal notice dated 09.01.2023, Ex.P5 is the postal acknowledgment, Ex.P6 is the copy of the legal notice dated 27.03.2023 issued by the defendant counsel to the plaintiff. Ex.P7 is the reply notice dated 05.03.2023, Ex.P8 is the postal receipt, Ex.P9 is the copy of the sale deed dated 29.08.2022, Ex.P10 to P12 are the record of rights in Sy. No.189/1, 149/3 and 189/3 situated at Gubbiga Village in the name of defendant. In order to prove the execution of Ex.P1, plaintiff examine one of the attesting witness as PW2. The learned counsel for defendant cross-examine the said witnesses.

11. The main defence of the defendant that as per terms and conditions of agreement of sale the plaintiff did not perform his contract within stipulated time, so that reason he issued legal notice and forfeited the advance sale consideration amount of



Rs.20,00,000/-by cancellation of the agreement of sale and he is not liable to execution of the sale deed in favour of plaintiff and the alternative relief sought by the plaintiff for refund of advance sale consideration amount is barred by law of limitation. In order to prove the defence, defendant examined himself as DW1, he has reiterate the contents of written statement in his examination in chief and 8 documents were marked as Ex.D1 to D8. Ex.D1 is the online copy of the sale deed dated 28.06.2022, Ex.D2 is the office copy of the legal notice dated 29.12.2022, Ex.D3 is the Online copy of the sale deed dated 01.12.2022, Ex.D4 is the office copy of the legal notice dated 27.03.2023, Ex.D5 is the postal acknowledgment, Ex.D6 is the encumbrance certificate, Ex.D7 is the record of rights pertaining to land bearing Sy.No.137/2 and Ex.D8 is the record of rights pertaining to land bearing Sy.No.2. The learned counsel for plaintiff cross-examine the said witness.

12. On careful perusal of the record, in the written statement at para No.2 in page No.2 and para No.3 defendant has categorically admitted the ownership of



the property as well as the agreement of sale dated 25.06.2022 and he received advance sale consideration amount of Rs.20,00,000/- from the plaintiff on various dates and the total sale consideration amount is fixed at Rs.60,00,000/-. Further with regard to issue No.1 is concern the defendant admitted the execution of Ex. P1 and receiving advance sale consideration amount in his written statement. Hence there is no require for much discussion on Ex.P1. Further as per **Section 58 of Indian Evidence Act clearly stated that Facts admitted need not be proved** - No fact need be proved in any proceedings which the parties thereto or their agents agree to admit at the hearing or which before the hearing, they agreed to admit by any writing under their hands or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings.

Provided that the Court may in its discretion require the facts admitted to be proved otherwise than by such admission. In the present case in the written statement the defendant admitted the execution of the



Ex. P1 and receiving of advance sale consideration amount of Rs,20,00,000/- from the plaintiff and there is no dispute the execution of Ex.P1 in favour of plaintiff. Hence for the above said reason my findings to this **issue in the affirmative.**

13. **Issue No.2:** The burden lies on the plaintiff to prove that he is readiness and willingness to perform to his part of contract. As per the contention of the plaintiff that he is ready to perform his part of contract within stipulated time, but defendant did not provide the document i.e., N.O.C from competent authority for registration of the sale deed.

14. Per contra the learned counsel for defendant vehemently argued that as per terms and conditions of the agreement of sale defendant has provide the documents to the plaintiff, but plaintiff did not come forward to get the sale deed in his favour by paying the balance sale consideration amount so that reason he issued a legal notice to the plaintiff to forfeited the advance sale consideration amount given by the plaintiff



and plaintiff has no right to seeking any remedy on the basis of agreement of sale.

15. On careful perusal of records, as per Ex. P1 plaintiff and defendant are entered into agreement of sale in respect of suit properties and the time fixed for registration of the sale deed for a period of 4 months from date of execution of the agreement of sale. Further as per recital of Ex. P1 it is on obligation to defendant to clearance of the loan and to provide all the necessary documents to get the registration of the suit schedule properties. At this juncture it will appropriate to the recital / condition mentioned at Ex. P1 in condition No.11 same was extracted as under; "11-ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ಮೇಲೆ ಯಾವುದೇ ಬ್ಯಾಂಕ್, ಸಹಕಾರ ಸಂಘ ಇನ್ನಿತರ ಹಣಕಾಸು ಸಂಸ್ಥೆಗಳ ಸಾಲಗಳು, ಕಂದಾಯ ಮತ್ತು ಸರ್ಕಾರಿ ಬಾಕಿಗಳು ಪಾವತಿಗೆ ಉಳಿದಿದ್ದಲ್ಲಿ, ಅಂತಹವುಗಳನ್ನು 1 ನೇ ಪಾರ್ಟಿಯು ನೋಂದಣಿಗೆ ಸಾಕಷ್ಟು ಮುಂಚಿತವಾಗಿ ಸಂಪೂರ್ಣ ತೀರುವಳಿ ಮಾಡಿ ಸ್ವತ್ತನ್ನು ಋಣಮುಕ್ತಗೊಳಿಸಿ, ಸಾಲ ತೀರುವಳಿ ಪತ್ರ, ಆಧಾರ ಖುಲಾಸೆ ಪತ್ರ, ಇ.ಸಿ. ಮತ್ತು ಸ್ವತ್ತಿನ ನೋಂದಣಿಗೆ ಅಗತ್ಯವಿರುವ ಮತ್ತು 2 ನೇ ಪಾರ್ಟಿಯವರು ಆಪೇಕ್ಷಿಸುವ ಕ್ರಮಬದ್ಧವಾದ ಎಲ್ಲಾ ದಾಖಲೆಗಳನ್ನು ಒದಗಿಸಿ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತುಗಳನ್ನು 2 ನೇ ಪಾರ್ಟಿಯವರ ಹೆಸರಿಗಾಗಲೀ, ಅಥವಾ 2 ನೇ



ಪಾರ್ತಿಯವರು ಸೂಚಿಸುವ ವ್ಯಕ್ತಿಗಳ ಹೆಸರಿಗಾಗಲೀ, ನೋಂದಾಯಿಸಿಕೊಟ್ಟು
ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ಕ್ರಯದ ಬಾಬು ಬಾಕಿ ಹಣವನ್ನು 2 ನೇ ಪಾರ್ತಿಯಿಂದ
ಪಡೆಯಲು 1 ನೇ ಪಾರ್ತಿ ಬದ್ಧರಾಗಿರುತ್ತಾರೆ".

16. In the recital of Ex. P1 at condition No.14 same was extracted as under: "1 ನೇ ಪಾರ್ತಿಯು ತಮ್ಮ ಪಾಲಿನ ಎಲ್ಲಾ ಕರ್ತವ್ಯಗಳನ್ನು ನಿರ್ವಹಿಸಿ ದಾಖಲೆಗಳನ್ನು ಒದಗಿಸಿ ಕ್ರಯ ಪತ್ರ ನೋಂದಾಯಿಸಿ ಕೊಡಲು ತಯಾರಿದ್ದಾಗಲೂ 2 ನೇ ಪಾರ್ತಿ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ಕ್ರಯದ ಬಾಕಿ ಹಣವನ್ನು 1 ನೇ ಪಾರ್ತಿಗೆ ಪಾವತಿಸಿ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತನ್ನು ನೋಂದಾಯಿಸಿ ಕೊಳ್ಳಲು ಮುಂದೆ ಬರದಿದ್ದಲ್ಲಿ ಈ ಕರಾರು ರದ್ದಾಗುತ್ತದೆ, ಮುಂಗಡ ಹಣವನ್ನು 1 ನೇ ಪಾರ್ತಿಯು ಮುಟ್ಟುಗೋಲು ಹಾಕಿಕೊಳ್ಳಲು ಹಕ್ಕುಳ್ಳವರಾಗಿರುತ್ತಾರೆ ಮತ್ತು ಆ ನಂತರ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ಮೇಲೆ 2 ನೇ ಪಾರ್ತಿಗೆ ಯಾವುದೇ ಹಕ್ಕು ಬಾಧ್ಯತೆಗಳು ಇರುವುದಿಲ್ಲ".

17. As per the recital of Ex. P1 it is an obligation to both the parties to perform their duties that defendant has by providing the document and plaintiff shall pay the balance sale consideration amount. In this background whether plaintiff has establish that defendant did not provide the documents for registration of sale deed within stipulated period and



even though plaintiff is readiness and willingness to perform his part of contract. Further the burden lies on defendant has establish before the court that within the stipulated period he was provide the documents to plaintiff, but plaintiff has failure to perform his part of contract and plaintiff was unable to pay the balance sale consideration amount so that reason he issued a notice for cancellation of agreement of sale by forfeited the advance sale consideration amount.

18. Further the readiness and willingness to perform the contract the meaning of readiness and willingness explained under Section 16(c) of Specific Relief Act 1963 explained by the Hon'ble Apex Court in the decision reported in **2022(14) SCC 793 in between P. Daivasigamani V/s. S. Sambadan**. In the said judgment the Hon'ble Apex Court held that readiness would mean that capacity of the plaintiff to perform the contract which would include financial position to pay the purchased price and willingness refers to the intention of plaintiff has a purchaser to perform his part of contract including the conduct of plaintiff /



purchaser and attending circumstances in the said judgment at para No.21 and 22 the Hon'ble Apex Court clearly held the capacity of the plaintiff to perform the contract and the granting or refusing to grant the relief of specific performance of a contract.

19. In this back drops whether plaintiff has establish his readiness and willingness to perform his part of contract. On perusal of Ex. P4 on 09.01.2023 plaintiff issued a legal notice through his counsel, on perusal of the contents of the said notice, as per agreement of sale dated 25.06.2022 defendant has agreed to provide the documents to the plaintiff for registration of the sale deed from the competent bank, financial agency with regard to N.O.C. certificate pertaining to suit property and also with regard to the suit property granted by the Government to obtain the N.O.C. from Revenue Authority for registration of the sale deed, but defendant did not provide the said documents for registration. So that reason plaintiff issued a legal notice as per Ex. P4. Further as per Ex. P6 on 27.03.2023 defendant given reply to the said



notice and stated that his client also furnished N.O.C. pertaining to suit schedule property and encumbrance certificate on 24.01.2023 and even receipt of the said notice the plaintiff did not come forward to pay the balance sale consideration amount of Rs.40,00,000/-. So that reason defendant has forfeited the advance sale consideration amount of Rs.20,00,000/- and also to cancel the agreement of sale dated 25.06.2022.

20. Further on perusal of the document produce by the defendant as per Ex. D2 on 29.12.2022 defendant issued a legal notice to the plaintiff, the sum and substance of the said notice that as per terms and conditions of the sale agreement his client is ready to perform his part of contract, but plaintiff failure to pay the remaining balance sale consideration amount of Rs.40,00,000/- within stipulated period, so that reason he has forfeited the advance sale consideration amount. As per the written statement and the evidence of DW1, he has categorically deposed before the Court within stipulated period he has provide the necessary documents to the plaintiff for registration of the suit



schedule properties in favour of plaintiff. On perusal of the contents of Ex. P6 defendant himself as stated that on 24.01.2023 he has provide the documents to the plaintiff for registration of the sale deed, but as per terms and conditions mentioned at Ex. P1 at condition No.8 the time fixed for execution of the sale deed is 4 months from date of agreement but defendant did not provide the said document to plaintiff within stipulated time.

21. Further as per recital of Ex.P1 condition No.11 it is an obligation to the defendant to provide the necessary documents for registration of the sale deed within a 4 months. But as per Ex. P6 the reply notice given by the defendant establish that within the statutory period agreed by the defendant, he did not provide the documents to the plaintiff and on 24.01.2023 defendant provide the documents, before that as per Ex. D2 defendant issued a legal notice for forfeited the advance sale consideration amount paid by the plaintiff. Further defendant has not produce any documents to show that within stipulated period



defendant has provide the documents but plaintiff has failure to perform his part of contract.

22. Further on careful perusal of the entire cross-examination of PW1, he has categorically deposed before the Court for execution and passing of advance sale consideration amount. Further in para No.6, page No.8 PW1 admitted that before enter into agreement of sale he has verify the R.T.C., mutation, E.C., grant certificate and N.O.C., the witness voluntarily stated that defendant agreed to produce N.O.C. from the bank. Admittedly in Ex. P1 there is nowhere mentioned that to obtain the N.O.C. from the Bank, but on perusal of the condition mentioned at Ex. P1 condition No.11 it clearly stated that for the purpose of the registration of the sale deed it is an obligation to the defendant to provide the necessary documents to the plaintiff for registration of suit properties.

23. On careful perusal of the record as per Ex. P4 on 09.01.2023 plaintiff given reply notice to the defendant counsel that defendant did not furnish the



N.O.C. from Revenue Authority for registration of the sale deed and till today he is readiness and willingness to perform his part of contract by paying the balance sale consideration amount of Rs.40,00,000/-. On perusal of the cross-examination of PW1, he has categorically deposed before the Court same was extracted as under; “ದಿನಾಂಕ: 25.10.2022 ರಂದು ನಿಮ್ಮ ಬಳಿ 40 ಲಕ್ಷ ಹಣ ಇತ್ತಾ? ಎಂದರೆ ಸಾಕ್ಷಿ ಇರಲಿಲ್ಲ, ಆದರೆ ಮಂಡಿ ಮತ್ತು ನನ್ನ ಮಗಳು ಲೋನ್ ಮಾಡಲು ತಯಾರಿದ್ದರು ಎಂದು ಉತ್ತರಿಸಿರುತ್ತಾರೆ. ದಿನಾಂಕ: 25.10.2022 ರಿಂದ ಈ ದಾವೆ ಹೂಡುವ ಕಾಲಕ್ಕೆ ನಿಮ್ಮ ಬಳಿ 40 ಲಕ್ಷ ಬಾಕಿ ಹಣ ಇತ್ತಾ? ಎಂದರೆ ಸಾಕ್ಷಿ ನನ್ನ ಖಾತೆಯಲ್ಲಿ ಇರಲಿಲ್ಲ, ಆದರೆ ನನ್ನ ಮಗಳು ಲೋನ್ ಪಡೆಯಲು ಹಾಗೂ ಮಂಡಿಯಲ್ಲಿ ಹಣ ಸಾಲ ಪಡೆಯಲು ಆಗುತ್ತಿತ್ತು ಎಂದು ಉತ್ತರಿಸಿರುತ್ತಾರೆ.” Admittedly, as on 25.10.2022 plaintiff was not possessed the remaining balance sale consideration amount of Rs.40,00,000/-, but he has categorically stated that he has intended to obtain the loan from the Mandi and also loan from in his daughter name.

24. On perusal of the record with regard to readiness is concern the plaintiff issued a legal notice to defendant as per Ex. P4, but before that as per Ex. D2



on 29.12.2022 defendant issued a legal notice to the plaintiff and unilaterally defendant forfeited the advance sale consideration amount of Rs.20,00,000/-. Further with repetition of the same on meticulous perusal of Ex. D2 defendant has nowhere stated that he has furnish the all the relevant and necessary documents pertaining to suit property within a stipulated period. Further in Ex. D2 defendant has stated that he agreed to furnish the relevant documents, but defendant has not produce any documents to show that before expiration of the time fixed in the agreement I,e, Ex.P1 defendant has furnish the documents to the plaintiff for registration of the sale deed.

25. Further plaintiff examined the One witness as PW2, he deposed before the court for execution of the agreement of sale and passing of the sale consideration amount. Due to defendant did not clear the loan and election was declared so that reason the sale deed was not obtained in favour of plaintiff. The learned counsel for defendant cross-examine the said witness and during the course of cross-examination he admitted that



within 4 months the defendant clear the loan from the bank. Admittedly as per Ex. D6 on 03.08.2022 the defendant clear the loan from the bank and obtain the clearance certificate. Further PW2 has categorically stated that for the purpose of registration of the sale deed in respect of suit properties the N.O.C. is required from the Tahsildar.

26. On appreciation of the evidence of PW2, he has categorically stated before the court for execution of agreement of sale, passing of sale consideration amount and in the month of May 2023 the Legislative Assembly Election was declared by the Government so that reason the plaintiff was not obtained the sale deed. There is no dispute the execution and passing of advance sale consideration, but the evidence of PW2 with regard to in his presence the sale talk was held.

27. Further on careful perusal of the defence of the defendant that within the stipulated period he has handed over the documents in favour of plaintiff, but plaintiff was unable to pay the balance sale



consideration amount and plaintiff has failure to perform his part of contract. With regard to whether defendant has furnish the documents to the plaintiff within a stipulated period as mentioned in the Ex.P1. On careful perusal of cross-examination of DW1, at page No.10 para No.3 in middle portion same was extracted as under; “ನಾನು ದಾವಾ ಆಸ್ತಿಯನ್ನು ಮಾರಾಟ ಮಾಡುವ ಸಂಬಂಧ ತಹಶೀಲ್ದಾರ್ ರವರಿಂದ ಎನ್.ಓ.ಸಿ. ಪಡೆದುಕೊಂಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ವಕೀಲರ ಮುಖಾಂತರ ಕಳುಹಿಸಿರುತ್ತೇನೆ ಎಂದು ಉತ್ತರಿಸಿರುತ್ತಾರೆ. ನಾನು ಜನವರಿ 2023 ರಲ್ಲಿ ಎನ್.ಓ.ಸಿ.ಯನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ಮೊದಲಿಗೆ ಪಡೆದ ಎನ್.ಓ.ಸಿ. ದಿನಾಂಕ ಗೊತ್ತಿರುವುದಿಲ್ಲ ಎಂದು ಉತ್ತರಿಸಿರುತ್ತಾರೆ. ನಾನು ಇ.ಸಿ. ಮತ್ತು ಎನ್.ಓ.ಸಿ. ದಾಖಲೆಯನ್ನು ವಕೀಲರ ಮುಖಾಂತರ ಕಳುಹಿಸಿಕೊಟ್ಟ ಬಗ್ಗೆ ದಾಖಲೆ ಇಟ್ಟುಕೊಂಡಿರುವುದಿಲ್ಲ.” As per the version of DW1 that he has provide the documents for registration of the suit property in favour of plaintiff through his counsel, but in this regard the defendant has not produce the documents. Further as per own admission of DW1 that in the month of January 2023 he obtain the N.O.C. from the Tahsildar, before obtaining the N.O.C. and



defendant has issued a legal notice to the plaintiff as per Ex. D2 to forfeited the advance sale consideration amount.

28. Further during the course of cross-examination of DW1, he admitted that on 09.01.2023 plaintiff issued a legal notice through his counsel for request to handed over the documents for registration. Admittedly as per Ex. P6/Ex.D4 defendant given reply to the said notice, in the said notice the defendant contended that **“accordingly my client has also furnished the N.O.C. pertaining to schedule property and encumbrance certificate on 24.01.2023 itself”(underlined by me).** The recital of reply notice itself discloses that within a stipulated period the defendant did not provide the documents to the plaintiff for registration of the suit schedule property.

29. On perusal of Ex. P1 it is an agreement of sale dated 25.06.2022 entered into between plaintiff and defendant and it is a bilateral contract and the recital of Ex. P1 it is an obligation to defendant to provide the



documents within a period as agreed in Ex. P1. Simultaneously it is an obligation to the plaintiff after furnishing the documents he has ready to repay the balance sale consideration amount to defendant at the time of registration of sale deed. But defendant has failure to produce the documents to show that within a stipulated period he was furnish the documents to the plaintiff.

30. Further with regard to the obligation of the defendant to provide the documents to the plaintiff is concern during the course of cross-examination of DW1, same was extracted as under; “ದಿನಾಂಕ: 05.03.2023 ರ ನೋಟೀಸ್ ನಲ್ಲಿ ವಾದಿಯು ಎನ್.ಓ.ಸಿ.ಯನ್ನು ಹಾಜರುಪಡೆಸುವಂತೆ ತಿಳಿಸಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ದಿನಾಂಕ: 09.01.2023 ರ ನೋಟೀಸ್ ಗೆ ನಾನು ಯಾವುದೇ ಪ್ರತ್ಯಯುಕ್ತರ ನೀಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ದಿನಾಂಕ: 27.03.2023 ರಂದು ನಮ್ಮ ವಕೀಲರ ಮೂಲಕ ನೋಟೀಸ್ ಕಳುಹಿಸಿದ್ದು, ನಾನು ದಾಖಲೆಯನ್ನು ನೀಡಿದ ಸಂಬಂಧ ಯಾವುದೇ ದಾಖಲೆ ಇರುವುದಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿ ನಮ್ಮ ವಕೀಲರ ಮೂಲಕ ಕಳುಹಿಸಿದ್ದೆ ಎಂದು ಉತ್ತರಿಸಿರುತ್ತಾರೆ. ದಿನಾಂಕ: 27.12.2022 ರ ನಾವು ನೀಡಿದ ನೋಟೀಸ್ ನಂತರ ಯಾವುದೇ ದಾಖಲೆಯನ್ನು ವಾದಿಗೆ ಕಳುಹಿಸಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ.” The above portion of deposition of DW1, clearly establish



that defendant without providing the documents to plaintiff, defendant has issued a notice to plaintiff that he had forfeited the advance sale consideration amount is illegal and against the law.

31. Further during the course of argument defendant counsel contended that plaintiff has not possessed the remaining balance sale consideration amount and he has failure to perform his part of contract. Hence defendant has right to forfeit the advance sale consideration amount. In support of his argument he relied on the decision in **Civil Appeal No.3015/2013, dated 21.11.2024 in between R. Kandasamy (since dead) and others V/s. T.R.K. Saraswathy and another (Hon'ble Supreme Court)**. I have gone through the above said judgment with regard to proof of financial capacity to perform part of contract and the buyer as having sufficient balance in his bank account, in the absence of the same the buyer had no capacity to perform his part of contract. I have gone through the above said judgment the Hon'ble Apex Court categorically held that there was no readiness and



willingness on the buyers part to pay the balance sale consideration and get the sale deed. On perusal of the entire record the readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance, this circumstances is material and relevant and it is require to be considered by the Court while granting or refusing to grant specific performance. Further plaintiff issued a legal notice to defendant for his willingness to purchase the property and with regard to readiness is concern plaintiff is ready to obtain the loan from Mandi.

32. Further learned counsel for defendant relied on the judgment in **R.F.A.No.21/2011, dated 18.12.2024 in between Sri. Sayyed Ishaq V/s. Sri. D. Ramesh Naik**. I have gone through the above said judgment in the said case the defendant had agreed to obtain conversion order of the land under Section 95 of Karnataka Land Revenue Act, but plaintiff has failure to perform his part of contract with regard to readiness and willingness under Section 16(c) of Specific Relief Act. In the said case plaintiff has failure to establish his



readiness and willingness even in the absence of other material. The ratio laid down in the said judgment is not applicable to the present facts and circumstances of this case because in the present case defendant has failure to perform his obligation to furnish the relevant documents within the stipulated time to plaintiff.

33. Further learned counsel for defendant relied upon the decision reported in **2013(15) SCC 27 in between I.S. Sikandar (dead) by LRs. And others V/s. K. Subramani and others.** I have gone through the above said judgment, in that case also the defendant No.1 to 4 get the necessary permission from the U.L.C.A. and Income Tax Department after paying the layout charges, but plaintiff within stipulated time he did not get the sale deed. In the said judgment the Hon'ble Apex Court refer the Section 16(c) of Specific Relief Act.

34. On perusal of the record it is settled principle of law that grant of relief of specific performance is a discretionary and equitable relief, the first Court to



consider that whether the existence of valid and concluded contract, the plaintiff has ready and willing to perform his part of contract. In the present case it is an obligation to the defendant to provide the necessary documents for registration of the sale deed, but defendant has failure to prove that within the stipulated period he has furnish the documents to plaintiff. Further defendant has failure to perform of his part of contract, when the defendant issued a legal notice for forfeited the advance sale consideration amount then plaintiff issued a legal notice to the defendant as per Ex. P4 that if the defendant provide the documents for registration he is ready to pay the balance sale consideration amount to the defendant.

35. Further with regard to readiness and willingness to perform the part of contract is concern the Court should consider entire facts and circumstances of the case that whether the defendant has discharge his obligation and plaintiff has willfully failure to perform his part of contract. On perusal of the entire cross-examination of DW1, it clearly discloses



that before issuance of notice i.e., as per Ex.D2 defendant has not produce any documents to show that he has furnish/provide the relevant documents to plaintiff for registration of sale deed. Further DW1 categorically stated that he provide the documents to the plaintiffs through his counsel, with regard to the same the defendant did not produce the documents. Further as per materials and evidence of both the parties the total sale consideration amount of Rs.60,00,000/-, plaintiff on various dates he has paid the advance sale consideration amount of Rs.20,00,000/- to the defendant, same was admitted by defendant in his written statement as well as legal notice.

36. Further the legal notice issued by the plaintiff i.e., Ex. P4 discloses that plaintiff is readiness and willingness to perform his part of contract. Further with regard to remaining balance sale consideration amount is concerned the plaintiff specifically stated in his cross-examination that he is intended to obtain the loan from the Mandi and also obtain the loan in the name of his



daughter. Further when the bilateral contract entered into between plaintiff and defendant, the defendant cannot unilateral to cancellation or forfeited the advance sale consideration amount. Further looking into conduct of the parties and nature of the transaction, the defendant without comply the condition enumerated in Ex. P1 that defendant has not furnish the relevant documents to plaintiff, he has forfeited the amount is against the law. Hence plaintiff has proves that he is readiness and willingness to perform his part of contract. Hence for the above said reason my findings to **this issue in the affirmative.**

37. **Addl. Issue:** Earlier plaintiff seeking main relief of specific performance of contract for execution of the sale deed in respect of suit properties in his favour, subsequently plaintiff amended the plaint in relief portion plaintiff seeking alternative relief of refund of advance sale consideration amount of Rs.20,00,000/- with interest at the rate of 18% p.a.



38. On perusal of Ex. P1 plaintiff enter into sale agreement in respect of 2 properties, as per Ex. P2 the item No.1 of the suit schedule property standing in the name of defendant, with respect to item No.2 of the suit schedule property is government land and defendant has not produce any document and item No.2 of the suit schedule property is encroached land, the defendant without having any title in respect of item No.2 of the suit property he had entered into agreement of sale with plaintiff. Further if the plaintiff to obtain the decree for specific performance of contract the said decree cannot be executable, because defendant has no right, title over the item No.2 of the suit property and said property belongs to government.

39. Further on perusal of the entire record defendant has not produce any documents to show that the item No.2 of the suit property was granted in his favour. Further during the course of argument the learned counsel for defendant argued that plaintiff is not entitle for alternative relief/remedy for return of advance amount with interest, because the relief



claimed by the plaintiff is barred by law of limitation, because the sale agreement entered between the parties on 25.06.2022 and the time fixed for execution of the sale deed is 4 months from date of agreement and for relief of refund of earnest amount the period of limitation is 3 years from date fixed for performance of contract and plaintiff filed the amendment application seeking alternative relief on 15.12.2025. Hence the relief claimed by the plaintiff is barred by law of limitation.

40. On careful perusal of the record with regard to the plaintiff is entitle for alternative relief is concern the relief claimed by the plaintiff is barred under law or not. On perusal of the recital of Ex. P1 at condition No.11 it clearly mentioned that for the purpose of registration of the property it is an obligation to the defendant to furnish the documents to the plaintiff. Further this Court has already given findings on issue No.2 that defendant has failure to perform his part of obligation and without providing the documents defendant issued a legal notice as per Ex. D2 to forfeited the advance sale consideration amount.



41. Further the limitation for seeking refund of earnest amount is concern when the defendant failure to perform his part of contract and as per Ex. P4 plaintiff clearly stated that he is ready to perform his part of contract if the defendant to provide the necessary documents, then only the period of limitation will starts. Further as per Ex. P4 on 09.01.2023 plaintiff issued a legal notice to the defendant calling upon to receiving the balance sale consideration amount to furnish the necessary documents, then onwards the period of limitation for refund of earnest amount is commences.

42. Further on perusal of the record as already stated that when the defendant has not obtain clear title in respect of item No.2 of the suit schedule property and to obtain the decree for specific performance is not executable decree. Further when the plaintiff specifically pleaded for alternative relief sought under Section 22 of Specific Relief Act to refund the earnest amount.



43. The learned counsel for plaintiff argued that when the decree for specific performance cannot be executable the Court can grant alternative relief of refund of earnest amount with interest. In support of his argument he relied upon the decision reported in **2022(14) SCC 793 in between P.Daivasigamani V/s. S. Sambandan**. I have gone through the above said judgment with regard to alternative prayer for refund of earnest amount with interest. In the said judgment the Hon'ble Apex Court held with regard to Article 54 of Limitation Act to file suit for specific performance within 3 years from date of agreement. In the said judgment the Hon'ble Apex Court held with regard to Section 20(2) of Specific Relief Act that the Court should take into consideration, while exercising discretion and the court shall consider the circumstances of the case to grant alternative relief.

44. Further learned counsel for defendant argued that the relief claimed by the plaintiff is barred by law of limitation. Hence plaintiff is not entitle alternative relief. In support of his argument he relied upon the decision



in **Civil Appeal No.5822/2025 in between K.R. Suresh V/s. R. Poornima and others.** I have gone through the above said judgment the Hon'ble Apex Court elaborately held with regard to Section 74 of Contract Act, Section 22(2) of Specific Relief Act, the difference between earnest money and advance money and forfeiture of earnest money and also refund of earnest money. I have gone through the above said judgment, in the said case the plaintiff had not sought for alternative prayer for refund of the advance sale consideration in the suit as mandated by Section 22 of Specific Relief Act. So that reason the plaintiff is not entitle alternative prayer for refund of the advance sale consideration amount. I have gone through the above said judgment the seller has right to forfeit the entire earnest money as per recital of agreement of sale, but with great respect to the above said judgment is not applicable to the present facts and circumstance of this case. Because plaintiff has sought alternative relief of refund of earnest amount with interest as contemplated under section 22(2) of Specific Relief Act.



45. Further learned counsel for defendant contended that the Modal Code of Conduct the Karnataka State Legislative Assembly Election 2023, on 05.04.2023 the Code of Conduct is held, but the plaintiff wrongly stated in his notice that due to Code of Conduct the money transaction could not possible. So that reason he issued a notice after completion of the election process is ready to obtain the sale deed. On perusal of the record as per Ex. P7 plaintiff issued a notice to the defendant counsel that the Legislative Assembly Election was declared. So that reason he was unable to registered the documents by payment of balance sale consideration amount.

46. Further during the course of cross examination of PW-1 the learned counsel for defendant taken contention that plaintiff doing real estate business and he has not intended to purchase the suit properties. Admittedly on perusal of Ex.D1 and Ex.D3 the plaintiff put his signature as witness to the sale deed and defendant has not produce any document to show that plaintiff doing real estate business.



47. On perusal of the cross-examination of DW1, he has also admitted that 2 – 3 times the plaintiff approached him postpone the registration of the sale deed. Further as per notification / circular of the Government to obtain the N.O.C. Certificate / Form No.3 is required for registration of the sale deed. But on perusal of the record the defendant could not provide the documents to plaintiff within a stipulated period and plaintiff seeking alternative relief of refund of earnest amount is within the period of limitation as stated in the earlier paragraph of this judgment. Hence the plaintiff proves that is entitle alternative relief of return of advance amount of Rs.20,00,000/-.

48. Further plaintiff sought interest at the rate of 18% p.a., admittedly on different dates the plaintiff paid an amount of Rs.20,00,000/- to defendant and same was mentioned in Ex.P1 I,e, agreement of sale dated 25.06.2022. Further if a common man has deposit the said amount in a nationalized bank certainly he get nominal interest. Further defendant has not disputed for receiving of advance sale consideration amount of



Rs,20,00,000/- from plaintiff. When the decree for specific performance cannot be executable decree this Court can exercise the discretionary power to refund of earnest amount of Rs.20,00,000/- to plaintiff with interest at the rate of 8% p.a. from date of agreement to till its realization to meets ends of justice to the both the parties. Hence for the above said reason my findings to this issue in the **partly affirmative**.

49. **Issue No.3:** While this Court given findings on issue No.1 that on 25.06.2022 defendant executed the agreement of sale pertaining to suit properties in favour of plaintiff by receiving advance sale consideration amount of Rs.20,00,000/- on various dates. Further plaintiff proves that he is readiness and willingness to perform his part of contract, but defendant is holding defective title in respect of item No.2 of the suit schedule property. Further when the execution of the sale deed is impossible, under such circumstances this Court by exercise of discretionary power to grant of refund of earnest amount/advance sale consideration amount to the plaintiff with interest at the rate of 8% p.a. from



date of agreement of sale to till its realization. Hence for the above said reason my findings to this issue in the **partly affirmative.**

50. **Issue No.4:** In view of discussion made supra on issue No.1 to 3 and additional issue, I pass the following:

ORDER

The suit of the plaintiff is hereby partly decreed with cost.

The relief sought by the plaintiff for specific performance of contract for execution of sale deed is hereby rejected.

Further it is hereby directed the defendant to refund the earnest amount of Rs.20,00,000/- with interest at the rate 8% p.a to plaintiff from date of agreement of sale to till its realization.

Further directed the defendant to pay/liable the said amount with interest to



plaintiff within a period of 2 months from date of this judgment.

Office is hereby directed to draw decree accordingly.

Dictated to Stenographer, transcribed by him, the transcript corrected by me and then pronounced in the open Court on this the 1st day of July, 2026.)

(Raghunatha Gowda K.T.)
Senior Civil Judge and J.M.F.C.,
N.R.Pura.

ANNEXURE

List of witnesses examined on behalf of plaintiff:

PW1 : Sri. Umesha.
PW2 : Sri. Raju K.P.

List of documents marked on behalf of plaintiff:

Ex.P1 : Copy of the agreement of sale.
Ex.P2 : Record of rights.
Ex.P3 : Certified copy of the mutation register.
Ex.P4 : Office copy of the legal notice.
Ex.P5 : Postal acknowledgment.
Ex.P6 : Copy of the legal notice.
Ex.P7 : Reply notice.
Ex.P8 : Postal receipt.
Ex.P9 : Copy of the agreement of sale.



Ex.P10-12: Record of rights.

List of witnesses examined on behalf of defendant:

DW1 : Sri. M.P. Varghese.

List of document marked on behalf of defendant:

Ex.D1 : Online copy of the sale deed.
Ex.D2 : Office copy of the legal notice.
Ex.D3 : Online copy of the sale deed.
Ex.D4 : Office copy of the legal notice.
Ex.D5 : Postal acknowledgment.
Ex.D6 : Encumbrance certificate.
Ex.D7-8 : Record of rights..

(Raghunatha Gowda K.T.)

Senior Civil Judge and J.M.F.C.,
N.R.Pura.