

KADG520000642021



Presented on : 19-01-2021
Registered on : 19-01-2021
Decided on : 25-06-2026
Duration : 5 years, 5 months, 6 days

IN THE COURT OF THE PRL.CIVIL JUDGE & JUDICIAL
MAGISTRATE FIRST CLASS AT : HONNALI.

PRESENT:

SRI.MANJUNATH BANAKAR,
B.A.,LL.B.,(Spl.)
Prl.Civil Judge & JMFC,
Honnali.

ORIGINAL SUIT No.17/2021

DATED THIS 25th DAY OF JUNE 2026

Plaintiff : Ramesha Menasinakai
S/o Late Dodda Kenchappa
Aged about 49 years
R/o: Hirekalmatha village
Honnali taluk
Davanagere district.

(By Sri. SNP advocate)

Defendants : 1. Ashoka
S/o Siddappa
Aged about 45 years

2. Smt. Huchamma
W/o Siddappa

Aged about 65 years

3. Sureshappa E

S/o Rudrappa

Aged about 52 years

All are R/o: Yaraganalu village

Nyamathi taluk

Davanagere district.

(Defendant No.1 placed Exparte,
Defendant No.2 and D3 By Sri. MRC
advocate)

1. Date of institution of the suit : 19.01.2021
2. Nature of the suit : Specific performance.
3. Date of the commencement
of recording of the evidence : 09.06.2022
4. Judgment pronounced on : 25.06.2026.

J U D G M E N T

The plaintiff has filed the suit against defendants for the relief of specific performance of an agreement of sale, directing the defendants to execute a registered sale deed in-favour of the plaintiff in respect of suit schedule property and also deliver the possession of the suit schedule property in favour of plaintiff and sought for alternative relief of recovery of Rs.4,00,000/- together interest at the rate of 18% per annum from the date of the suit till the date of realization of the amount and also to award costs of the suit.

2. The factual matrix which leads to file the present suit in brief can be crystallized as under :

The agricultural land in Sy. No. 1/11 measuring 1 acre 24 guntas (including karab of 0.01 guntas) and in Sy. No. 44/1P2 measuring 1 acre 06 guntas; both lands situated at Yaraganalu village in Nyamathi taluk, Davangere district more fully described in the plaint schedule are originally belongs to defendant No-1 and his father Late. Siddappa Maritimmappa. Being the owner they are in possession and enjoyment of aforesaid property.

3. It is further affirm that, the plaintiff is a resident of Honnali town and an agriculturist. In the year 2015 the defendant and his father jointly approached the plaintiff and offering to sell the suit schedule properties due to financial crisis and outstanding debts. After negotiation the defendants have agreed to sell the suit properties for a sum of Rs 4,00,000/-. Further contended that, on 22.05.2015 the defendant and his father received an advance amount of Rs. 3,50,000/- from the plaintiff and agreed to execute registered sale deed after receiving balance amount within 2 year 11 months and as per the agreement the defendant and his father were required to execute the registered sale deed, hand over the possession of the property and deliver all the original documents at the time of registration after receiving the balance consideration.

4. The plaintiff further affirm that, he has always ready and willing to perform his part of contract and intended to obtain a registered sale deed at the earliest. In this regard the plaintiff

approached the defendants and demanded for execution of sale deed in his favor on several occasion. It is further affirm that the defendant saying that some documents required to be rectified and for preparation of survey sketch is pending. Consequently the plaintiff has issued legal notice to defendants dated 19.11.2020 and which was duly served. The notice sent to the father of defendant No-1 returned to sender with a note that, the party has died. It is further affirm that, in the said notice the defendant was requested to appear at sub registrar office at Honnali on 30.11.2020 for executing of registered sale deed, but the defendant failed to appear and did not execute the sale deed in favor of plaintiff. Even thereafter, the defendant neither complied with the notice nor issued any reply.

5. it is further affirm that, even after issuing the legal notice, plaintiff contacted the defendant on several occasions and requested for execution of registered sale deed and delivery of possession of the suit land. However without any valid reasons the defendant failed to respond or appear. The defendant continued non compliance with the legal notice and failure to honor oral assurance amount to clear denial of execution of sale deed . Having no other way the plaintiff constrained to file this suit for specific performance of contract. Hence, the present suit.

6. After service of summons, the defendants No.1 remained absent. Hence placed him as exparte, the defendant No.2 and 3 have appeared through their Counsel but failed to file the written statement, hence the written statement of the

defendants No.2 and 3 are taken as not filed.

7. On the basis of the above said pleadings following points arise for my consideration.

1. Whether the plaintiff proves that defendants have executed the registered agreement of sale dated 22.05.2015 in respect of the suit schedule properties for a total sale consideration of Rs.4,00,000/- and received sum of Rs.3,50,000/- towards advance sale consideration?
2. Whether the plaintiff proves that, he is ever ready and willing to perform his part of the contract?
3. Whether the plaintiff proves that, he is entitled to alternative relief of refund an amount of Rs.3,50,000/- along with interest at the rate of 18% per annum?
4. Whether the plaintiff is entitled for relief as sought for?
5. What order?

8. In order to prove the case the Plaintiff has examined as PW-1 and got marked Ex.P.1 to Ex.P.11. The defendants neither cross-examined the PW-1 nor adduced defence evidence. Hence defendants evidence is taken as nil.

9. Heard the arguments of the Learned Counsel appearing for the plaintiff and perused the materials on record.

10. My findings on the above said Points are as under:

POINT No.1 : In the Affirmative.

POINT No.2 : In the Affirmative

POINT No.3 : In the Affirmative in part

POINT No.4 : In the Negative

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

REASONS

11. POINT No.1, 2 and 4 : Since these points are interlinked with each other, they are taken up together for common discussion to avoid repetition of appreciation of evidence.

12. Before proceeding further, at this stage, it is appropriate to take note of few well-settled legal principles. It is well-settled in law that, the plaintiff, who approaches the Court seeking the relief of specific performance of the contract, should approach the Court with clean hands. It is equally well-settled legal principle that, the jurisdiction to grant the relief of specific performance of the contract is discretionary in nature and the court has to consider various circumstances to decide whether such relief is to be granted. The Court need not grant the relief of specific performance merely because it is lawful to do so, but the discretion in this regard has to be exercised on sound principles of law.

13. In the backdrop of the aforesaid well-settled legal principles, the facts of the case in hand may be examined. It is the grievance of the plaintiff that, the defendants have executed the registered agreement of sale on 22.05.2015 in respect of the suit schedule properties for a total sale consideration amount of Rs.4,00,000/- and received an advance sale consideration amount of Rs.3,50,000/- and agreed to execute a registered sale deed by receiving balance sale consideration in respect of the suit schedule property after furnishing the required documents. But, the defendants are failed to perform their part of contract. Hence, the present suit is filed.

14. As per Section 101 to 103 of the Indian Evidence Act, the burden of proof lies on the plaintiff to establish the averments of the plaint. The plaintiff in order to prove his case, he has been examined himself as PW-1 and filed his affidavit evidence in lieu of his examination in chief, wherein he has deposed in consonance with the plaint averments. The PW-1 in support of his oral evidence has got marked Ex.P1 to Ex.P11. Ex.P1 is the agreement of sale dated 22.05.2015 executed by the defendant No.1 and his father in favour of plaintiff, Ex.P2 is the legal notice dated 31.01.2018, Ex.P.3 and 4 are the Postal receipts, Ex.P.5 is the postal acknowledgment, Ex.P.6 is RPAD envelop cover, Ex.P.6(a) is legal notice kept in Ex.P.6, Ex.P.7 is the sale deed dated 30.05.2018 executed by N.Siddappa S/o Marithimmappa in favour of Sureshappa E S/o Rudrappa, Ex.P.8 is the mutation register extract, Ex.P.9 to 11 are the RTC extracts. The defendants counsel has not cross-examined PW-1. Hence, his cross examination is taken as nil.

15. This Court has carefully perused the materials available on record in order to ascertain whether the defendants had executed the registered agreement of sale as averred by the Plaintiff and receipt of advance sale consideration amount as pleaded in the plaint. Accordingly Ex.P1 appears that defendant No-1 and his father had executed the registered agreement of sale in favour of plaintiff in respect of suit properties. These facts are not disputed by the defendant No-1 or remaining defendants, but on perusal of ExP-1 things are cleared that defendant No-2 and 3 are not party to the said agreement. Hence this court carefully perused the Ex9 and 11 which are the RTC's of the suit schedule properties respectively, which clearly discloses that the defendants are not the absolute owners of the suit schedule properties and also not tally with the description of suit properties and their measurement also. Because in the ExP-1 agreement suit properties are described as that R.S.No-1/1 measuring 01 acre 24 guntas and R.S.No-44/1P2 measuring 1 Acre 23 Guntas. However in the ExP-11 it is mentioned that R.S.No-44/7 measuring 00 Acre 26 Guntas. Therefore it is clearly goes to show that suit properties are not tally with the ExP-9 and 11. Moreover presently both properties shown in the ExP-9 and 11 are standing in the name of defendant No-2, but defendant No-2 was not the party in ExP-1 agreement. Therefore on these technical grounds ExP-1 agreement become un enforceable document.

16. However despite of service of summons defendant No-1 placed exparte and remaining defendants inspite of their appearance, they have failed to contest the suit. Hence silence of defendants clearly shows that they have not disputing the

execution of ExP-1 agreement in favour of the plaintiff and also receiving the advance consideration amount from him. Therefore after considering the Ex.P1 and also the oral evidence of PW-1 , this Court is of the opinion that the defendant No-1 had executed Ex.P.1 on 22.05.2015 and by receiving the advance sale consideration amount from the plaintiff. Since this court of the opinion that ExP-1 agreement is un enforceable document point No-2 regarding the readiness and willingness does'nt survive for consideration. Therefore on these grounds this court of the opinion that plaintiff is not entitle to get the specific performance decree for execution of sale deed on the basis of ExP-1 Agreement of sale pertains to the suit properties against the defendants as sought in the plaint. Hence this court answered point No-1 and 2 in the affirmative and point No-4 in the negative.

17. POINT No.3 : The plaintiff has specifically pleaded that, in case this Court is come to the conclusion as that the decree for specific performance of contract cannot be granted, then alternatively pass decree for recovery of Rs.3,50,000/- together interest at the rate of 18% per annum from the date of suit till the date of realization of entire amount from the defendants. As aforesaid discussion things are cleared that defendants have not disputed the facts of execution of ExP-1 agreement of sale and received amount of Rs-3,50,000/- from the plaintiff as advance consideration. Hence when the ExP-1 is become un enforceable agreement then plaintiff is entitled to recover the advance consideration amount along with reasonable interest from the defendants.

18. Therefore on considering the facts and circumstances of the suit and also considering the conduct of the parties this court of the opinion that it is just and proper to give directions to defendants to refund an amount of Rs.3,50,000/- along with interest at the rate of 9% per annum from the date of the suit to till the date of realization. With these observations, this Court has answered Point No.3 in the Partly Affirmative.

19. POINT No.5 : For the aforesaid discussion and decision on Point No.1 to 4, this Court proceeds to pass the following:

ORDER

The suit of the Plaintiff is partly decreed with cost.

The defendants are hereby directed to refund an amount of Rs.3,50,000/- to the plaintiff along with interest at the rate of 9% per annum from the date of suit to till the date of realization.

Draw decree accordingly.

[Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this day of 25th June 2026]

(Manjunath Banakar)
Prl. Civil Judge and JMFC.,
Honnali.

ANNEXURE

1. Witnesses examined on behalf of plaintiff :

PW-1 : Ramesha Menasinakai

2. Documents marked on behalf of plaintiff :

- Ex.P-1 : Agreement of sale
- Ex.P-2 : Legal notice
- Ex.P-3 & 4 : Postal receipts
- Ex.P-5 : Postal acknowledgment
- Ex.P-6 : RPAD cover
- Ex.P-6a : Notice kept in Ex.P.6
- Ex.P-7 : Certified copy of sale deed
- Ex.P-8 : Mutation register extract.
- Ex.P-9 to 11 : RTC extracts.

3. Witnesses examined on behalf of defendants:- N I L -

4. Documents marked on behalf of defendants: - N I L -

(Manjunath Banakar .)
Prl. Civil Judge and JMFC.,
Honnali.

