

KADW050060482022

Presented on : 28-09-2022
 Registered on : 28-09-2022
 Decided on : 29-11-2023
 Duration : 1 years, 2 months,
 1 days.

**IN THE COURT OF IV ADDL. SENIOR CIVIL JUDGE &
 J.M.F.C., DHARWAD.**

PRESENT : SRI.AMOL JAYKUMAR HIRIKUDE

B.A. L.L.B.,

IV Addl. Senior Civil Judge,
 & J.M.F.C., Dharwad.

O.S.No.388/2022

Dated 29th day of November 2023

<u>PLAINTIFF/S:</u>	1. Sushilkumar S/o Appasaheb Kodate Age: 40 years, Occ: Lecturer, R/o: Rudshed road, Gandhinagar, 5 th cross, Dharwad.
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(R/by Sri.B.V.Somapur, Adv)

V/s

<u>DEFENDANT/S:</u>	1. Basavaraj S/o Shankrappa Tumbaraguddi Age: 48 years, Occ: Business, R/o: 1 st Cross, Gandhinagar, Dharwad.
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	1(a)	Smt.Geeta W/o Basavaraj Tumbaraguddi Age: 42 years, Occ: Household work, R/o: 1 st Cross, Gandhinagar, Dharwad.
	1(b)	Tarun S/o Basavaraj Tumbaraguddi Age: 20 years, Occ: Student, R/o: 1 st Cross, Gandhinagar, Dharwad.
	1(c)	Sneha D/o Basavaraj Tumbaraguddi Age: 18 years, Occ: Student, R/o: 1 st Cross, Gandhinagar, Dharwad.
	1(d)	Preeti D/o Basavaraj Tumbaraguddi Age: 14 years, Occ: Student, R/o: 1 st Cross, Gandhinagar, Dharwad. (Petitioner No.3 is minor represented by her natural mother petitioner No.1(a) Smt.Geeta W/o Basavaraj Tumbaraguddi.

(Defendant dead)

(D1(a) to (c) Exparte)

(D1(d) R/by Sri.V.V.M, Adv)

Date of Institution of suit	: 28-09-2022
Nature of suit	: Specific performance.
Date of Recording of evidence	: 07-01-2023
Date of Judgment	: <u>29-11-2023</u>

Total duration	:	Year/s	Month/s	Day/s
		01	02	01

(Amol Jaykumar Hirikude)
IV Addl.Sr.Civil Judge,
& J.M.F.C. Dharwad.

: JUDGMENT :

This is a suit filed by the plaintiff against the defendants seeking specific performance of agreement of sale dated 05.05.2021.

2. The suit properties are Sy No.38A, plot No.84/1 and 84/2 respectively measuring 00 guntas 11 annas and 50 paise and 00 guntas 15 annas 25 paise situated at Lakamanahalli village.

2(a). The case of the plaintiff is that, the defendant is the owner of the suit properties, being so, during the year 2021 for the necessities of his family, he had agreed to sell the suit properties in favour of the plaintiff for the total sale consideration of Rs.20,00,000/- and out of it an

amount of Rs. 6,00,000/- has been obtained by the defendant as earnest money on 05.05.2021 and executed a registered agreement of sale on 05.05.2021. Further it is alleged that the defendant agreed to execute the sale deed within one month by receiving balance sale consideration amount in respect of the suit properties in favour plaintiff. The plaintiff is ever ready to perform his part of contract and he is ready with his balance sale consideration amount to get the sale deed registered in his name as per agreement of sale mentioned above in respect of the suit properties. But in that regard, though the plaintiff requested the defendant several times, but defendant postponed the execution of sale deed on one or the other pretext. It is further alleged in the plaint that during the month of July 2021, defendant obtained an amount of Rs.5,00,000/- from the plaintiff as hand loan and promised him to repay the same within 3 months. But he did not repay the same and in turn he issued a cheque with respect to repayment of the said hand loan of Rs.5,00,000/-. But the said cheque on presentation came

to be dishonoured. It is further alleged in the plaint that, the defendant said to have requested the plaintiff that the transaction entered into between the plaintiff and him with respect to sale of suit properties is different and the hand loan transaction is different and he sought sometime to complete both the transactions. Further the plaintiff said to have requested the defendant to execute the sale deed in terms of agreement of sale, but the defendant postponed the same on one or the other pretext and despite issuance of notice dated 30.08.2022, the defendant said to have refused to execute the sale deed on 16.09.2022. Therefore the plaintiff is constrained to file this suit seeking the relief mentioned above.

3. Despite due service of summons, defendant did not appear, as such he has been placed exparte. Meanwhile during the pendency of this suit on 18.01.2023, the sole defendant died and his wife and children have been brought on record as defendant No.1(a) to (d). The suit summons is also duly served on them, but they too did not appear, as such defendant

No.1(a) to (c) have been placed exparte. The defendant No.1(d) being minor, court guardian came to be appointed to represent him in this case. Accordingly, Sri.V.V.M Advocate filed the written statement of defendant No.1(d) by denying the averments made in the plaint against the defendants and prayed to dismiss the suit.

4. On the basis of the pleadings of the parties, this Court has framed the following Issues:-

I S S U E S

- 1. Whether the plaintiff proves that the defendant has executed an agreement of sale on 05.05.2021 agreeing to sell the suit properties in his favour for the total sale consideration of Rs.20 lakh and out of it, he has received an amount of RS.6 lakh as earnest money ?**
- 2. Whether the plaintiff further proves that he has always been ready and willing to perform his part of contract ?**
- 3. Whether the plaintiff is entitled to the specific performance of agreement of sale dated**

05.05.2021 as sought for ?

4. What order or decree?

5. In order to prove the case of plaintiff, he himself got examined as PW.1 by filing affidavit and got marked **Ex.P1 to P9** documents and closed his side evidence. On behalf of defendant No.1(d) no evidence is led.

6. I have heard the arguments of both side and perused the material available on record.

7. On perusal of the material available on record and on considering arguments of both side, my answer to the above Issues are as under:-

<u>Issue No.1:</u>	<u>In the Affirmative.</u>
<u>Issue No.2:</u>	<u>In the Affirmative.</u>
<u>Issue No.3:</u>	<u>Partly Affirmative.</u>
<u>Issue No.4:</u>	<u>As per final order for the following:-</u>

R E A S O N S:

8. **Issue No.1 to 3:-** As these issues are interlinked with each other, therefore to avoid repetition of facts they are discussed together.

8(a). The plaintiff in order to prove the execution of agreement of sale by the defendant in his favour agreeing to sell the suit properties for the total sale consideration amount of Rs.20,00,000/- by receiving an amount of Rs.6,00,000/- as earnest money, has got himself examined as PW.1, wherein he has reiterated the contents of the plaint and got marked Ex.P1 to P9 documents.

8(b). Ex.P1 is the original registered agreement of sale dated 05.05.2021. On perusal of the same, it can be seen that the defendant namely Basavaraj Shankrappa Tumbarguddi has executed same in favour of the plaintiff agreeing to sell the suit properties for Rs.20 lakh and out of total sale consideration, he has received Rs.6 lakh as earnest money. Further it was agreed in the said agreement of sale that within one month the sale deed is

to be executed. Ex.P2 to P4 are the bank statements of the plaintiff. Ex.P5 is the copy of legal notice. Ex.P6 is the speed post receipt. Ex.P7 & 8 are the RTCs of suit properties No.1 and 2. On perusal of Ex.P7 and 8, it can be seen that the said suit properties are standing in the name of deceased defendant namely Basavaraj Shankrappa Tumbarguddi. Ex.P9 is the reply given by defendant to the notice of plaintiff by denying the averments made in the said notice.

8(c). It is clear from the Ex.P7 and P8 that the defendant was the owner of the suit properties and same are standing in the name of defendant. Further it is also clear from Ex.P1 agreement of sale that the defendant had agreed to sell the suit properties in favour of the plaintiff for the total sale consideration of Rs.20 lakh and it is also clear from the said Ex.P1 that he had received an amount of Rs.6 lakh as earnest money. If at all the said defendant had not executed Ex.P1 with an intention to sell the suit properties, then, he could have filed the

written statement by denying the averment of the plaint during his lifetime. On behalf of defendant No.1(d) though the execution of agreement of sale has been denied, but nothing has been produced before the Court to disbelieve the contents of Ex.P1 nor anything worth elicited in the cross examination of PW.1 contrary to the contents of Ex.P1. Therefore, the oral and documentary evidence produced by the plaintiff are sufficient to hold the execution of agreement of sale by the deceased defendant in favour of plaintiff with respect to suit properties as proved.

8(d). It is also the contention of the plaintiff that he has been ever ready and willing to perform his part of contract as envisaged under Ex.P1. But the deceased defendant during his lifetime, he did not come forward to perform his part of contract as envisaged under Ex.P1. There is no contrary evidence on record against this averment of the plaintiff with regard to readiness and willingness. Therefore, I am of the opinion that the

plaintiff has been ready and willing to perform his part of contract as envisaged under Ex.P1. Though the plaintiff proves the execution of agreement of sale dated 05.05.2021 and also his readiness and willingness to perform his part of contract as envisaged under Ex.P1, but it is pertinent to mention here that the suit properties are standing in the name of deceased defendant namely Basavaraj Shankrappa Tumbarguddi and he died during the pendency of this suit. Though the plaintiff brought the wife of deceased and his three children on records as defendant No.1(a) to (d), but it is not clear from the documents produced by the plaintiff that, whether the deceased defendant had only four LRs or he had any other person as his legal representative/heir. Further, defendant No.1(d) is a minor and he is represented by court guardian. The defendant No.1(d) being minor, no liability can be fixed against him. Therefore, I am of the opinion that, if the earnest money received by the deceased defendant is ordered to be returned to the plaintiff with interest at the rate of 10% from the

defendant No.1(a) to (c), then the purpose would be served and the plaintiff will not to be subjected to much hardship. Therefore, having regard to the facts and circumstances of this case and in view of death of defendant during the pendency of this suit, the specific performance of agreement of sale dated 05.05.2021 with respect to the suit properties in favour of plaintiff cannot be performed, as such the plaintiff is entitled to alternative relief of refund of earnest money with interest at the rate of 10% from the date of 05.05.2021 till the realization of entire amount from the defendant No.1(a) to (c). Hence, for the above stated reasons, I have answered Issue No.1 and Issue No.2 “**In Affirmative**” and Issue No.3 in “**Partly Affirmative**”.

9. **Issue No.4:-** Hence, for the above stated reasons and the reasons stated while discussing Issue No.1 to 3, I proceed to pass the following:

ORDER

The suit filed by plaintiff is hereby decreed partly as under.

The defendant No.1(a) to (c) are hereby directed to pay Rs.6,00,000/- to the plaintiff with interest at the rate of 10% from the date of 05.05.2021 till the realization of entire amount with cost of this suit.

Draw decree accordingly.

(Dictated to the stenographer directly on computer typed by her, corrected, signed and then pronounced by me in the open Court on this the **29th day of November 2023**)

(Amol Jaykumar Hirikude)
IV Addl. Senior Civil Judge,
& J.M.F.C. Dharwad.

ANNEXURE

<u>1. List of witnesses examined on behalf of plaintiff:-</u>	
PW.1:	Sushilkumar S/o Appasaheb Kodate.
<u>2. List of documents marked on behalf of plaintiff:-</u>	
Ex.P1:	Sale deed dated 05.05.2021
Ex.P2:	Account extract of SBI Bank.

Ex.P3:	Account extract of Beereshwar Co-operative Society pertaining to one Leela Sushilkumar.
Ex.P4:	Account extract of Beereshwar Co-operative Society pertaining to petitioner.
Ex.P5:	Office copy of legal notice.
Ex.P6:	Speed post receipt.
Ex.P7:	RTC of Sy No.38/A pertaining to plot No.84/1.
Ex.P8:	RTC of Sy No.38/A pertaining to plot No.84/2.
Ex.P9:	Reply given by defendant to the notice of plaintiff on 16.09.2022.
3. <u>List of witnesses examined on behalf of defendants:-</u>	
NIL.	
4. <u>List of documents marked on behalf of defendants:-</u>	
NIL.	

(Amol Jaykumar Hirikude)

IV Addl. Senior Civil Judge
& J.M.F.C. Dharwad.

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For Judgment
29-11-2023

(Judgment pronounced in the open Court Vide separate Judgment)

ORDER

The suit filed by plaintiff is hereby decreed partly as under.

The defendant No.1(a) to (c) are hereby directed to pay Rs.6,00,000/- to the plaintiff with interest at the rate of 10% from the date of 05.05.2021 till the realization of entire amount with cost of this suit.

Draw decree accordingly.

(Amol Jaykumar Hirikude)
IV Addl.Senior Civil Judge,
& J.M.F.C. Dharwad.