



IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE
AND J.M.F.C., HUBBALLI

PRESENT:- SMT. DEEPA G. MANERKAR,
B. Com., LL.B., (Spl.)

II ADDL. SENIOR CIVIL JUDGE AND JMFC
HUBBALLI

DATED THIS 27th DAY OF JUNE 2026

O.S.No.187/2023

Plaintiff/s :

1. Sri. Shoukatali S/o
Mohammedgouse Mulla
Age:54 yrs, Occ: Business,
R/o: H.No.89-90, Raza Town
Islampur Road, Old Hubballi
Hubballi
2. Smt. Bibiayisha W/o Shoukatali
Mulla
Age: yrs, Occ: Household,
R/o: H.No.89-90, Raza Town
Islampur Road, Old Hubballi
Hubballi

(By Sri. M.S.Banad, Adv.)

-V/s-

Defendants/s :

1. Smt. Basavannevva W/o Kotayya
@ Kotrayya Hiremath
Age: 53 yrs, Occ: Household,
R/o: M.V. Galli, New Gabbur,



Tq: Hubballi, Dist: Dharwad

2. Sri. Basavaraj Kotayya @
Kotrayya Hiremath
Age: 40 yrs, Occ: Agriculture,
R/o: M.V. Galli, New Gabbur,
Tq: Hubballi, Dist: Dharwad
3. Sri. Siddaramayya Kotayya @
Kotrayya Hiremath
Age: 38 yrs, Occ: Agriculture,
R/o: M.V. Galli, New Gabbur,
Tq: Hubballi, Dist: Dharwad
4. Smt. Nirmala W/o
Veerupakshayya Adavayynamath
Age: 35 yrs, Occ: Household,
R/o: Yeribudihal, Tq: Kundagol,
Dharwad

(By Sri. P.S.Patil, Adv.)

Date of institution of Suit	:	15-04-2023
Nature of Suit	:	Specific performance of Contract
Date of Evidence	:	28-08-2023
Date of pronouncement of judgment	:	27-06-2026



Total duration	:	<u>Year/s</u> 03	<u>Month/s</u> 02	<u>Day/s</u> 12
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JUDGMENT

This suit is filed by the plaintiffs for the relief of specific performance of contract.

2. The case of plaintiff in brief is :-

The husband of defendant No.1 and father of defendant No.2 to 4 by name Kotayya @ Kotrayya S/o Sidramayya Hiremath was the absolute owner of the said property. He was in need of money for his legal and other necessities. Hence he offered to sell the suit schedule property to the plaintiffs and after negotiations the total sale consideration of Rs.20,00,000/- was fixed. Accordingly said owner received Rs.20,000/- through cash on 31.01.2020 and Rs.1,80,000/- through cheque bearing No. 032739 on 30.01.2021 and it was paid to defendant No.2 and a sum of Rs.15,00,000/- was paid to the said Kotayya @ Kotrayya Hiremath through cheque



bearing No.032747 drawn on State Bank of India Herepeth Branch on 16.03.2020. Out of said total consideration amount the plaintiff paid Rs.17,00,000/- as an earnest money to said Kotayya as well as defendant No.2. The said Kotayya after receiving the said part consideration amount has executed registered agreement of sale dated 16.03.2020 in favour of the plaintiffs in respect of suit schedule property and agreed to receive balance sale consideration of Rs.11,00,000/- at the time of registration of the sale deed. That the defendants have signed the said agreement of sale as consenting parties therefore, execution of sale agreement is within their knowledge. That as per the agreement of sale said Kottaya Hiremath was required to get measure and get fix the boundaries of the suit schedule property and execute registered sale deed in favour of the plaintiffs by receiving balance sale consideration amount. After execution of the said agreement of sale, the said Kotayya again approached time to time the plaintiffs for balance sale consideration amount and



as per his request, the plaintiffs paid Rs.2,00,000/- on 30-04.2022 through Cheque No.079827 drawn on State Bank of India Hirepeth branch and Rs.5,00,000/- on 12.04.2022 through Cheque No.079817 and Rs.40,000/- on 31-03-2022 through Cheque No.079813, Rs.30,000/-on 06-06-2022 through phonepay and Rs.5,000/- on 02-01-2023 to the defendant No.2. In all the plaintiffs paid Rs.24,25,000/- to said Kotayya @ Kotrayya Hiremath. They were ever ready and willing to perform their part of contract. Therefore plaintiffs repeatedly insisted Kotayya to perform his part as early as possible and execute sale deed. The plaintiffs trusted the defendant, the bonafides of said Kotayya @ Kotrayya Hiremath and waited for compliance of obligations by him. However, he did not come forward to execute the registered sale deed despite of repeated requests and reminders. The plaintiffs came to know that on 16.12.2022 said Kotayya @ Kotrayya Hiremath expired. Thereafter the plaintiffs approached the defendants and requested them to execute the sale deed by



receiving balance sale consideration amount. The defendants having agreed to execute registered sale deed, again the defendant No.1 received Rs.5,000/- through cheque bearing No.079877 dated 02.01.2023 and made the plaintiffs to believe that they will get their names in the record of rights and execute the sale deed. However the defendants went on postponing the execution of the sale deed. Hence plaintiffs got issued notice dated 29.03.2023 calling upon them to execute registered sale deed. However, they did not come forward to execute the sale deed. The plaintiffs recently came to know that the defendants with utter disregard to the terms of agreement dated 16.02.2020 are trying to alienate the suit schedule property with dishonest intention.

3. The plaintiffs are businessmen and intending to establish their business in the suit property as it is having such potentiality and they have also obtained permission from competent authority. The plaintiffs have partied with major



consideration that the plaintiffs have kept ready balance sale consideration of Rs.3,25,000/-. Hence, prayed to decree the suit.

4. After the service of summons, the defendants appeared through counsel. The defendant No.3 has filed the written statement and same is adopted by defendant No.1, 2 and 4.

In the Written Statement plaintiff averments has been denied. They have denied that they have executed agreement of sale in favour of the plaintiffs as claimed by the plaintiffs. It is contented that the suit schedule property is the only property on which the defendants are depending for their survival. The said property is ancestral property and in the year 2020 its minimum value was one crore as the suit property is situated on Puna-Bangalore highway and in order to engulf the said property the plaintiffs have created documents. There was no any need or family legal necessity



for the members of the family of the defendants. As such, the deceased Kotayya @ Kotrayya Hiremath did not offer the suit property for sale. That the plaintiffs were in need of money for his business and he took money in cash from the said Kotayya and he returned the same to said Kotrayya in the form of cheque and claiming that it was paid towards agreement of sale. The deceased Kotayya never executed agreement of sale in favour of the plaintiffs in respect of suit schedule property at any Issue of time. As such, the defendants are not under obligation to execute sale deed in favour of the plaintiffs. The present suit is not filed within the period of 3 years. It appears that the plaintiffs are not ready and willing to perform their part of contract and the suit is filed by delay and latches. That the plaintiffs have failed to prove readiness and willingness to perform his part of a contract. Hence prayed to dismiss the suit.



5. On the basis of pleadings, the following issues have been framed :-

ISSUES

1. Whether plaintiff proves that husband of defendant No.1 and father of defendant No 2 to 4 Sri Kotayya @ Kotrayya S/o Shidramayya Hiremath agreed to sell the suit property for total consideration amount of Rs.28,00,000/- and received the sum of Rs.24,25,000/- and executed agreement of sale along with defendants on 16.03.2020?
2. Whether plaintiff is ready and willing to perform his part of contract.?
3. Whether defendants proves that suit of the plaintiff is barred by law of limitation ?
4. Whether plaintiff is entitled for relief as claimed in the plaint ?
5. What order or decree?



6. In order to prove the case of the plaintiffs, the plaintiff No.1 is examined himself as PW1 and got marked Ex.P.1 to 23 documents. In order to substantiate the defence, the defendant No.3 examined himself as DW.1 and got marked Ex.D.1 and 2(a) documents.

7. Heard the arguments from both side counsels, defendants counsel have filed written arguments and perused the materials on record.

8. My answer to the above issues is as follows:-

Issue No.1: In the Affirmative

Issue No.2: In the Affirmative

Issue No.3: In the Negative

Issue No.4: In the Affirmative

Issue No.5: As per final order

for the following:-

REASONS

9. **ISSUE NO.1:-** As per the plaintiffs the husband of defendant No.1 and father of defendant No.2 to 4 by name Kotayya @ Kotrayya Sidramayya Hiremath being the owner of



suit schedule property for his financial assistance and family legal and other necessity executed agreement of sale dated 16-03-2020 in favour of the plaintiffs agreeing to sell the suit property for total consideration of Rs.20,00,000/- and he has agreed to receive balance sale consideration of Rs.11,00,000/- at the time of registration of the sale deed and agreed to execute sale deed in favour of the plaintiffs. The defendants have signed the agreement of sale as consulting parties. However, as per the request of said Kotrayya Hiremath, the plaintiffs have paid Rs.2,00,000/- on 30.04.2022, Rs.5,00,000/- on 12.04.2022, Rs.40,000/- on 31.03.2022, Rs.30,000/- on 06-06-2022 and Rs.5,000/- on 02-01-2022 defendant No.1 in all they have paid Rs.24,25,000/- and despite of repeated requests being made, the deceased Kotrayya failed to execute said deed in favour of the plaintiffs and died on 16.12.2022. Thereafter the defendants also agreed to execute sale deed however despite of repeated request and issuance of legal notice they failed to execute the same.



10. In the affidavit filed in lieu of chief examination, plaintiff No.1 has reiterated the averments made in the plaint. In support of oral testimony, reliance is placed on Ex.P1 to 23 documents. Ex.P.1 is the RTC pertaining to suit schedule property for the year 2021-2022 in which the name of Kotayya @ Kotrayya Sidramayya Hiremath is finding place in column No.9 and 12 along with the names of defendants in column No.12. Ex.P2 is the registered agreement of sale dated 16.03.2022 in which it is mentioned that one Kotayya S/o Shidramayya Hiremath being the owner of suit property agreed to sell the same to the plaintiffs for total consideration of Rs.28,00,000/- and agreed to execute sale deed after receipt of balance sale consideration of Rs.11,00,000/-. Ex.P3 is the consent deed which is the part of Ex.P2 at page No.5 of said document it is stated that the defendants No.1 to 4 have consented for execution of agreement of sale by deceased Kottaya in favour of the present plaintiffs. However the defendants in their written statement have denied that the



deceased Kotayya @ Kotrayya Sidramayya Hiremath has executed any agreement of sale as asserted by the plaintiffs. They have also denied that they are the consenting witnesses to Ex. P3.

11. The counsel for the plaintiffs argued that in the written statement filed by the defendants, there is bare denial of execution of the agreement of sale. DW1 in his cross-examination has admitted the photographs and signatures of other defendants on the said agreement of sale. The said witness has denied his signature on his vakalath and he is in the habit of denying his signature. Ex.P2 being the registered document, carries presumptive value. DW1 himself stated that his father might have executed agreement of sale in favour of the plaintiffs which itself goes to show that the agreement of sale has been admitted hence, execution of agreement of ale is proved.



12. On the contrary the counsel for the defendants argued that the execution of the agreement of sale at Ex.P2 has been very much denied by the defendants. As such it is for the plaintiffs to prove its due execution. However in order to prove the execution of said document the plaintiffs have not examined any of the testing witnesses or scribe to the said document and proved its execution. Mere registration of a document is not sufficient to prove its execution and its contents has to be proved. In the written arguments filed by counsel for the defendants, the above things have been reiterated.

13. In the cross examination of PW1 he stated that on 31.03.2020 negotiations took place and after three months agreement of sale was executed. He denied the suggestion that since no agreement of sale was executed, the plaintiffs did not get executed sale deed during the lifetime of Kotayya



Hiremath. However, nothing has been elicited from the mouth of PW.1 in the entire cross-examination.

14. However, in the cross-examination of D.W.1 he denied the signature appearing on Ex.P3 consent deed and stated that it does not pertain to him. It is pertinent to make mention that though all the defendants in the present suit have engaged the very same counsel, DW1 stated that he is unable to identify the signature of his own mother, brother and sister on vakalath which is got marked at Ex.D1. The said witness admitted that his brother, mother and sister are in good terms with him and he also stated that he is deposing in the present suit for himself as well as on behalf of other defendants but he stated that he does not know whether all the defendants together signed on vakalath or not. He admits that he has filed his examination-in-chief on behalf of all the defendants. In his cross-examination at page No.13, it was suggested to said witness that he himself, his mother and his



sister have engaged the same counsel for which he stated he does not know. He also stated that prior to filing of his chief examination he did not enquire with his mother, brother or sister as to which advocate they have got engaged. He also stated that he did not try to ascertain before filing his examination chief as to which counsel the mother, brother and sister of plaintiff PW1 have engaged. Admittedly, in the present suit all the defendants have engaged only one counsel. Though DW1 has not identified his photo and signature on Ex.P3, he has very much identified the photo and signature of his father, mother, brother and sister on Ex.P2 and 3. Therefore, it appears that for the sake of denying his signature and photographs on Ex.P3 he has denied the same when the signatures and photos of his father, mother, sister are very much appearing on Ex. P2 and 3 which is a registered instrument, it cannot be believed that it does not contain the signature and photo of DW-1.



15. DW-1 in his cross-examination at page No.14 admits that for the purpose of registration of any document the parties have to go to the office of Sub Registrar and present the document, thereafter it would be registered and the persons selling the property will put their signatures on the sale deed and thereafter the document will be registered and thereafter signatures and seal will be put. He also admitted that on Ex.P2 there is a seal and signature of one D. K. Nalawadi Sub Registrar. Therefore this admission of DW1 goes to show that he is acquainted with the process of registration and having knowledge about the same. Further in his cross-examination at page No.16 he admits that Ex.P16 and Ex.P17 documents have been executed by his father in respect of the suit schedule property. He also admits that in Ex.P16 there is a mention that his father had agreed to sell the suit schedule property for Rs.13,00,000/- and on 16.03.2020 the document at Ex.P16 has been cancelled as per Ex. P17. He also admitted that on the said day itself i.e. on 16.03.2020



Ex.P2 agreement of sale has been executed. He further admits that his father was not financially sound and his father did not possess Rs.12,00,000/- in order to pay it to one Shivangouda Hosagoudar i.e., intending purchaser as shown in Ex.P16 with whom the father of the defendants No.2 to 4 had entered into agreement of sale. The said witness also admitted that his father died at the age of 61 years and his liver was not functioning. He also admitted that expenses are required to be incurred in case of ill health and the same is considered as family necessity and family obligation. He also admitted that obtaining loan and repayment of it is also family necessity. It was suggested to the said witness that in order to meet out the medical expenditure of his father, himself and the defendants had executed agreement of sale and had obtained loan from one Shivanagoud Hosagoudar and in that connection they executed agreement of sale at Ex.P2 in favour of the plaintiffs by receiving Rs.17,00,000/- as advance sale consideration amount for which the said witness stated that



his father only might have executed the said agreement of sale. The above cross examination of DW1 per se establishes that the father of the defendants as well as the defendants were in need of money as such they intended to sell the suit schedule property in favour of plaintiffs to meet out the medical expenditure and other expenditure of their family.

16. Though DW1 has not admitted his and his brothers signatures on Ex.P3, in his cross-examination at page No.15 he admits that he has not lodged any complaint against plaintiffs and not taken any steps against them alleging that Ex.P3 does not contain his signature and signature of his brother. Though he denied the suggestion that since himself, his mother, sister and brother had gone to the office of Sub Registrar, their photos are reflected in Ex.P2 but as already discussed above, the said document is registered document in accordance with law as such it is for the defendants to explain



how photos and signatures of themselves and deceased Kotayya are reflected in Ex.P2 and 3.

17. Moreover, DW1 himself admitted that prior to the filing of present suit himself and his mother were residing at address shown in Ex.P10 legal notice and in the said address all the letter correspondence will be sent. He admits that himself and his mother have received the legal notice at Ex.P10 and Ex.P4. Though he stated that he tried to give reply to said notice, but his say cannot be accepted for the reason that if really the document at Ex. P2 and 3 were not at all executed by deceased Kotayya and the defendants, after receipt of legal notice they had every occasion to submit their reply or to initiate any action against the plaintiffs. However, it appears that since the said document at Ex.P2 has been executed by them in favour of the plaintiffs, they have neither given any reply nor taken any action against the plaintiffs



contending that Ex.P2 and 3 do not contain the signatures of the defendants and deceased Kotayya.

18. As regards passing of consideration under Ex.P2 is concerned, in the plaint it is averred that out of total consideration of Rs.28,00,000/-, plaintiffs made payment of Rs.20,000/- through cash on 31.01.2020 and Rs.1,80,000/- through cheque bearing No.032739 drawn on State Bank of India on 31.01.2020 to defendant No.2 and Rs.15,00,000/- through cheque bearing No.032747 drawn on State Bank of India, Hubballi on 16.03.2020 to Kotayya @ Kotrayya Hiremath and plaintiffs totally made payment of Rs.17,00,000/- as earnest money to said Kotayya @ Kotrayya Hiremath and defendant No.2. It is further averred that as per the request of said Kotayya @ Kotrayya Hiremath the plaintiffs have paid Rs.2,00,000/- on 30.04.2022 through cheque bearing No.079827 drawn on State Bank of India, Hirepeth Branch, Rs.5,00,000/- on 12.04.2022 through cheque



No.079817 and Rs.40,000/- on 31.03.2022 through cheque bearing No.079813 Rs.30,000/- on 06-06-2022 through phonepe and sum of Rs.5,000/- on 02.01.2023 to defendant No.2 and in all the plaintiffs have paid total sum of Rs.24,25,000/- to said Kotayya @ Kotrayya Hiremath and to defendant No.2. In this regard the counsel for the defendants argued that in Ex.P.2 agreement of sale the total amount paid Kotayya @ Kotrayya Hiremat is mentioned as Rs.17,00,000/- only. If at all the plaintiffs had paid in all Rs.24,25,000/- there was no impediment to get the same mentioned in the agreement of sale or to get execute further agreement of sale showing the amount paid on subsequent dates. There is no endorsement on Ex.P2 or no other documents have been produced by the plaintiffs to show said payment. Therefore, the passing of amount as mentioned in the plaint is not proved. On the contrary, the counsel for the plaintiffs argued that the amount mentioned in the plaint has been paid through cheques and in this regard, the plaintiffs have



produced statement of account to show the payment of said amount to deceased Kotayya @ Kotrayya Hiremath and defendant No.2. The said statement has been marked through DW1 and when the payment is evident from statement of account there is no requirement to make any endorsement on the agreement of sale or to get executed further agreement of sale.

19. It is pertinent to make mention that in para No.6 of the written statement itself it is contended that since plaintiffs were in need of money for their business purpose they had obtained cash from Kotrayya and thereafter returned the same in the form of cheque but the plaintiffs are claiming that the said amount is paid towards advance sale consideration amount under agreement of sale. As regards lending of money by the father of defendants the plaintiffs as asserted by defendants is concerned, as already Issue ed above, DW1 himself admitted in his cross-examination that his father was



not financially sound and he died due to non functioning of lever. It is also admitted that the defendants had taken loan from one Vinay Shivangouda Hosagoudar, under such circumstances, how their father had lent so much of big amount to the plaintiffs have to be proved by the defendants. They have not placed any materials on record to that effect in the present suit. From the above contents of Written Statement one thing is clear that passing of advance sale consideration amount under Ex.P2 is admitted. That apart, in the cross-examination of DW1 at page No.13, Ex.P15 is got marked by confronting to said witness. The said witness admits that said Ex.P15 is the statement of accounts pertaining to plaintiffs in SBI Bank. In the said document there is entry dated 03-02-2020 for having transferred an amount of Rs.1,80,000/- through cheque to said Basavaraj Kotrayya, there is entry dated 17.03.2020 for remitting an amount of Rs.15,00,000/- through RTGS, there is entry dated 30-01-2022 for having transferred Rs.40,000/- through



cheque to Basavaraj Kotrayya i.e., defendant No.2. There is entry dated 12-04-2022 for having paid an amount of Rs.5,00,000/- through cheque to Kotayya Hiremath, there is entry dt:30-04-2022 for having paid Rs.2,00,000/- to Kotayya Hiremath through cheque and there is entry dated 02.11.2023 for having paid Rs.5,000/- to defendant No.2 through cheque. As already discussed above, when the defendants themselves have admitted in the written statement for having received amount from the plaintiffs and they failed to establish their defence that the said amount was lent by their father to plaintiffs, it can be safely concluded that the amount mentioned in Ex.P2 as well as the plaint has been received by the defendants and deceased Kotayya @ Kotrayya Hiremath towards advance sale consideration amount.

20. Moreover, Ex.P.2 is the registered document having presumptive value about its execution therefore, the burden of proof to displace this presumption rests heavily upon the



challenger. However, defendants failed to prove that they did not execute the same agreeing to sell suit property in faovur of the plaintiffs. No doubt in the present case ano attesting witness is examined but agreement of sale does not require attestation. The above evidence establishes the fact that deceased Kotayya @ Kotrayya Hiremath being owner of suit property executed Ex.P2 agreement of sale in favour of the plaintiffs agreeing to sell the suit property for total consideration of Rs.28,00,000/- by receiving advance sale consideration of Rs.24,25,000/- from the plaintiffs. Ex.P.3 shows that the defendants have consented for execution of agreement of sale at Ex.P.2 by deceased Kotayya in favour of the plaintiffs. As the plaintiffs proved above issue same is answered in the **Affirmative.**

21. **Issue No.2:-** It is averred in the plaint that the plaintiffs were and are always ready and willing to perform their part of contract. Therefore they repeatedly requested and insisted Kotayya @ Kotrayya Hiremath to perform his part of



contract as early as possible and transfer the suit schedule property after receiving balance sale consideration amount and the plaintiffs continued their insistence from time to time and reminded the defendants. However, he promised that he will do the needful as an earliest. But the said Kotayya @ Kotrayya Hiremath did not come forward to execute the sale deed. However, the plaintiffs came to know that said Kotayya @ Kotrayya Hiremath died on 16.12.2022 leaving behind defendants as his legal heirs. That the execution of the agreement of sale by the said Kotayya @ Kotrayya Hiremath is well within the knowledge of defendants and they being the legal heirs are bound by the terms of agreement of sale. Thereafter, the plaintiffs approached the defendants and requested them to execute registered sale deed by receiving remaining sale consideration amount. However, the defendants agreed for the same and the defendant No.1 has received a sum of Rs.5,000/- through cheque bearing No.079877 drawn on State Bank of India dated 02.01.2023



and made the plaintiffs to believe that they would execute the sale deed after their names are entered in the record of rights. Therefore the plaintiffs with no alternative caused notice to the defendants on 29.03.2023 calling upon them to perform their part of a contract they are always ready and willing to perform their part of a contract.

22. In this regard the counsel for the plaintiffs argued that since the date of inception i.e., from agreement of sale the plaintiffs were ever ready and willing to perform their part of contract. They have paid substantial part of consideration amount and they are only required to pay Rs.3,25,000/- which they are ready and willing to pay. Though the time mentioned in agreement of sale at Ex.P2 is the three months for its performance, however there is obligation cast on the defendants as well said Kotayya @ Kotrayya Hiremath to get clear the bank loan and execute suit in respect of property free from encumbrance. There is also obligation on the part of the



said deceased Kotayya @ Kotrayya Hiremath to get fixed the boundaries get the survey done and execute the sale deed. In order to show the readiness and willingness of the plaintiffs, they have obtained necessary permission from the concerned authority for establishment of industry in the suit schedule property on 31.12.2021 itself. They have paid challan for the purpose of getting sale deed registered in their favour as per Ex.P20 which is the relevant document for consideration which clearly establishes the readiness and willingness to perform their part of contract by the plaintiffs. He also argued that even after execution of the agreement of sale the plaintiffs have made several payments through cheque since 2021 till 2023. This itself goes to show that the plaintiffs are ever ready and willing to perform their part of contract. He also argued that though there is a condition that the plaintiffs have to get permission from DC to purchase agricultural land as contemplated under Sec.79A of Karnataka Land Reforms Act however, the said section has been repealed as such there is



no question of plaintiffs getting the permission from the required authority. When the plaintiffs proved the execution of agreement of sale at Ex.P2, after amendment to specific relief Act in the year 2019, no more discretion is left with the court to refuse decree for specific performance of contract and as such, the plaintiffs are entitled for decree of specific performance contract. In support of his arguments, he relied upon decision reported in **2025(5) KCCR 234 in RSA No.403/2024 dt:30-06-2025 in between Mansoor Nazeer Vs. H.R. Rehaman and others** wherein it is held that **“Specific Relief Act, 1963 – Sec.16(c)-Specific Performance-Readiness and Willingness-Time not Essence of Contract-Where vendees had paid substantial advance and additional amounts towards sale consideration, but the vendor failed to discharge his loan and produce necessary documents for registration, it was held that time fixed in the agreement was intended for the vendor to perform his obligations, not as an essential term**



binding the purchasers. The consistent conduct and payments made by the vendees established their continuous readiness and willingness to complete the transaction. The plea that the contract was time bound was untenable. The decree granting specific performance in favour of the vendees was rightly upheld.”

23. On the contrary, the counsel for the defendants argued that as per the agreement of sale Ex.P2, time was fixed for performance of contract within three months. The plaintiffs did not make any efforts to come forward to get execute sale deed. The plaintiffs have not at all made any efforts to get the sale deed executed when Kotayya @ Kotrayya Hiremath was very much alive. As per recitals in Ex.P2, the plaintiffs are required to get necessary permission to purchase agricultural land from concerned authorities since they are not agriculturalists. Though Sec.79A of Karnataka Land Reforms Act has been amended, it has no retrospective effect and it has



been repealed subsequently as such, repealing of said section has no effect on the agreement of sale. In the written agreement filed by the counsel for the defendants, reliance is placed on decisions reported in **2016(4) KCCR SN 3720 in a case between Nagaraj Vs. Smt. Uma** and **2023 (4) KCCR SN 3581 in a case between C. B. Chandrasekhar Vs. Smt. Javaramma and others** and **2022 (4) KCCR SN 424** in a case between **U.N.Krishnamurthy (since deceased) through LR's Vs. A.M. Krishnamurthy.**

24. As can be seen from Ex.P2, there is a recital to the effect that Rs.17,00,000/- has been paid as advance sale consideration amount to deceased Kotayya @ Kotrayya Hiremath and in page No.3 it is stated that he is required to execute the register sale deed in favour of the plaintiffs within three months by receiving advance sale consideration amount and there is a mention that the said Kottaya has agreed to produce the documents required for the registration of the sale



deed. So in the said agreement though time of three months is mentioned, there are other conditions also which are required to be performed by the plaintiffs as well as defendants. There is mention in the said agreement that there is encumbrance of bank on suit property and the deceased has agreed to clear the same before the execution of the sale deed and agreed to execute sale deed in respect of suit property free from encumbrance. There is also mention that before execution of the sale deed, the deceased Kotayya @ Kotrayya Hiremath would get fixed the boundaries, get the measure and survey the suit property and get the sale deed executed. In page No.4 of the said document, obligation is cast on the plaintiffs that he is required to obtain necessary permission for purchase of agricultural land from D.C. Therefore, the above recitals in the agreement of sale establishes that though time is mentioned for performance of contract, the parties did not intend it to be performed within the period of three months as there were obligations cast both on plaintiffs and defendants. It is settled



principle of law that in case of immovable property, time is not the essence of contract unless parties intend to treat time as essence of contract. Ex.P2 goes to show that the plaintiffs and defendants never intended to treat time as essence of contract in view of conditions stipulated in the said document. Therefore the argument of the counsel for the defendants is that the deceased Kotayya @ Kotrayya Hiremath was required to request the defendants to execute sale deed within the period of three months in order to establish his readiness and willingness to perform contract does not hold any merits.

25. In the present case, the plaintiffs herein have produced Ex.P21, which is the order passed by the Industrial and Commercial Department dated 16.11.2021 approving the proposal of M. S. Mulla Industries and proprietor of which is shown as plaintiff No.1 and permission is given to set up manufacturing of kitchenware equipments in Sy.No.110/1A+1B Gabburu Village i.e. the suit property. He



has also produced the document at Ex.P22 which is certificate issued by the Department of Industry and Commerce seeking concession in stamp duty and registration charges charges. On perusal of Ex.P1 and P2 documents, they do not appear relevant for the purpose of adjudication of the case. As the plaintiffs were required to obtain necessary permission from the Deputy Commissioner to purchase agricultural land as they were not agriculturists. However, these documents will establish that the plaintiffs really intended to purchase suit property and they were ready to establish the industry in suit schedule property. The plaintiffs herein have produced the bank passbook at Ex.P23 to show that opening of account in the name of Mulla Industries. As rightly argued by the counsel for plaintiffs that plaintiffs have made several payments to the deceased Kotayya @ Kotrayya Hiremath and defendant No.2 even after execution of agreement of sale and said payments have been made since the year 2020 till the year 2023 as reflected in statement of account at Ex.P.15. These payments



also establishes that plaintiffs were ever ready and willing to perform their part in the contract. Only because the plaintiffs have not issued legal notice to the defendants within the period of three months is no ground to say that plaintiffs are not ready and willing to perform their part of contract. Similarly, though the plaintiffs were required to obtain necessary permission from DC to purchase agricultural land, Sec.79A of Karanataka Land Reforms Act has been repealed in the year 2020 which provided that in order to acquire agricultural land by the non agriculturist to obtain necessary permission from the Deputy Commissioner. Therefore, the said restriction is no longer in operation in view of same plaintiffs can very well purchase the suit schedule property even if they are non agriculturist. Therefore, plaintiffs by leading oral and documentary evidence have proved their readiness and willingness to pay balance sale consideration amount and get the sale deed executed as such above issue is answered in the **Affirmative.**



26. **Issue No.3:-** The written statement filed by the defendants at page No.7, it is contended that the present suit is not filed within three years as such the present suit is not maintainable. However it is pertinent to make mention that as per the agreement of sale at Ex.P2, the time fixed for performance of contract is three months. The said three months period expires on 16-06-2020 and as per Article 59 part I of Indian Limitation Act, the time for performance of agreement of sale commences from 16.06.2020. As such the cause of action to file suit commences from 16.06.2020 and within the period of three years present suit has to be filed. Admittedly the present suit is filed on 15.04.2023 which is within the period of three years from the date fixed for performance of the contract. As such the present suit is within the period of limitation. Hence the contention of the defendants that the present suit is barred by limitation cannot be accepted. As the present suit is filed within the period of



limitation accordingly above, issue is answered in the **negative**.

27. **Issue No.4**: The plaintiffs have sought for relief of specific performance of contract to direct the defendants to execute registered sale deed in respect of suit schedule property in their favour by receiving balance sale consideration amount and to deliver the actual and vacant possession of suit property. The plaintiffs have also sought for refund of earnest money as alternative relief. As already discussed on issue No.1 and 2, the plaintiffs have proved the execution of agreement at Ex.P.1 by the defendants. The plaintiffs have also proved that they are ready and willing to perform their part of a contract. As such, the plaintiffs are entitled for relief of the specific performance of a contract. The defendant No.1 being wife defendant No.2 to 4 being children of deceased Kotayya @ Kotrayya Hiremath are bound to execute registered sale deed in favour of the plaintiffs in terms of Ex.P.1. Therefore,



plaintiffs are entitled for relief of specific performance of contract. As such, above issue is answered in the **affirmative**.

28. **Issue No.5**: In view of findings on Issue No.1 to 4, this court proceeds to pass the following.

ORDER

The suit of the plaintiffs is hereby decreed.

The defendants are hereby directed to execute registered sale deed in respect of suit schedule property in favour of the plaintiffs by receiving balance sale consideration of Rs.3,25,000/- within the period of 6 months.

That the plaintiffs are hereby directed to deposit Rs.3,25,000/- before this court within the period of one month.



No order as to costs.

Draw Decree accordingly.

(Dictated to the AI, corrected by stenographer, corrected and verified by me, and then pronounced in the open court on this the 27th day of June 2026.)

Sd/-

**(Smt. Deepa G. Manerkar)
II Addl. Senior Civil Judge &
J.M.F.C., Hubballi**

ANNEXURE

Witnesses examined for the Plaintiff/s:

PW1 : Shoukatali M. Mulla

Documents Ex.ed by the Plaintiff/s:

Ex.P.1 : RTC Extract
Ex.P.2 : Agreement of sale
Ex.P.3 : Consent deed
Ex.P.4 : Legal Notice
Ex.P.5 to 8: Postal receipt
Ex.P.9 : Postal acknowledgment
Ex.P.10 : Unclaimed postal cover
Ex.P.10(a) : its legal notice
Ex.P.11 : Unclaimed postal cover
Ex.P.11(a) : its legal notice
Ex.P.12 : Track consignment



- Ex.P.13 : SBI Bank pass book
Ex.P.14 : SBI Account statement
Ex.P.15 : SBI Account statement
(confronting to D.W.1)
Ex.P.16 : Sale deed
(confronting to D.W.1)
Ex.P.17 : Cancellation deed
(confronting to D.W.1)
Ex.P.18 : Copy of Partition deed
Ex.P.19 : Copy of Gift deed
Ex.P.20 : Copy of Challan
Ex.P.21 : Copy of office order dt:16-11-2021
Ex.P.22 : Certificate
Ex.P.23 : Passbook

Witnesses examined for the Defendant/s:

- DW1 : Sri. Siddaramayya K. Hiremath

Documents Ex.ed by the Defendant/s:

- Ex.D.1 : Vakalath
Ex.D.1(a) : Signature of D.W.1
Ex.D.2 : Deposition of D.W.1
Ex.D.2(a) : Signature of D.W.1

Sd/-
(Smt. Deepa G. Manerkar)
II Addl. Senior Civil Judge &
J.M.F.C.,Hubballi