

KADW200017092023



Govt. of Karnataka **TITLE SHEET FOR JUDGMENT IN
SUITS**

Form No.9 (Civil)
Title Sheet for
Judgment
in Suits
(೨೦೨೧)

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, HUBBALLI**

Present:

Sri. Chinnannavar Rajesh Sadashiv,
Prl. Senior Civil Judge, Hubballi.

O.S. No.226/2023

Dated this the 1st day of March – 2023

Plaintiff : Umeshgouda S/o. Shivangouda Pujar,
Age: 40 years, Occ: Agriculture,
R/o. Kusugal, Tq: Hubballi, Dist: Dharwad.

[By Sri. S.M. Kenchangoudra, Adv.]

.Vs.

Defendants 1: Smt. Renuka W/o. Mohan Iti,
Age: 38 years, Occ: Household,
R/o. Kurubar Oni, Near Manappajjan
Temple, Hebsur, Tq: Hubballi,
Dist: Dharwad.

2: Sri. Fakkirappa S/o. Mohan Iti,
Age: 28 years, Occ: Household,
R/o. Kurubar Oni, Near Manappajjan

Temple, Hebsur, Tq: Hubballi,
Dist: Dharwad.

[Exparte]

Date of institution of suit : 24-04-2023

Nature of suit : Specific performance of contract

Date of recording of evidence : 18.07.2023

Date on which Judgment was : 01-03-2024
pronounced

Duration of suit : Year/s Month/s Day/s

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J U D G M E N T

This suit is filed by the plaintiff against defendants for the relief of specific performance of contract.

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

The suit property bearing survey No.98 was belonging to husband of defendant No.1 and father of defendant No.2 by name Mohan Iti. He was in need of money for his legal necessity and offered the suit property for sale for ₹8,50,000/- and plaintiff has agreed to purchase the same for said consideration amount. Accordingly, said Mohan has executed agreement of sale dated 08.01.2016 by receiving advance consideration of ₹8 lakhs. Thereafter, plaintiff

requested said Mohan to execute the sale deed, but he went on postponing the same. Plaintiff is ever ready and willing to perform his part of contract. He got issued a legal notice dated 21.02.2022 calling upon the vendor to sell the suit property, but said notice is returned with an endorsement 'no such addressee'. So, again he got issued legal notice on 24.03.2023, the same was also not received by the vendors. So, plaintiff approached this Court seeking the relief of specific performance of the contract and claimed alternative relief of refund of earnest money of ₹8 lakhs with interest at the rate of 18% p.a.

3. On issuance of suit summons, defendants though served, remained absent, hence they were placed as *exparte*.

4. In order to prove the case, plaintiff got examined himself as PW.1 and got marked Ex.P.1 to 5.

5. Heard the learned counsel for the plaintiff and perused the plaint, evidence oral and documentary and materials on record. The following points arise for my consideration:

1) Whether the plaintiff proves that the husband of defendant No.1 and father of defendant No.2 by name Mohan Iti executed agreement of sale in his favour on 08.01.2016 by

agreeing to sell the suit property for ₹8,50,000/- by receiving advance consideration of ₹8 lakhs?

2) Whether the plaintiff proves that he is ever ready and willing to perform his part of contract?

3) Whether the plaintiff is entitle for the discretionary relief of specific performance of contract?

4) Whether the plaintiff is entitle for alternative relief of refund of earnest money with interest at the rate of 18% p.a.?

5) What order or decree?

6. My answers to the above points are as under:

Point No.1	: In the Affirmative.
Point No.2	: In the Negative.
Point No.3	: In the Negative.
Point No.4	: In the Affirmative.
Point No.5	: As per final order, for the following

REASONS

7. **Points No.1 to 4:** Defendants have not chosen to contest the suit, but the burden is upon the plaintiff to prove his case. In order to prove the same he got examined himself as PW.1 and got marked Ex.P.1 to 5. Ex.P.1 is the registered agreement of sale dated 08.01.2016. This document is executed by Mohan Fakkirappa Iti in favour of plaintiff Umeshgouda Shivangouda Pujar. The said Mohan

has received ₹8 lakhs and the balance consideration was just ₹50,000/-. Ex.P.2 is RTC of the suit property standing in the name of deceased Mohan Fakkirappa Iti along with other joint owners. As per Ex.P.1 said Mohan had agreed to sell 2 acres 12 guntas out of total area measuring 4 acres 28 guntas. Ex.P.3 is the legal notice dated 15.02.2022. Ex.P.3(a) is the postal cover of said notice returned as no such addressee. Ex.P.4 is the legal notice dated 24.03.2023. Ex.P.4(a) is its postal receipt, Ex.P.4(b) is the track consignment report. Ex.P.5 is copy of legal notice and Ex.P.5(a) is postal receipt and Ex.P.5(b) is track consignment report. Plaintiff has not produced acknowledgement to show that the said notices were served upon the defendants. But the track consignment report is not sufficient to hold that notice was duly served upon the defendants. The agreement of sale is dated 08.01.2016, but plaintiff got issued a legal notice first time on 21.02.2022 i.e. after lapse of 6 years. The second notice is issued after lapse of 7 years and suit is filed on 24.04.2023 i.e. after lapse of 7 years from the date of agreement of sale. Plaintiff has not given any explanation as to why he has not enforced the agreement of sale all along. There is no pleading as to when Mohan Fakkirappa Iti died. Plaintiff simply pleaded that he is ready to pay remaining consideration amount of ₹50,000/-, but there is no evidence on record that he was ever ready and willing to perform his part of the contract. If he was able to pay maximum consideration amount of ₹8 lakhs, then he should have paid

remaining consideration amount and insisted the vendor for execution of the sale deed. But all along plaintiff has not at all enforced the agreement of sale. The suit property is not standing in the name of defendants, but it is standing in the name of deceased Mohan Fakkirappa Iti along with other joint owners. It is an agricultural land. So, considering the fact that the plaintiff has not enforced the agreement of sale within the period of 3 years, I hold that the plaintiff is entitle for refund of earnest money along with reasonable interest at the rate of 6% p.a. from the date of agreement of sale till its realization. The defendants being wife and son of deceased Mohan Iti are liable to refund the said amount with interest. But plaintiff is not entitle for the main relief of specific performance of contract. Plaintiff was not ever ready and willing to perform his part of the contract. He has not proved his readiness and willingness. Mere pleading that he was ready is not sufficient to grant discretionary relief to him. Hence, I answer **points No.1 and 4 in Affirmative and points No.2 and 3 in Negative.**

8. **Point No.5:** In view of my answer to point No.1 to 4 as stated above, I proceed to pass the following:

ORDER

Suit of the plaintiffs is decreed in part with costs.

The main relief of specific performance of contract is rejected.

The alternate relief claimed by the plaintiff is allowed and defendants No.1 and 2 are directed to refund earnest money of ₹8 lakhs along with interest at the rate of 6% p.a. to the plaintiff from the date of agreement of sale till its realization within 60 days. Failing which plaintiff can recover the said amount by filing execution petition.

Draw a decree accordingly.

(Dictated to the Stenographer, transcribed and computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the 1st day of March - 2024)

(Chinnannavar Rajesh Sadashiv)
Prl. Senior Civil Judge,
Hubballi.

ANNEXURE

1.List of witnesses examined on behalf of Plaintiffs:

PW.1 : Umeshgouda Shivangouda Pujar.

2.List of documents exhibited on behalf of Plaintiffs:

Ex.P.1 : Sale agreement.
Ex.P.2 : R of R.
Ex.P.3 : Copy of legal notice.
Ex.P.3(a) : Postal envelop.
Ex.P.4 : Copy of legal notice.
Ex.P.4(a) : Postal receipt.
Ex.P.4(b) : Postal track consignment.
Ex.P.5 : Copy of legal notice.
Ex.P.5(a) : Postal receipt.
Ex.P.5(b) : Postal track consignment.

3.List of witnesses examined on behalf of Defendants:

-NIL-

4.List of documents exhibited on behalf of Defendants:

-NIL-

**Prl. Senior Civil Judge,
Hubballi.**