

KADW200030832024



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

Form No.9 (Civil)
Title Sheet for
Judgment
in Suits
(P D 01)

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

Present:

Sri. Yamanappa Karehanumanthappa,
Prl. Senior Civil Judge, Hubballi.

O.S. No.304/2024

Dated this the 16th day of November – 2024

Plaintiff : Virupakshappa S/o. Basavanneppa
Kallimani, Age: 56 years,
Occ: Agriculture and Business,
R/o. H.No.54, Kumbra Oni,
Unkal Cross, Hubballi-580031.

[By Sri. A.S. Akkur, Adv.]

.Vs.

Defendant : Shantavva W/o. Veerabhadrappe
Ullagaddi, Age: 68 years,
Occ: Home Management,
R/o. Horakeri Oni, Adaragunchi,
Tq: Hubballi.

[Exparte]

Date of institution of suit : 05-07-2024

Nature of suit : Specific performance of contract

Date of recording of evidence : 30.10.2024

Date on which Judgment was pronounced : 16-11-2024

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 defendant for the relief of specific performance of contract.

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

The defendant is the owner of the suit property bearing RS No.26A/4A, measuring 1 gunta 4 anna, situated at Unkal village. She has offered to sell the same. Hence, the plaintiff after verifying the records agreed to purchase the suit property for ₹5,85,000/-. Accordingly, the plaintiff has paid ₹2,50,000/- as advance consideration on different dates and has executed registered agreement of sale dated 20.07.2019 by receiving advance consideration of ₹2,50,000/-. Thereafter, plaintiff requested defendant to execute the sale deed, but she went on postponing the same. Plaintiff is ever ready and willing to perform his part of contract. He got issued a legal notice dated 23.02.2024

calling upon the defendant to sell the suit property, but said notice was served on the defendant. Defendant has sent reply to the said notice. The defendant has assured the plaintiff that she will execute the sale deed as early as possible. But the defendant has been protracting the execution of sale deed under one pretext or the other. So, plaintiff approached this Court seeking the relief of specific performance of the contract and claimed alternative relief of refund of earnest money of ₹2,50,000/-.

3. On issuance of suit summons, defendant though served, remained absent, hence she was placed as *exparte*.

4. In order to prove the case, plaintiff got examined himself as PW.1 and got marked Ex.P.1 to 8.

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 defendant has executed agreement of sale in his favour on 20.07.2019 by agreeing to sell the suit property for ₹5,85,000/- by receiving advance consideration of ₹2,50,000/-?

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?

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

REASONS

7. **Points No.1 to 4:** Defendant has 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 8. Ex.P.1 is the registered agreement of sale dated 20.09.2019. This document is executed by defendant in favour of plaintiff. The defendant has received ₹2,50,000/- and the balance consideration was ₹3,35,000/-. Ex.P.2 is consent letter executed by the children of defendant agreeing to sell the

suit property to plaintiff. Ex.P.3 to 5 are RTC of the suit property. Ex.P.6 is the legal notice dated 23.02.2024. Ex.P.7 is the reply issued by defendant through his counsel. In the said reply she has contended that there is technical issue regarding mutation entry. Now the same is resolved and now she is ready to execute the sale deed. Ex.P.8 is the certified copy of judgment passed in FDP No.64/2017. There is no reason to the plaintiff to approach the court without cause of action. So, looking to original agreement of sale, I hold that plaintiff has proved that defendant has executed this document by receiving maximum amount of consideration as an earnest money. So, plaintiff has proved that he is ever ready and willing to perform his part of contract by paying balance consideration amount. Plaintiff has pleaded said fact in the plaint and evidence affidavit. But it is not denied by the defendant by contesting the suit. The defendant has also admitted about execution of sale deed in favour of plaintiff by issuing reply notice. Hence, I answer points No.1 to 3 in **Affirmative and issue No.4 in Negative.**

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

ORDER

The suit of the plaintiff is decreed with costs.

The defendant is directed to execute the registered sale deed in favour of the plaintiff

with respect to suit property by receiving remaining consideration of Rs.3,35,000/- within 60 days from the date of this judgment. Failing which plaintiff can execute the decree by filing EP.

Draw a decree accordingly.

(Dictated to the Stenographer directly on computer, script corrected directly on computer and then pronounced by me in the Open Court on this the 16th day of November - 2024)

(Yamanappa Karehanumanthappa)
Prl. Senior Civil Judge,
Hubballi.

ANNEXURE

1.List of witnesses examined on behalf of Plaintiff:

PW.1 : Virupakshappa Basavanneppa Kallimani.

2.List of documents exhibited on behalf of Plaintiff:

Ex.P.1 : Sale agreement.
Ex.P.2 : Consent letter.
Ex.P.3 to 5 : R of R extracts.
Ex.P.6 : Legal notice.
Ex.P.7 : Reply.
Ex.P.8 : C.C. of judgment in FDP No.64/2017.

3.List of witnesses examined on behalf of Defendant:

-NIL-

4.List of documents exhibited on behalf of Defendant:

-NIL-

Prl. Senior Civil Judge,
Hubballi.

