



IN THE COURT OF II ADDL SENIOR CIVIL JUDGE &

J.M.F.C AT : HUBBALLI

PRESENT : SMT.PADMASHREE RATNAKAR PATIL

B.A.,LL.B.,(Spl)

**II Addl., Senior Civil Judge & JMFC.,
Hubballi**

Dated on this day of 29th day of November 2023

O.S.No.365/2023

PLAINTIFF:-

1. Sri. Chandrakanth S/o
Shamappa Konth,
Age: about 46 years.
Occ: Business,
R/o: Parvati Nagar,
Bhavani Nagara, Hubballi
2. Sri. Ujwal S/o Hemantkiran
Gundami
Age: about 42 years.
Occ: Business,
R/o: Mission Compound, Hubballi

[Rep. By Sri. A.V. Jois, Adv.]

-V/s-

DEFENDANT:-

Sri. Jagadeesh S/o
Chandrashekharappa Mattikoppa
Age: about 59 years.
Occ: Business,



R/o: No.120/83/7,
Mangalawarpeth, Hubballi

Exparte

Date of filing of suit	-	23-08-2023
Nature of suit	-	Recovery of money
Date of commencement of recording evidence	-	28-11-2023
Date of judgment	-	29-11-2023
Total duration	-	Year Month Days 00 03 06

(Smt.P.R.Patil)
II Addl. Senior Civil Judge &
J.M.F.C.,Hubballi.

J U D G M E N T

This suit filed by the plaintiff for relief of recovery of amount of Rs.9,37,000/- together with interest at the rate of Rs.21% p.a., from 18-01-2016 to the date of suit till realization of amount.



2] **The brief averments of the plaint is as under :-**

The Plaintiff submits that, One Gurusiddappa Mahadevappa Vali was the owner of suit schedule property situated at Amargol village, Hubli. As per the defendant on 15-07-1986 the said person has sold his permanent lease hold rights of the suit property to one Sri. Veerabhadrappe S/o Sanganasappa Sunkad. He purchased the permanent lease hold rights of suit schedule property from said Veerabhadrappe Sunkad by sale deed dated 02-05-1987. According to the defendant the owner of suit property sold the same to third persons, the defendant and said Veerabhadrappe Sunkad challenged the same and according to the defendant the court has decreed the suit. The defendant is the permanent lessee of the suit schedule property and having absolute right over the suit schedule property as permanent lessee. The defendant offered to sell the suit schedule property to the plaintiffs and plaintiffs agreed to



purchase the same for total consideration amount of Rs.36,37,000/-. The defendant executed the registered agreement of sale in favour of plaintiffs by receiving earnest amount of Rs.9,37,000/-. The plaintiffs are ready and willing to perform their part of the contract but defendant one or the other pretext postponed the same and not complied the conditions mentioned in the agreement. Therefore, plaintiff intended to recover the earnest amount paid by them to the defendant. Therefore plaintiff constrained to file this suit.

3. After filing of this suit, suit summons issued to defendant by RPAD, the same is returned with endorsement as refused. The defendant placed exparte in this case.

4. By virtue of the above pleadings and documents available on record, this Court raised the following points for consideration.



Point No.1] Whether the plaintiff proves that defendant executed agreement of sale of the suit schedule property by receiving earnest amount of Rs.9,37,000/-?

Point No.2] Whether the plaintiff is entitled to recover the amount of Rs.9,37,000/- together with current and future interest at the rate of Rs.21% p.a., ?

Point No.3] What order or decree ?

5. The plaintiff in order to substantiate its claim the of plaintiff No.2 deposed before the court as P.W.1 and relied the document marked as Ex.P.1 to 3(a) and closed his side.

6. This Court answer the above points are as follows,

Point No.1: In the Affirmative

Point No.2: Partly in the affirmative

Point No.3: As per final order,
for the following :



REASONS

7. **Point No.1:-** It is the case of plaintiff that, One Gurusiddappa Mahadevappa Vali was the owner of suit schedule property situated at Amargol village, Hubli. As per the defendant on 15-07-1986 the said person has sold his permanent lease hold rights of the suit property to one Sri. Veerabhadrapappa S/o Sanganasappa Sunkad. He purchased the permanent lease hold rights of suit schedule property from said Veerabhadrapappa Sunkad by sale deed dated 02-05-1987. According to the defendant the owner of suit property sold the same to third persons, the defendant and said Veerabhadrapappa Sunkad challenged the same and according to the defendant the court has decreed the suit. The defendant is the permanent lessee of the suit schedule property and having absolute right over the suit schedule property as permanent lessee. The defendant offered to sell the suit schedule property to the plaintiffs and plaintiffs agreed to purchase the same for total consideration amount



of Rs.36,37,000/-. The defendant executed the registered agreement of sale in favour of plaintiffs by receiving earnest amount of Rs.9,37,000/-. The plaintiffs are ready and willing to perform their part of the contract but defendant one or the other pretext postponed the same and not complied the conditions mentioned in the agreement. In order to prove his case the plaintiff No.2 deposed before the court by way of evidence on affidavit as P.W.1 and the chief examination affidavit is reiteration of fact of the plaint avernments. The P.W.1 relied the document marked as Ex.P.1 to 3(a). Ex.P.1 is permanent lease hold right cum agreement of sale of suit schedule property this document discloses that, the defendant agreed to sell the suit schedule property for total consideration amount of Rs.36,37,000/- and executed the said agreement of sale in favour of plaintiff and received the earnest amount of Rs.9,37,000/- on 08-01-2016. The plaintiff issued notice to the defendant on 26-03-2023 by RPAD. The said notice returned with endorsement as



refused. Those documents are marked as Ex.P.2, Ex.P.3 and Ex.P.3(a). The defendant neither come forward to execute the sale deed in favour of plaintiff nor replied to the notice issued by the plaintiff. After service of summons of this court the defendant neither appeared before the court nor contested the same. The plaintiff by oral and documentary evidence proves that, they paid earnest amount of Rs.9,37,000/- to the defendant.

8. On perusal of the documents produced by the plaintiff and the oral evidence, I am of the opinion that the plaintiffs have adequately proved their case. The genuine and admissibility of the documents produced by the plaintiffs is not in dispute. Hence, there is no reason, doubt or disbelieve these documents which have got presumptive value the positive evidence adduced by the plaintiff.

9. The plaintiffs have satisfactorily established their case and there is no in built inconsistency, which give rise to two different versions and hence I do not find the necessity of



adducing further evidence in support of the pleadings. The said oral and documentary evidence placed by the plaintiffs remained unchanged. I am of the opinion that on the basis of oral and documentary evidence the plaintiffs have clearly and convincingly established their case and hence, I answer Point No.1 **In the Affirmative.**

10. **Point No.2:-** The plaintiffs claiming interest on the amount of Rs.9,37,000/- of Rs.21%. The said rate of interest is very exhaustive Therefore, during the pendency of the suit interest is awarded on the adjudged sum of Rs.9% p.a., i.e., from the date of suit till realization of amount that will be meets the ends of justice, for these reasons and discussion this Court held Point No.2, Partly in the affirmative.

11. **Point No.3 :-** For the reasons stated and findings given in points No.1 and 2, I proceed to pass the following :

**ORDER**

The suit of the plaintiff is hereby partly decreed with cost.

The defendant is liable to pay the amount of Rs.9,37,000/- to the plaintiffs.

Further defendant is liable to pay interest on the above said amount i.e., Rs. 9,37,000/- of Rs. 9% p.a., from the date of suit i.e., from 23-08-2023 till realization of amount.

Draw decree accordingly.

[Dictated to the Stenographer, directly on computer and typed by her, the same is corrected and then pronounced by me in the open Court on this the 29th day of November 2023.]

(Smt.P.R.Patil)
II Addl. Senior Civil Judge &
J.M.F.C.,Hubballi.

ANNEXURE

1. List of witnesses examined for the plaintiff/s:

P.W.1 : Ujwal H. Gundami

2. List of documents marked for the Plaintiff/s:-

Ex.P.1. : Agreement of sale



Ex.P.2. : Legal notice

Ex.P.3. : Unclaimed legal notice

Ex.P.3(a) : With unclaimed postal cover

3. List of witnesses examined for the defendant/s:

NIL

4. List of documents marked for the defendant/s:-

NIL

(Smt.P.R.Patil)
II Addl. Senior Civil Judge &
J.M.F.C.,Hubballi.