

KADW410001192022



Presented on : 20-04-2022
Registered on : 21-04-2022
Decided on : 03-08-2023
Duration : 1 years, 3 months, 13 days

**IN THE COURT OF
SENIOR CIVIL JUDGE AND JMFC AT Kundgol,DHARWAD
Presided Over by Sri. P.J. Parameshwara**

O.S./61/2022

PLAINTIFF: Yallappa S/o Ramanna Joger,
Age: 37 years, Occ: Agriculture,
R/at Hesarur, Savanur Taluk,
Haveri District.

(By Sri. IFH., Advocate)

-VS-

DEFENDANT: Devendragouda S/o Shivanagouda
Aralihalli @ Patil, Age: 63 years,
Occ: Agriculture, R/at Pashupatihall
Kundgol Taluk.

(Placed Exparte)

Nature of suit : For Specific performance
of contract

Date of institution : 20.04.2022

Date of Judgment : 03.08.2023

Total duration : **Year/s Month/s Day/s**

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JUDGMENT

The plaintiff has filed the suit against the defendant for the relief of specific performance of contract.

2. The description of the property is as under:

Agricultural land bearing Sy.No.98/1 measuring 14 acres 14 guntas out of 8 acres 29 guntas situated in Sultanpur Gram, Kundgol Taluk.

3. The brief facts of the case of the plaintiff is as under :

That the defendant is lawful owner of the suit property bearing Sy.No.98/1 totally measuring 8 acres 29 guntas situated at Sultanpur village, Kundgol Taluk. On 22.02.2019 the defendant has executed an agreement of sale in favour of plaintiff agreeing to sell the suit property to an extent of 4 acre 14 guntas and received earnest amount of Rs.6,75,000/-. The defendant further agreed to receive balance consideration amount of Rs.1,25,000/- and deliver possession of the property at the time of execution of registered sale deed. He also agreed to execute the sale deed whenever the plaintiff called for and assured that, the suit land is free from encumbrance. But whenever the plaintiff approached, the defendant kept on post-phoning by giving one or other reasons. The plaintiff also advised the defendant through elders in the month

of December 2021, but it went in vain. On the other hand, the defendant trying to sell the property to third party. The plaintiff got issued a legal notice through his counsel to the defendant on 24.01.2022. Even after receipt of notice, the defendant did not come forward to execute sale deed. The plaintiff always ready and willing to give remaining sale consideration amount of Rs.1,25,000/-. The cause of action for the suit arose on 22.02.2019 when defendant executed agreement of sale in favour of plaintiff and on 24.01.2022 when notice was issued to the defendant. Under these backgrounds, the plaintiff prayed to decree the suit.

4. After institution of suit, summons was issued to the defendant. But it returned unserved with shara as “defendant refused”. Hence, the defendant placed exparte.

5. Now the following points arise for my consideration are as under:

POINTS

1. Whether the plaintiff proves that, the defendant has executed an agreement of sale in his favour on 22.02.2019 agreeing to sell the suit schedule property for Rs.8,00,000/-, received Rs.6,75,000/- as earnest amount and agreed to receive balance consideration amount of Rs.1,25,000/- at the time of execution of registered sale deed?

2. Whether the plaintiff proves that, he always ready and willing to perform his part of contract ?
3. Whether the plaintiff is entitled for the relief as sought for ?
4. What order ?

6. In order to prove his case, the plaintiff got examined himself as PW.1 and two witnesses as PW.2 Appanna Javoor and PW.3 Rajshekhar Mulgunda. The plaintiff has also marked documents as Ex.P1 to 6. Since defendant placed exparte, cross-examination of PW.1 to 3 and defendant's side evidence taken as nil.

7. Heard argument and perused the materials available on record.

8. My answer to the above said points are as follows :

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|------------|---|--------------------------------------|
| Point No.1 | : | In the Affirmative |
| Point No.2 | : | In the Affirmative |
| Point No.3 | : | In the Affirmative |
| Point No.4 | : | As per final order for the following |

REASONS

9. Point No.1 to 3 : Since these three points are interrelated with each other they are taken up together for common discussion under one head to avoid the repetition of the fact and findings.

10. It is the case of plaintiff that, defendant being

owner of the suit schedule property has executed agreement of sale on 22.02.2019 in his favour agreeing to sell the suit schedule property for Rs.8,00,000/-, received earnest amount of Rs.6,75,000/- and agreed to receive balance of Rs.1,25,000/- at the time of execution of registered sale deed. Subsequently, the defendant failed to execute sale deed and trying to alienate the property to some other person. The plaintiff always ready and willing to perform his part of contract.

11. In order to establish his case, plaintiff examining himself as PW.1 filed affidavit in-lieu of his examination-in-chief and reiterated his case. In support of oral evidence, the plaintiff got marked Ex.P1 to 6 as documentary evidence. Ex.P1 is RTC extract pertaining to suit schedule property. Ex.P2 agreement of sale. Ex.P3 is office copy of legal notice. Ex.P4 postal receipt. Ex.P5 postal acknowledgement. Ex.P6 Bank Statement of plaintiff. The plaintiff has identified agreement of sale as per Ex.P2 and signatures of himself, the defendant, attestors and deed writer found therein.

12. In support of his case, the plaintiff has also examined an attestor as PW.2 Appanna Javor and deed writer as PW.3 Rajshekar Mulagund who filing their affidavits in-lieu of thier examination-in-chief supported the case of plaintiff by stating that, the defendant being owner of the suit schedule property executed agreement

of sale on 22.02.2019 in favour of the plaintiff agreeing to sell the suit schedule property for Rs.8,00,000/- and received earnest amount of Rs.6,75,000/- and agreed to receive balance of Rs.1,25,000/- at the time of execution of registered sale deed. Subsequently, the defendant failed to execute sale deed and trying to alienate the property to some other person. The plaintiff always ready and willing to perform his part of contract. PW.2 and 3 have identified the agreement of sale deed as per Ex.P2 and their signature at Ex.P2 as Ex.P2 (f and h).

13. A perusal of evidence of PW.1 to 3 and Ex.P1 and 2 reveals that, the defendant being owner of the suit schedule property has executed agreement of sale on 22.02.2019 in favour of the plaintiff agreeing to sell the suit schedule property for Rs.8,00,000/-, received earnest amount of Rs.6,75,000/- and agreed to receive balance of Rs.1,25,000/- at the time of execution of registered sale deed. Subsequently, the defendant failed to execute sale deed and trying to alienate the property to some other person. The plaintiff always ready and willing to perform his part of contract. It appears from Ex.P2 that, the defendant has agreed to arrange all the necessary documents for execution of registered sale deed from his own costs and deliver possession of the property at the time of execution of sale deed.

14. A perusal of Ex.P3 to 5 reveals that, on 24.01.2022,

the plaintiff got issued legal notice to the defendant calling upon the defendant to come and execute sale deed as agreed within 15 days from the receipt of notice by receiving balance consideration amount, failing which he will initiate legal action. The notice was sent by registered post and it was duly served on defendant. A perusal of Ex.P6 statement of account reveals that, the plaintiff has necessary amount to pay balance consideration amount to the defendant.

15. The oral evidence of PW.1 to 3 and documentary evidence as Ex.P1 to 6 given on oath before the court remained unchallenged. It appears from the record that, the summons issued to the defendant returned as refused. Though the defendant had knowledge about the case of plaintiff, failed to appear and dispute the execution of agreement of sale by him in favour of plaintiff and ready and willingness of the plaintiff to perform his part of contract. When defendant having knowledge about the case of plaintiff, failed to rebut the evidence given on oath before court, an adverse inference U/Sec.114 of Indian Evidence Act has to be drawn against the defendant. There is no reasonable grounds to disbelieve the case of plaintiffs.

16. By considering over all evidence of the plaintiff, the Court is of considered opinion that, the plaintiff has successfully proved that, the defendant has executed

agreement of sale dated 22.02.2019 in his favour agreeing to sell the suit schedule property for Rs.8,00,000/-, received Rs.6,75,000/- as advance and agreed to receive Rs.1,25,000/- at the time of execution of sale deed. The plaintiff has also established that, he always ready and willing to perform his part of contract. Now the question whether the plaintiff is entitled for the discretion relief of decree for specific performance. It is well settled by various decisions of the Honble Apex and High Court that by virtue of Section 20 of Specific Relief Act, the relief for specific performance lies in the discretion of the Court and the Court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the Court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. The court is required to consider the facts and circumstances of the case, the conduct of parties, and their respective interests under the contract. It should not give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant. In the present case, there are no materials on record to show that the plaintiff is taking undue advantage or hardship would caused to the defendant if discretion is exercised in favour of the

plaintiff. When the plaintiff has proved the execution of the sale agreement and ready and willingness to perform his part of contract, the plaintiff is entitled for the relief as sought for with cost as the plaintiff is made to approach the court. Therefore, the plaintiff is entitled for recovery of the cost incurred as he made to approach the court. Accordingly, I answer point No.1 to 3 in the **Affirmative.**

17. Point No.4 : In view of my findings and reasons assigned there on, I proceed to pass the following :

ORDER

- The suit of the plaintiff is hereby decreed with cost.
- Consequently, the defendant is hereby directed to execute registered Sale Deed in favour of the plaintiff by receiving balance consideration amount of Rs.1,25,000/- within 3 months failing which the plaintiff is at liberty to get execute sale deed through court process by filing necessary petition.
- Office to draw decree accordingly.

(Dictated to the Stenographer, transcribed by her, corrected, signed and then pronounced by me in the open court on this the 03rd August, 2023.)

Sd/-
(Sri.P.J.Parameshwara)
Senior Civil Judge & JMFC,
Kundgol.

ANNEXURE

Witness examined for plaintiff:-

PW.1: Yallappa S/o Ramanna Joger.

PW.2: Appanna Javoor.

PW.3: Rajshekar Mulgund.

Documents exhibited on behalf of plaintiff :-

Ex.P1: RTC Extract of Sy.No.98/1.

Ex.P2: Sale Agreement.

Ex.P3: Legal notice.

Ex.P4: Postal receipt.

Ex.P5: Postal acknowledgement.

Ex.P6: Statement of account.

Witness examined for defendant:-

-NIL-

Documents exhibited for defendant:-

-NIL-

Sd/-
Senior Civil Judge & JMFC,
Kundgol.