

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND J.M.F.C AT
RON.**

P R E S E N T

Sri Chandrashekhar Y.Talawar, B.A.LL.B.,(Spl)
Principal Civil Judge & J.M.F.C. Ron

O.S.294/2017

Dated this the 19th day of January, 2019

PLAINTIFF: Chandragouda Shivanagouda Parvatagouda,
Age: 40 years., Occ:Agriculturist & Busienss,
R/o Near Kanak Bhavan, Gadag – 582101
(By Sri S.R.Gondabal, Advocate)
-V/S-

DEFENDANT: Nagaraj Veerappa Akkishettar,
Age:32 Years., Occ:Agriculturist,
R/o Jakkali, Tq:Ron, Dist:Gadag.
(Exparte)

Date of Institution of Suit	14/09/2017
Nature of Suit	Specific Performance of Contract
Date of Commencement of Recording of evidence	11/06/2018
Date of closing of evidence	26/07/2018
Date on which judgement was pronounced	19/01/2019
Total Duration	<u>Year/s</u> <u>Month/s</u> <u>Days</u> 01 03 05

J U D G M E N T

The plaintiff has filed this suit against the defendant for the relief of specific performance directing the defendant to execute the Registered Sale Deed in respect of suit lands along

with goods shed covered with steel sheet in R.S.No.91/5 measuring 0 acre 08 guntas and R.S.No.91/6 measuring 0 acre 08 guntas of Naregal village by receiving the balance sale consideration of Rs.50,000/- in favour of the plaintiff and to deliver the actual possession and if the defendant fails to comply with the terms of the decree then, the Court Commissioner be appointed at the costs of the defendant to comply the terms of decree and in the alternative, the Hon'ble Court may kindly direct the defendant the earnest money of Rs.4,50,000/0 with interest at the rate of 18% p.a. and for costs of the suit.

Brief facts of the plaintiff case is as under

2. That the lands bearing R.S.No.91/5 measuring 0 acre 08 guntas and R.S.No.91/6 measuring 0 acre 08 guntas and Godown covered with steel sheets of Naregal village are the suit schedule properties in this suit. The defendant is the absolute owner in possession and enjoyment of the suit lands.

3. Further, it is the assertion of the plaintiff that the defendant was in need of financial assistance and intended to dispose off the above said lands to meet the financial crisis by way of sale. The defendant approached the plaintiff and expressed about desire to sell the suit lands. The plaintiff by

considering the desire of the defendant about the sale of the suit properties, proposed to purchase the same for Rs.5,00,000/-. The defendant accepted and agreed to sell the suit lands along with godown in favour of the plaintiff for the above said amount. Thereafter, the defendant executed a Registered Agreement of Sale on 16/06/2016 in favour of the plaintiff after receiving earnest money of Rs.4,50,000/- from the plaintiff in the presence of witnesses and promised that he would come and execute the Registered Sale Deed by receiving balance consideration amount of Rs.50,000/- as and when the plaintiff demands without fail and deliver the actual possession of the suit properties in favour of the plaintiff.

4. The plaintiff, subsequently made several request to the defendant to receive balance consideration amount of Rs.50,000/- and execute the Registered Sale Deed by delivering the actual possession of the suit properties in his favour. The defendant went on postponing the same on one or the other pretext and started playing hide and seek game. The plaintiff, by doubting the bonafide of the defendant, came to know that the defendant intending to alienate the suit properties, caused legal notice through his counsel dated 03/03/2017 calling upon the

defendant to execute the Registered Sale Deed by receiving balance consideration amount of Rs.50,000/- showing his readiness to perform his part of contract. In spite of receipt of the legal notice, the defendant has not turned up. The plaintiff is facing trouble due to non performance of part of contract by the defendant, as major amount has been received by the defendant, constrained to file this suit as prayed for.

5. In spite of service of summons, even publication of notice in the daily newspaper, the defendant did not turned up. Hence, the defendant is placed exparte as per the order of this Court dated 06/06/2018. Hence, the matter has been posted for enquiry.

6. To prove the assertions, the plaintiff himself stepped into the witness box and examined as P.W.1 and also examined one of the witnesses for agreement as P.W.2 and the scribe of agreement of sale as P.W.3 and got marked six documents at Ex.P.1 to Ex.P.6 and closed his side evidence. The defendant neither come forward to cross-examine the P.W.1 nor adduced any evidence on his behalf.

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

8. The points that would arise for final determination of the case is as under:

1. Whether the plaintiff proves that the defendant executed the agreement of sale dated 16/06/2016 agreeing to sell the suit properties in favour of the plaintiff for a consideration of Rs.5,00,000/-?
2. Whether the plaintiff further proves that he paid Rs.4,50,000/- to the defendant as earnest money towards the part performance of contract as per the Agreement of Sale?
3. Whether the plaintiff proves that he is always ready and willing to perform his part of contract?
4. Whether the plaintiff is entitled for the relief of specific performance of contract as prayed for?
5. What order/decreree?

9. Heard arguments on both the side and perused the materials available on record.

10. My findings on the above points are:

- | | |
|-------------|---------------------|
| Point No.1: | In the Affirmative; |
| Point No.2: | In the Affirmative; |
| Point No.3: | In the Affirmative; |

Point No.4: In the Affirmative;

Point No.5: As per the final order for the following:

REASONS

POINT NO.1 and 2:

11. These two points are interconnected with each other and required common discussion. Therefore, I would like to deal these points together to avoid repetition of facts.

12. It is the specific case of the plaintiff that the defendant intends to sell the suit properties and the plaintiff agreed to purchase the same for a valid consideration of Rs.5,00,000/-. In this regard, the plaintiff and the defendant entered in to an agreement of sale and the plaintiff has paid Rs.4,50,000/- and the defendant has received the same as part consideration and also the defendant agreed to execute the Registered Sale Deed in favour of the plaintiff as and when called upon to do so after receiving the balance consideration amount of Rs.50,000/- from the plaintiff. Subsequently, the defendant went on postponing to execute the Registered Sale Deed in favour of the plaintiff on one or the other pretext and tried to alienate the same.

13. The burden is upon the plaintiff to prove his assertions. To prove the said contention, himself has stepped into the witness box as P.W.1 and also examined two more witnesses i.e., witness to Agreement of Sale and the scribe of the Agreement of Sale as P.W.2 and P.W.3 and also relied on 6 documents marked at Ex.P.1 to Ex.P.6. The plaintiff has reiterated the plaint averments. The P.W.2, who is the attesting witness to Ex.P.1 also followed the evidence of P.W.1 stating that the defendant has agreed to sell the suit properties for Rs.5,00,000/- and receipt of Rs.4,50,000/- by the defendant from the plaintiff as earnest money and also identified the signatures of the plaintiff, himself and the defendant found on Ex.P.1. P.W.3, who is the scribe of the Ex.P.1, also contended about the averments of it and followed the evidence of P.W.1 and P.W.2. The defendant, in spite of service of notices through Court as well as through paper publication has not turned up to rebut the contention of the plaintiff. Ex.P.2 and 3 are standing in the name of defendant. Col.No.10 of the said documents clearly go to show that the said properties devolve upon the defendant through partition. Hence, the defendant is the absolute owner of the suit properties.

14. Hence, over all evaluation of the case, it is clear that the defendant has agreed to sell the suit properties in favour of the plaintiff and received Rs.4,50,000/- from the plaintiff and executed an agreement of sale on 16/06/2016 and failed to execute the Registered Sale Agreement in favour of the plaintiff after receiving the balance consideration amount of Rs.50,000/- from the plaintiff. Thus, the plaintiff through the evidence of P.W.1 to P.W.3 and the documents at Ex.P.1 to Ex.P.6 proved that defendant executed an agreement of sale agreeing to sell the suit properties in favour of the plaintiff for Rs.5,00,000/- and received Rs.4,50,000/- as earnest money and failed to perform his part of contract in executing the Registered Sale Deed after receiving balance consideration of Rs.50,000/- from the plaintiff. Accordingly, I answered the point No.1 and 2 in the Affirmative.

POINT No.3:

15. The plaintiff contended that he is every ready and willing to perform his part of contract, however the defendant is not ready to perform his part of contract in executing the Registered Sale Deed. To prove this assertion, the plaintiff has produced the Ex.P.4, which is the copy of legal notice sent

through his counsel dated 03/03/2017 showing his readiness and willingness to perform his part of contract. In spite of receipt of Ex.P.4 as per Ex.P.6, the defendant did not come forward to execute the Registered Sale Deed as per Ex.P.1 Agreement of Sale. The defendant also not come forward to defend the case. The silence of the defendant shows his failure on his part to perform his part of contract. Hence, without much discussion, I answered the point No.3 in the Affirmative.

POINT No.4:

16. In view of my answers to point No.1 to 3, I hold that the plaintiff has proved the execution of agreement of sale by the defendant in his favour and his readiness and willingness to perform his part of contract and also failur on the part of the defendant in performing his part of contract as per Ex.P.1 Agreement of Sale, the plaintiff is entitled for the reliefs as sought for in this suit. Accordingly, I answered the point No.1 in the Affirmative.

POINT No.4:

17. In the light of my due discussions on point No.1 to 4, I proceed to pass the following:

ORDER

Suit filed by the plaintiff is hereby decreed with costs.

Consequently, the defendant is directed to execute the Registered Sale Deed as per the Agreement of Sale in favour of the plaintiff after receiving Rs.50,000/- within two months from the date of this order.

Failing which, the plaintiff is at liberty to proceed against the defendant in accordance with law.

Draw Preliminary Decree accordingly.

(Dictated to the Stenographer, directly on computer, corrected by me and then pronounced in the Open Court on this the 19th day of January, 2019)

(Chandrasekhar Y.Talawar)
Prl.Civil Judge & JMFC., Ron.

ANNEXURE

1. List of witnesses examined for Plaintiff:

P.W.1: Chandragouda S.Parvatagouda
P.W.2: Krishna Singri
P.W.3: Virupakshappa N.Potadar

2. List of witnesses examined for Defendant:

NONE

3. List of documents exhibited for Plaintiff:

Ex.P.1	Agreement of Sale
Ex.P.1(a) to (c)	Signatures
Ex.P.2 & 3	RTC Extracts
Ex.P.4:	Copy of Legal Notice
Ex.P.5:	Postal Receipt
Ex.P.6:	Postal Ack.

4. List of documents exhibited for defendants:

NIL

Prl.Civil Judge & JMFC.,
Ron.