

KAHS610012622014



**IN THE COURT OF PRL CIVIL JUDGE & JMFC.,
CHANNARAYAPATNA.**

PRESENT

**Smt. Kusuma.V., B.A.L, LL.B.,
Prl Civil Judge & JMFC.,
Channarayapatna.**

Dated : This the 04th day of July-2026

O.S.No.211/2014

PLAINTIFF

Sri. Kalegowda,
S/o Late Kempegowda @ Papegowda,
Aged about 72 years,
R/o S Hosahalli Village,
Shravanabelagula Hobli,
Channarayapatna Taluk,
Hassan District.

[By Sri.GSG., Advocate]

-V/s-

Defendant

Smt. Jayamma
D/o Late Boregowda,
Aged about 50 years,
R/o S Hosahalli Village,
Shravanabelagula Hobli,
Channarayapatna Taluk,
Hassan District.

Presently residing at:

Gowdara Beedi,
Masjid Road,
Shravanabelagula Village,
Channarayapatna Taluk,
Hassan District.

(Defendant by Sri. GKG Advocate)

Date of institution of the suit	05.04.2014
Nature of the suit	<u>Specific performance of contract</u>
Date of the commencement of recording of the evidence	29.10.2015
Date on which the judgment was pronounced	04-07-2026
Total duration	Years Months Days 12 02 29

(SMT. Kusuma.V.)
Prl. Civil Judge & JMFC.,
Channarayapatna.

J U D G M E N T

It is the suit for the relief of specific performance of contract i.e., to direct the defendant to execute the registered sale deed in favour of the plaintiff in respect of the suit schedule property by receiving the balance sale consideration of Rs.30,000/- and to deliver the possession of the suit schedule property to the plaintiff, direct the defendant to handover the possession of the suit schedule property after executing the sale deed and also if the defendant fails to execute the registered sale deed dated 26.04.2012, the defendant is directed to return the advance amount of Rs.3,50,0000/- with interest of 24% per annum from the date of registered sale deed to the plaintiff and such other reliefs.

2. The suit schedule property situated at S Hosahalli Village, Shravanabelagula Hobli, Channarayapatna Taluk

bearing Sy.No.6/1A measuring 19 guntas out of 23 guntas and the same is bounded on :

East by : Land of Savithramma,
West by : Land of Patel Appajigowda,
North by : Road and remaining land of plaintiff,
South by : Land of Chandrasingh.

3. Brief facts of the plaintiff's case are as under :-

According to the plaintiff, the defendant is the owner of the suit schedule property and it is her self acquired property. For her personal reason and to clear her hand loans which was borrowed for her daughter marriage, she offered to sell the suit schedule property to the plaintiff. The same was accepted by the plaintiff and the said defendant was executed agreement of sale dated 26.04.2012 to sell the said property to the plaintiff for a sum of Rs.3,80,000/- and received advance amount of Rs.3,50,000/- towards the sale price before the witnesses. Further agreed to execute the regular registered sale deed by receiving balance sale consideration of Rs.30,000/-.

4. Further, as per the terms of the agreement dated 26.04.2012, the defendant is supposed to be ready with all required documents in respect of the suit schedule property. The plaintiff has always been ready and willing to carryout the contractual obligation on his part and demanded the defendant to come forward to carryout the contractual obligation of her part and postponing the same on one or other pretext.

5. Further submitted that, he got issued legal notice on 15.02.2014 calling upon the defendant to be ready for the execution of the registered sale deed by receiving the balance sale consideration amount of Rs.30,000/- and further informed her to carryout the contractual obligation of her part. The said notice was not served on the defendant and the defendant did not come forward to comply with the terms of agreement dated 26.04.2012. Hence, the plaintiff has been constrained to file this suit.

6. After service of suit summons, the defendant has appeared before the court through her counsel and she has filed her written statement. In the written statement it is submitted that, the suit property is the property of the husband of this Defendant. After the death of her husband, his legal heirs i.e. Defendant, three daughters and one male son have got inherited the suit property. This Defendant is not at all having any form of right of share and independent right and title over the suit property. Originally the suit property was/is joint family property of this Defendant's husband. The Four children of this Defendant have been in joint possession and enjoyment of the suit property. Till date no partition has been effected in the joint family. The khatha of the suit property was changed in the name of this Defendant merely for the purpose of obtaining agricultural loan for its improvement. This Defendant is also having children. Since the suit property was / is not at all absolutely belonged to this Defendant, this Defendant is not having any form of independent right and interest over the suit property.

7. It is further submitted by the defendant, since the suit property is the joint family property of Defendant and his major family members, this Defendant is not at all having any sort of independent, exclusive right and interest over the suit property. One mangalore tiled house is also situated in the suit property and this Defendant is residing in that with her children. This Defendant's children have been managing the entire affairs joint family, this Defendant dealing with suit property and executing the alleged sale agreement is highly unbelievable and un-imaginable one. The suit property is very valuable one. At the time of alleged sale negotiation the suit property was valuing more than Rs.20,00,000/-. Hence, selling the suit property for meagre sum only by the Defendant is highly un-believable.

8. It is further submitted by the defendant is that, the Plaintiff is indulged in illegal and fraudulent activities to knock off the valuable suit property by hook or crook. There was/is no any legal necessity or compelling circumstances of the Defendant to deal with the Plaintiff to alienate the valuable suit property. The Defendant has not at all negotiated with the Plaintiff to deal with the suit property and not even executed the alleged sale agreement in favour of the Plaintiff.

9. It is further submitted by the defendant that, the Plaintiff has come to the Court with unclean hands. He has come up with this mischievous suit, on the basis of the forged, concocted and fraudulently created instrument. On

this score, the Defendant will take necessary legal course against the stranger Plaintiff for his offences of, forgery, fabrication of false evidence and infringing their personal liberty and causing unlawful loss and embarrassment. It is submitted with respect that, the Plaintiff is not at all entitled to any relief much less the one sought for in this mischievous suit.

10. It is further submitted by the defendant that, there is no cause of action to this mischievous suit and the one mentioned in Para 6 of the Plaint are concocted and fabricated for the purpose of this mischievous suit and to suit the convenience of the Plaintiff and the same are hereby specifically denied as false. Hence prays to dismiss the suit with cost.

11. On the basis of plaint and written statement the following issues had framed :

:: ISSUES ::

- 1. Whether the plaintiff proves that the defendant agreeing to sell the suit schedule property for sale consideration of Rs.3,80,000/- executed a sale agreement dated 26.04.2012 by receiving a sum of Rs.3,50,000/-?**
- 2. Whether plaintiff proves that, he always ready and willing to perform his part of contract?**
- 3. Whether the plaintiff is entitled for specific performance of contract dated 26.04.2012?**

4. To what relief plaintiff is entitled for?

5. What Order or Decree?

:ADDITIONAL ISSUES:

1. Whether the plaintiff proves that, the defendant is liable to pay interest at the rate of 24% p.a on advance amount of Rs.3,50,000/- from 26.04.2012 till its complete realization?

12. In order to substantiate the case of the plaintiff, the plaintiff got examined himself as PW-1 and got marked the documents at Ex.P-1 to 5 and plaintiff got examined three witnesses on his behalf by name Sathish, Ramegowda and Nanjundaswamy as PW.2 to 4 and closed his side. Counsel for defendant cross examined PW.1 to 4.

13. Per contra, the defendant got examined herself as DW.1 and got marked Ex.P.1 to 7. The counsel for plaintiff cross examined DW.1. During the course of cross examination of DW.1, the counsel for the plaintiff confronted her with one document and got marked as Ex.P.6.

14. One court witness by name Suresh was examined as CW.1 and he got marked two documents Ex.C.1 and 3.

15. Heard arguments by both sides and perused the

materials placed on record.

16. On consideration of the materials placed on record, this court answers the aforesaid issues are as under;

Issue No.1 to 4	:	In the Affirmative
Additional issue.1	:	In the Negative
Issue No.5	:	As per the final order for the following ;

:: REASONS ::

17. Issue No.1: The case of the plaintiff is that the defendant is the owner of the suit schedule property and for her personal reason and also to clear her hand loans, she offered to sell the suit schedule property to the plaintiff. The same was accepted by the plaintiff and the said defendant was executed agreement of sale dated 26.04.2012 to sell the said property to the plaintiff for a sum of Rs.3,80,000/- and received advance of Rs.3,50,000/- towards the sale price before the witnesses. Further agreed to execute the regular registered sale deed by receiving balance sale consideration of Rs.30,000/-.

18. Further, as per the terms of the agreement dated 26.04.2012, the defendant is supposed to be ready with all required documents in respect of the suit schedule property. The plaintiff has always been ready and willing to carryout the contractual obligation on his part and demanded the defendant to come forward to carryout the contractual

obligation of her part. But the defendant did not come forward to carryout the contractual obligation of her part and postponing the same on one or other pretext.

19. The contention of the defendant is that, the suit property is the property of the husband of this Defendant. After the death of her husband, his legal heirs i.e. Defendant, three daughters and one male son have got inherited the suit property. This Defendant is not at all having any form of right of share and independent right and title over the suit property. Originally the suit property was/is joint family property of this Defendant's husband. The Four children of this Defendant have been in joint possession and enjoyment of the suit property. Till date no partition has been effected in the joint family. The khatha of the suit property was changed in the name of this Defendant merely for the purpose of obtaining agricultural loan for its improvement. This Defendant is also having children. Since the suit property was / is not at all absolutely belonged to this Defendant, this Defendant is not having any form of independent right and interest over the suit property.

20. One mangalore tiled house is also situated in the suit property and this Defendant is residing in that with her children. This Defendant's children have been managing the entire affairs joint family, this Defendant dealing with suit property and executing the alleged sale agreement is highly unbelievable and un-imaginable one. The suit property is very valuable one. At the time of alleged sale negotiation the suit

property was valuing more than Rs.20,00,000/-. Hence, selling the suit property for meagre sum only by the Defendant is highly un-believable.

21. To prove the case of the plaintiff, the plaintiff himself examined as PW.1 and got marked Ex.P1 to 6 documents as per Ex.P1 to 6. Ex.P1 is the registered Agreement of sale dated 26.04.2012, Ex.P.2 is the RTC extract, Ex.P3 is the legal notice dated 26.12.2016, Ex.P.4 and 5 is the Postal Receipt and Ex.P6 is the certified copy of registered sale deed dated 14.08.2006.

22. On perusal of Ex.P1 un-registered original agreement of sale dated 26.04.2012 (thereafter the plaintiff paid duty and penalty of Rs.9,350/-) it depicts that the defendant has executed un-registered agreement of sale to sell the suit schedule property in favour of the plaintiff for sale consideration of Rs.3,80,000/- by receiving advance sale consideration of Rs.3,50,000/-.

23. Ex.P.2 is the RTC extract pertaining to the Sy.No.6/1A. On perusal of the same it appears that the said khatha is standing in the name of said defendant in respect of property measuring 23 guntas. Out of 23 guntas, 19 guntas of land had been executed un-registered agreement of sale in favour of the plaintiff. Ex.P.3 is the legal notice issued by the plaintiff through his counsel and the same was unserved and returned back. On perusal of Ex.P.1 it discloses that the plaintiff father for his personal and legal necessities

had executed agreement of sale dated 26.04.2012 in favour of the plaintiff in respect of the property bearing Sy.No.6/1A measuring 19 guntas out of 23 guntas situated S Hosahalli Village, Shravanabelagula Hobli, Channarayapatna Taluk in favour of plaintiff by receiving advance sale consideration amount of Rs.3,50,000/- and also agreed to receive balance sale consideration of Rs.30,000/- at the time of execution of registered sale deed.

24. Ex.P.3 is the legal notice issued by the plaintiff through his counsel to the defendant by calling upon the defendant to execute registered sale deed in favour of the plaintiff. Ex.P.4 and 5 are the unserved RPAD. Further on perusal of the receipts dated 15.02.2014 it shows that the legal notice issued to the defendant on 15.02.2014. By oversight the said document was not marked as exhibit on behalf of the plaintiff. It shows that the plaintiff is ever ready and willing to pay the balance sale consideration of Rs.30,000/- to the defendant. Ex.P.4 and 5 are the unserved postal cover, it depicts that the said legal notice was not served to the defendant.

25. But in the written statement the defendant has taken the contention that she is not having any independent right or title to execute sale agreement in favour of the plaintiff as per Ex.P.1. Further she taken the contention that originally the suit schedule property was standing in the name of her husband Boregowda and after his death, herself and her four children become his legal heirs, they have also have right over

the suit schedule property. The suit schedule property is the ancestral joint family property of herself and her children.

26. In support of his case the plaintiff examined three more witnesses and scribe of Ex.P.1. On perusal of the evidence of PW.2 to 4 it appears that the said witnesses have supported the case of the plaintiff. In the cross examination the said witnesses have stated that in their presence the plaintiff had paid Rs.3,50,000/- to the defendant, the defendant had executed unregistered agreement of sale in favour of the plaintiff on 26.04.2012 and the defendant agreed to execute the registered sale deed in favour of the plaintiff by receiving balance sale consideration amount of Rs.30,000/-. All witnesses have identified their signatures found on Ex.P.1. The same was marked as Ex.P.1(c) to Ex.P.1(e). Further they identified the signatures of plaintiff and defendant which are found on Ex.P.1 as per Ex.P.1(a) and Ex.P.1(b). It clearly discloses that the defendant for her legal and family necessity, she executed unregistered agreement of sale in favour of the plaintiff by receiving advance sale consideration amount of Rs.3,50,000/- and agreed to receive balance sale consideration amount of Rs.30,000/- at the time of execution of registered sale deed.

27. In the suit for specific performance of contract, it is bounden duty of the plaintiff to prove that the defendant has executed agreement of sale in respect of the schedule property mentioned in the sale agreement.

28. Section 101 of Indian Evidence Act reads as follows :

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person”

29. As per the above said provision, here in this case also burden is on the plaintiff to prove that the defendant has executed agreement of sale in respect of the suit schedule property by receiving advance sale consideration and agreed to receive balance sale consideration at the time of registering the sale deed.

30. In this case, this court has to decide whether the defendant has executed agreement of sale in respect of the suit schedule property by receiving advance sale consideration and agreed to execute registered sale deed or whether the defendant has executed agreement of sale in respect of the suit schedule property for her legal and family necessities. Herein the plaintiff himself examined as PW.1 and examined three witnesses as PW.2 to 4 who are the witnesses to the Ex.P.1.

31. Section 68 of Indian Evidence Act reads as follows :

“Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one

attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: 1[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied”.

32. As per the above said provision, in this case also the plaintiff has to examine atleast one attesting witness on his behalf to prove the execution of Ex.P1. In this case the plaintiff has examined PW.2 to 4 who are the witnesses and scribe of Ex.P.1. Therefore the plaintiff has proved his case by examining PW.2 to 4.

33. In the trial, the defendant has denied the signature on Ex.P.1. Further she stated that she has not written in Kannada language in such circumstances. In this view the plaintiff has filed the application for comparing the signature on Ex.P.1 with signature on Ex.C.1 of the defendant to send to expert to obtain the opinion. The said application was allowed and the signatures found on Ex.P.1 and Ex.C.1 sent for expert opinion. Thereafter this court received the opinion of the expert. The expert opinion is shown as under:

“The person who wrote the standard signatures marked as S.1 to S.4 and Ex.C.1a also wrote the questioned signature marked as Ex.P.1b.”

34. The above opinion of the expert it is very clear that the defendant herself had affixed her signature on Ex.P.1. Therefore the contention taken by the defendant in her written statement are contrary to the said opinion. Thereafter one court witness was also examined as CW.1, through him two documents were marked as Ex.C.1 and Ex.C.3. Therefore the defendant herself has executed Ex.P.1 in favour of plaintiff.

35. On the above discussion, it is clear that the plaintiff has proved that the defendant had executed agreement of sale in favour of the plaintiff agreeing to sell the suit schedule property in his favour. Hence this court answered **issue No.1 in the Affirmative.**

36. Issue No.2: In this case the plaintiff on the basis of oral and documentary evidence has proved that the defendant had executed agreement of sale dated 26.04.2012 in favour of the plaintiff agreeing to sell the suit schedule property. On the other hand, the plaintiff had issued legal notice as per Ex.P3, the said notice had been returned as unserved on the defendant as per Ex.P4 and 5. In view of the above said discussions, the contention taken by the defendant is not believable one. Here the plaintiff has to prove that he is ever ready and willing to perform his part of

contract. On the basis of Ex.P3 it is clear that the plaintiff had issued legal notice to the defendant to show that he has ever ready and willing to perform his part of contract. Hence **issue No.2 is answered in the affirmative.**

37. Issue No.3 : The main contention of the defendant is that she never executed agreement of sale in favour of the plaintiff and suit schedule property is the ancestral joint family property of herself and her children. In this case, while discussing the issue No.1 and 2, on the basis of oral and documentary evidence, the plaintiff has proved that the said Ex.P.1 dated 26.04.2012 was executed for the purpose of sell the suit schedule property in favour of the plaintiff. In this view, this court come to conclusion that on the basis of oral and documentary evidence, the plaintiff has proved that the defendant had executed said agreement for the purpose of to sell the suit schedule property in favour of the plaintiff. Therefore the the plaintiff is entitled for the relief of specific performance of contract. Hence this court answered **issue No.3 in the Affirmative.**

38. Additional Issue No.1 :- In the above discussion on issue No.1 to 3, it is very clear that the defendant had executed unregistered sale agreement in favour of the plaintiff by receiving advance sale consideration amount of Rs.3,50,000/- and agreed to receive balance sale consideration amount of Rs.30,000/- from the plaintiff at the time of execution of registered sale deed in his favour. From oral and documentary evidence the plaintiff had proved his

case regarding execution of unregistered sale agreement executed by the defendant for her legal and family necessities. At this juncture the plaintiff is no need to prove regarding Additional issue No.1. In respect of the advance amount of Rs.3,50,000/-. Further in this case the defendant is liable to execute registered sale deed in favour of the plaintiff. At this juncture there is no need to prove the said additional issue. Hence this court answers **additional issue No.1 in the Negative.**

39. Issue No.4 : The plaintiff has filed the suit against the defendant for the purpose of specific performance of contract in respect of the suit schedule property. On the basis of oral and documentary evidence by both the parties, this court come to conclusion that the defendant has executed unregistered agreement of sale dated 26.04.2012. In view of these discussions, the plaintiff proved the said unregistered sale agreement had been executed for the purpose of sell the suit schedule property in favour of the plaintiff. Therefore, the plaintiff is entitled for the relief of specific performance on the basis of unregistered sale agreement dated 26.04.2012. Hence this court answered **issue No.4 in the affirmative.**

40. Issue No.5:- In view of the discussion and conclusion arrived in above Issues are concerned, the suit of the plaintiff is hereby partly decreed with cost. Hence, this court proceed to pass following :

ORDER

The suit of the plaintiff is decreed with cost.

It is ordered and decreed that directed the defendant to execute the regular sale deed pertaining to the suit property to the plaintiff with receiving balance sale consideration amount of Rs.30,000/- within 2 months from the date of order.

If the defendant failed to execute the regular sale deed, the plaintiff has to obtain the regular sale deed through the process of court with depositing balance sale consideration amount in the court.

Office is directed to draw decree accordingly.

[Dictated to the Stenographer on on-line computer directly, corrected by me and pronounced in the Open Court this the 04th day of July-2026]

**(SMT. KUSUMA.V.)
Prl. Civil Judge & JMFC.,
Channarayapatna.**

A N N E X U R E**List of witnesses examined for plaintiff:-**

PW.1	:	Kalegowda
PW.2	:	Sathish
PW.3	:	Remegowda
PW.3	:	Nanjundaswamy

List of documents marked for plaintiff:-

Ex.P1 : Registered Agreement of sale
dated 26.04.2012.
Ex.P1(a to e) : Signatures
Ex.P2 : RTC extract.
Ex.P3 : Legal notice dated 15.02.2014
Ex.P4 & 5 : Unserved postal covers
Ex.P6 : Certified copy of registered sale deed
dated 14.08.2006

List of witnesses examined for defendant:-

DW.1 : Jayamma

List of documents marked for Defendant:-

Ex.D1 : RTC extract
Ex.D2 : Mutation register extract
Ex.D3 : Declaration
Ex.D4 : Bank passbook
Ex.D5 : Invitation Card of death ceremony
Ex.D6 & 7 : Photographs

List of court witnesses examined:-

CW.1 : Suresh D.J

List of documents marked for plaintiff:-

Ex.C1 : Original AOF
Ex.C3 : Page of Specimen signatures

**Prl. Civil Judge & JMFC.,
Channarayapatna.**

Judgment pronounced in the open court
(vide separate judgment)

ORDER

The suit of the plaintiff is decreed with cost.

It is ordered and decreed that directed the defendant to execute the regular sale deed pertaining to the suit property to the plaintiff with receiving balance sale consideration amount of Rs.30,000/- within 2 months from the date of order.

If the defendant failed to execute the regular sale deed, the plaintiff has to obtain the regular sale deed through the process of court with depositing balance sale consideration amount in the court.

Office is directed to draw decree accordingly.

(Kusuma.V)
Prl. Civil Judge & JMFC.,
Channarayapatna.