



IN THE COURT OF THE CIVIL JUDGE AND JMFC.,
AT SAVANUR

Present: SRI. SRINIVASA. S. N.,
B.A., LL.M.,
Civil Judge and JMFC.,
Savanur.

O.S.No.209/2024

DATED THIS 23rd DAY OF AUGUST, 2025

Plaintiff: Nisar Ahmed S/o Hussainmiya Bateri
Age: 55 Years, Occ: Agriculture & Business
R/o: Horakeri Street, Savanur
Tq: Savanur, Dist.: Haveri

[By Sri. Irfan I. Jalgar, Advocate]

V/S

Defendant: Veerayya @ Irayya S/o Gadigeyya
Kanavallimath
Age: 65 Years, Occ: Agriculture
R/o: Mangalwarpeth, Savanur,
Tq: Savanur, Dist.: Haveri

[Ex-parte]

Date of institution of suit	03-07-2024		
Nature of the suit	For relief of specific performance of agreement of sale		
Date of commencement of recording of the evidence	25-09-2024		
Date on which the Judgment was pronounced	23-08-2024		
Total duration	Year/s	Month/s	Day/s
	01	01	20

CJ & JMFC., Savanur



J U D G M E N T

The plaintiff has filed suit against the defendant seeking for the relief of specific performance of agreement of sale dated 15-02-2024 directing the defendant to receive the balance sale consideration amount of Rs.50,000/- and to execute the registered sale deed in respect of the suit property in favour of plaintiff or if the defendant failed to execute the registered sale deed, the Court Commissioner may be appointed to execute the registered sale deed in favour of the plaintiff or alternatively if the Hon'ble Court comes to the conclusion that specific performance of contract cannot be granted, a decree for refund of the earnest money of Rs.2,50,000/- from the defendant to the plaintiff with the interest at the rate of 24% per annum from the date of agreement till realization.

2. The description of the suit schedule property.

An agricultural land measuring 6 guntas, out of total measuring 3 acres 36 guntas in Sy.No.267 of Savanur village and bounded by

East	: Government Road,
West	: Remaining property of the same Sy.No.
North	: Property of Mehaboobalikhan Biradar
South	: Remaining property of the same Sy.No.



3. The brief facts of the plaintiff's case are as follows:-

a) The case of the plaintiff is that, when the defendant was in need of money for his family legal necessity, he had offered to sell suit property and the plaintiff having desired to purchase the same, offered to purchase the suit property for total sale consideration amount of Rs.3,00,000/-, and defendant satisfied with the said price offered by the plaintiff and agreed to sell the suit property to the plaintiff. The Plaintiff and Defendant entered into an agreement of sale on 15-02-2024, in the presence of witnesses, defendant by receiving the earnest money of Rs.2,50,000/- in cash from the Plaintiff out of total sale consideration amount and Defendant had agreed to sell the suit property in favour of Plaintiff after getting the said land measured and subdivided and after obtaining the 11-E sketch map from the Competent Authority within one month from the date of said agreement of sale dated 15-02-2024 and to execute the registered sale deed in favour of Plaintiff by receiving the balance sale consideration amount of Rs.50,000/- and hand over the possession of said property to the Plaintiff. Further, the defendant has failed to obtain the 11-E sketch map from the competent



authority, which is necessary for execution of sale deed with respect to the suit property.

b) The plaintiff has been repeatedly requesting and demanding the defendant to comply with the said agreement of sale and receive the balance consideration amount and to execute the registered sale deed in his favor. But the defendant is postponing and avoiding to receive the said balance sale consideration amount, with the sole intention to cause financial loss to the plaintiff. Now the defendant is trying to alienate and transfer the said property in favor of some third parties, which the plaintiff came to know about the same. The plaintiff is ready and willing to pay the balance sale consideration amount of Rs.50,000/- to the defendant. Ultimately, the plaintiff, having no other alternative, got issued a legal notice dated 18-03-2024 calling upon the defendant to perform his part of contract by accepting the balance sale consideration amount within 7 days from the date of receipt of said notice. And the said notice came to be served upon the defendant on 20-03-2024, but the defendant has failed to comply with the conditions of the agreement of sale and legal notice. Therefore, plaintiff has filed the present suit against the defendant.



4. After service of summons, The defendant remained absent, hence he placed exparte. Hence, the matter was posted for plaintiff evidence.

5. In order to prove and substantiate the plaint averments, the plaintiff has examined himself as PW.1 and got marked documents as Ex.P.1 to 5 and examined two witnesses as PW-2 and 3 and got marked Ex.P.5(a) and 5(b) and closed his side evidence.

6. Heard arguments of learned counsel appearing for the plaintiff on merits, perused pleadings, documentary evidence and material available on record.

7. The following points arise for my consideration of this court;

P O I N T S

1. Whether the plaintiff proves that the defendant has agreed to sale the suit property in his favour for a valuable consideration of Rs.3,00,000/- and he has executed agreement deed of sale after receipt of earnest money of Rs.2,50,000/- on 15-02-2024?
2. Whether the plaintiff proves that he was and is always ready and willing to perform his part of contract?
3. Whether the plaintiff is entitled for the relief as as sought for?
4. What order or decree?

8. The findings of this Court on aforesaid points are as follows:-



Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Partly Affirmative

Point No.4: As per final order for following;

REASONS

9. Point No.1:-The plaintiff has filed the present suit against the defendant seeking specific performance of an agreement of sale dated 15-02-2024, directing the defendant to receive the balance sale consideration of Rs.50,000/- and execute the registered sale deed in respect of the suit property in his favour. The plaintiff has also sought, in the alternative, refund of the earnest money of Rs.2,50,000/- with interest at 24% p.a. from the date of agreement till realization, if court finds that specific performance of contract cannot be granted. An initial burden lies on the plaintiff U/Sec.101 of Indian Evidence Act, 1872 to prove the fact that the defendant has executed a sale agreement dated 15-02-2024 in favour of plaintiff in respect of suit property.

10. The case of the plaintiff is that the defendant, in need of money for family legal necessity, offered to sell the suit property, namely an agricultural land measuring 6 guntas, out of the total extent of 3 acres 36 guntas in Sy.No.267 of Savanur village, for a total consideration of Rs.3,00,000/-. The plaintiff accepted the



offer, and on 15-02-2024, an agreement of sale was executed, wherein the defendant has received Rs.2,50,000/- as earnest money, and agreed to obtain measurement and sub-division of the land, secure an 11-E sketch from the competent authority within one month, and thereafter execute the registered sale deed in favour of the plaintiff upon receiving the balance sale consideration of Rs.50,000/-. It is further alleged that the defendant failed to secure the 11-E sketch despite repeated requests and demands, and instead attempted to alienate the suit property to third parties. The plaintiff issued a legal notice dated 18-03-2024, duly served on 20-03-2024, calling upon the defendant to comply with the agreement within seven days. As the defendant failed to respond or perform his obligations, the plaintiff has filed the present suit.

11. To prove and substantiate the case of the plaintiff, plaintiff has examined as himself as PW-1 and reiterated the plaint averments in his evidence and got marked Ex.P.1 to 5. Ex.P.1 is the RTC extract in respect of land bearing Sy.No.267 measuring 3 acres 36 guntas which is standing in the name of defendant. Ex.P.2 is the legal notice issued by the plaintiff to the defendant to perform agreement of sale, notice dated 18-03-2024. Ex.P.3 and 4 are the postal receipt and postal acknowledgment respectively.



Ex.P.5 is the Unregistered agreement of sale dated 15-02-2024 executed by defendant in favour of plaintiff in respect of suit property 06 guntas out of totally measuring 3 acres 36 guntas in Sy.No.267. The two attesting witnesses are examined as PW-2 and 3 and got marked Ex.P.5(a) and 5(b) by identifying their signatures respectively.

12. To discharge the burden, the oral evidence of PW-1, supported by PW-2 and PW-3, clearly establishes that the defendant executed Ex.P.5 by receiving Rs.2,50,000/- as earnest money. The agreement contains the defendant's obligation to obtain the 11-E sketch within one month and execute the sale deed after receiving the balance of Rs.50,000/-. The signatures of the attesting witnesses on Ex.P.5 are duly proved. The defendant, though served, has chosen to remain ex-parte. Hence the evidence adduced by the plaintiff remains unchallenged and unrebutted. Ex.P.1 further confirms that the suit property forms part of land standing in the name of the defendant. Accordingly, this court has answered ***Point No.1 in the Affirmative.***

13. Point No.2:- In so far as ready and willing to perform his part of contract by the plaintiff is concerned, he has specifically



pleaded his readiness and willingness to perform his part of contract as per Sec.16(c) of Specific Relief Act, 1963. The plaintiff has filed this suit well within the limitation period. The plaintiff has approached the defendant to execute the sale deed. This court cannot disregard the fact that the defendant under Ex.P.5 sale agreement has already received portion of sale consideration of Rs.2,50,000/- and what is remained to be paid is Rs.50,000/-.

14. The sale agreement i.e.,Ex.P.5 states that the defendant, within one month, get the land measured and subdivided and obtain the 11-E sketch from the competent authority, and thereafter execute the sale deed on receipt of the balance. These are condition precedent for sale agreement. The plaintiff obligation was to pay Rs.50,000/- upon completion of those steps. The material on record shows the plaintiff demanded performance and expressed readiness to pay the balance amount but the defendant neither complied nor responded.

15. In the present case the plaintiff has pleaded and deposed that he was always ready with the balance sale consideration of Rs.50,000/-. The plaintiff issued Ex.P.2 legal notice within a month of the agreement, offering payment of the balance and calling upon the defendant to execute the sale deed. This conduct



satisfies the legal requirement of readiness and willingness.

Accordingly, this court has answered ***Point No.2 in the Affirmative.***

16. Point No.3:- The primary relief sought is specific performance and the alternative relief is refund of earnest money of Rs.2,50,000/- with interest. Though Point No.1 and 2 proved by the plaintiff, the enforceability of specific performance is possible or not has to be examined. Ex.P.5 requires the defendant to first obtain the 11-E sketch/sub-division of 6 guntas out of the larger property within one month. That step has not been performed. Without such sub-division/11-E sketch, the identity and separability of the contracted 6 guntas remain uncertain and registration of a sale deed for an undivided, un-sketched portion of agricultural land is legally not valid.

17. The Specific performance cannot be granted where the subject-matter is uncertain. As per Section 22 of the Specific Relief Act, 1963, empowers the Court to grant refund of earnest money in a suit for specific performance when specific performance is refused. In the present case, the plaintiff is entitled to refund of Rs.2,50,000/- paid under Ex.P.5. In regard of the interest, considering the nature of transaction and prevailing judicial norms, awarding interest at the rate of 8% per annum from the date of



agreement i.e., 15-02-2024 till realization would meet the ends of justice. Accordingly, this court has answered ***Point No.3 in the partly Affirmative.***

18. Point No.4:- In the light of aforesaid reasons and discussions, this court has proceed to pass following:-

ORDER

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

Consequently, the plaintiff is entitled for refund of earnest consideration amount of Rs.2,50,000/- along with interest at the rate of 8% per annum from defendant, from the date of agreement to till realization.

Suit in respect of specific performance of contract is hereby refused.

Draw decree accordingly.

(Dictated to Stenographer, directly on computer, corrected and later initialed by me and then pronounced by me in the open court on this the 23rd day of August- 2025)

(SRINIVASA.S.N.)
Civil Judge & JMFC.,
Savanur.

: ANNEXURE :

LIST OF WITNESS EXAMINED ON BEHALF OF PLAINTIFFS :

PW.1: Nisar Ahmed Bateri
PW.2: Aashakbeg Mirza
PW.3: Kalandar Devihosur



LIST OF DOCUMENTS MARKED ON BEHALF OF PLAINTIFFS :

- Ex.P.1: RTC extract in respect of land bearing Sy.No.267
Ex.P.2: Legal notice issued by the plaintiff to the defendant
Ex.P.3: Postal receipt
Ex.P.4: Postal acknowledgment
Ex.P.5: Unregistered agreement of sale dated 15-02-2024
executed by defendant in favour of plaintiff
Ex.P.5(a) Signatures
& (b):

LIST OF WITNESS EXAMINED ON BEHALF OF DEFENDANTS:

- NIL-

LIST OF DOCUMENT MARKED ON BEHALF OF DEFENDANTS:-

- NIL-

**(SRINIVASA.S.N.)
Civil Judge & JMFC.,
Savanur.**

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