

**IN THE COURT OF SENIOR CIVIL JUDGE, AT ALAND:**

**PRESENT: SRI. M. MAHESHBABU, B.A., LL.M.,**  
**Senior Civil Judge, Aland:**

**OS.No.49/2019**

**DATE OF JUDGMENT: 17<sup>th</sup> DAY OF MARCH 2020.**

**Plaintiff...**

Mansing S/o Sitaram Rathod,  
Age : 68 years, Occ: Agriculture,  
R/o Teerth Tanda, Tq. Aland,  
Dist. Kalaburagi.

**(By Sri. B. A. Deshpande, Advocate)**

V/s

**Defendant...**

Sonabai W/o Laxman,  
Age : 55 years, Occ: Agriculture,  
R/o Teerth Tanda, Tq. Aland,  
Dist. Kalaburagi.

**(Exparte)**

- |                                |   |                                      |
|--------------------------------|---|--------------------------------------|
| 1. Date of institution of suit | - | 17-07-2019                           |
| 2. Nature of suit              | - | Suit for Specific Performance;       |
| 3. Date of recording evidence  | - | 06-03-2020                           |
| 4. Date of closure of evidence | - | 06-03-2020                           |
| 5. Date of disposal            | - | 17-03-2020                           |
| 6. Total duration              | - | years / months/ days<br>00 / 08 / 00 |

Contd...

**J U D G M E N T**

This is a suit of the plaintiff against defendant for the relief of specific performance of contract and for perpetual injunction.

**SCHEDULE OF SUIT PROPERTY**

The land Sy.No.320/3/Uu, measuring 02 acres 20 guntas, with LR of Rs.1-38 paisa, situated at Aland, which is by bounded as under:-

East : Land of Dhannanabai Mansingh;  
West : Land of Sonabai Laxman (Plaintiff);  
North : Land of Ganu Krishna;  
South : Land of Vithal Rao Patil;

2. **In brief, the case of the plaintiff is that:-**

The defendant purchased the suit land by virtue of registered sale-deed dated 17-07-1992 from one Vithal Rao S/o Babasaheb Patil and got mutated her name in the ROR as owner in possession. In the month of January 2017, the defendant approached the plaintiff with and offered to alienate

the suit land for her family necessity for a consideration of Rs.5,00,000/-. Accordingly, the plaintiff agreed to purchase the suit land. The agreement made between the parties that, the entire sale consideration amount should be paid on that day itself and the defendant should execute the registered sale-deed of the transaction after completing the mandatory formalities. Further, it is agreed that, the defendant should bear the entire survey expenses and the plaintiff should bear the entire registration expenses of sale transaction. After the completion of the sale talks, the parties of this suit, elders of tanda and husband and sons of the defendant together came to Aland for preparing an agreement for sale on 30-01-2017.

3. Further, it is the case of the plaintiff that, as per the instructions of the plaintiff and defendant, one Muneer Ahmed Mulla drafted the agreement and the plaintiff and the defendant put their thumb impression or signature, then in the presence of plaintiff and defendant, the other witnesses including the brothers and husband of the defendant put their signatures.

The plaintiff has paid entire consideration amount to the defendant and the sale transaction was made to the knowledge of the husband, son and brother-in-laws of the defendant. After few days of the said agreement, the plaintiff approached the defendant and requested her to sign the necessary application for survey work, but the defendant has avoided it on one or the other pretext. Therefore, on 03-06-2019, the plaintiff got issued a legal notice calling upon the defendant to execute the sale-deed, the said notice served to the defendant, but the defendant has not turned for signing the application of survey work on 13-06-2019. The defendant said that neither she will sign any application for survey nor she will execute the registered sale-deed. The plaintiff is ever ready to perform his part of the contract i.e., to bear the registration expenses. Hence, the plaintiff has constrained to file this suit.

4. After institution of the suit, suit summons was issued to the defendant. In pursuance of summons defendant failed to

appear before the court, consequently she has been placed ex-parte. Matter was posted for Plaintiff's evidence.

5. In order to prove its case the plaintiff examined himself as PW-1 and got marked Ex.P-1 to 9 documents.

6. I have heard plaintiff's counsel and perused the records, thereafter following points arise for determination;

**(1) Whether the plaintiff is entitled for the relief sought?**

**(2) What order or decree?**

7. My findings to the above points are as under for the following reasons:-

Point No.1 : In the Affirmative;

Point No.2 : As per final order

**REASONS**

8. **Point No.1:** - It is the case of the plaintiff that in the month of January 2017, the defendant approached the plaintiff with an offer to alienate the suit land for a consideration of Rs.5,00,000/-. Accordingly, the plaintiff agreed to purchase the

suit land. As per the instructions of the plaintiff and defendant, agreement has been drafted in the presence of plaintiff, defendant and the other witnesses including the brothers and husband of the defendant. After few days of the said agreement, the plaintiff approached the defendant and requested her to sign the necessary application for survey work, but the defendant did not heed the request of the plaintiff. On 03-06-2019, the plaintiff got issued a legal notice to the defendant, the said notice served to the defendant, but the defendant said that neither she will sign any application for survey nor she will execute the registered sale-deed. The plaintiff is ever ready to perform his part of the contract i.e., to bear the registration expenses.

9. In order to prove the case, the plaintiff examined himself as PW-1 and produced as many as 09 documents as Ex.P-1 to 9. It is very pertinent to note that Ex.P-1 original sale agreement, Ex.P-1(a) is the signature of plaintiff. Ex.P-2 is the certified copy of the mutation. Ex.P-3 to 6 are the RORs in

respect of suit schedule property, Ex.P-7 is the legal notice. Ex.P-8 is the Postal Receipt and Ex.P-9 is the Postal Acknowledgment. Ex.P-1 is the agreement for sale executed on 30-01-2017, which clearly demonstrates that, the agreement made in between the plaintiff and the defendant along-with the other witnesses including the brothers and husband of the defendant with terms and conditions and the defendant agreed to sell the suit property to the plaintiff for a consideration of Rs.5,00,000/- and to execute the sale-deed in favour of the plaintiff. Further, the recitals of Ex.P-1 shows that the defendant has received the entire sale consideration amount on different date in cash from the plaintiff herein. Ex.P-2 is the certified copy of mutation, which demonstrates that the defendant purchased the suit land from one Vithal S/o Babasaheb Patil. Ex.P-3 is the ROR in respect of the suit property which is standing in the name of vendor fo the defendant. Further in the said document itn can be seen that in the year 1992, the suit schedule property came to be mutated in the name of the defendant herein. Ex.P-4 to 6 are the RORs

for the year 1993 to 2017, which was standing in the name of the defendant. From Ex.P-2 to 6, it is crystal clear that, the defendant purchased the suit land from one Vithalrao Babasaheb Patil and since from the said date, the property is standing in the name of defendant herein as absolute owner.

10. The plaintiff has pleaded in the plaint as well as in his affidavit that, he should bear the entire registration expenses of sale transaction. The said fact is mentioned in Ex.P-7 i.e., the Legal Notice. On perusal of Ex.P-9 postal Acknowledgment for being served Ex.P-7 i.e., the legal notice to the defendant herein. On perusal of P-9, it can be seen that, the legal notice as per Ex.P-7 duly served on the defendant. It is a matter on record that the defendant has not replied for the said notice nor came forward to execute the sale-deed in favour of the plaintiff. As per the recitals of Ex.P-1, already, the defendant has received full consideration amount from by the plaintiff by bearing the signatures of plaintiff, defendant and the other witnesses including the brothers and husband of the defendant

and they have also knowledge regarding the execution of sale-deed. Considering the pleadings and evidence placed by the plaintiff, it can be inferred that, the plaintiff is ready and willing to perform his Part of contract i.e., the registration expenses of the sale transaction. I hold that, the plaintiff is ready and willing to get sale-deed executed.

11. Further, regarding the readiness and willingness of the party, I would like to rely upon the decision reported in **A.I.R. 2000 SUPREME COURT 2408 (Mothilal Jain V/s. Ramdasi Devi & Others)**

**An averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff fulfill his part of the obligations under the contract which is subject matter of suit, the fact that they are differently worded will not militate against the readiness and willingness of the**

**plaintiff in a suit of specific performance of contract for sale.**

12. Further, with respect to same aspect , I would like to rely upon another decision reported in **A.I.R. 1970**

**SUPREME COURT 546 (Nathulal V/s. Phoolchand)**

**Agreement to sell - readiness and willingness - purchaser is not required to produce money or to vouch a concluded scheme for financing the transaction, to prove his readiness and willingness to perform the contract.**

13. Further, with respect to same aspect , I would like to rely upon another decision reported in **A.I.R. 2000 SUPREME**

**COURT 2408 (Motilal Jain V/s. Ramdasi Devi and others)**

**Agreement to sell - specific performance - alternative relief of damages - Not a ground to dilute main relief of specific performance.**

14. Accordingly, in the light of the above discussion and above rulings the plaintiff has proved the agreement took place

between Sonabai and and himself dated 30/01/2017. Further the plaintiff has also proved his readiness and willingness.

15. It is matter on record that even after service of summons defendant failed to appear before the court and consequently placed ex-parte. The evidence of PW-1 is corroborate with the documentary evidence Ex.P-1 to 9. Further, in order to contradict the case of the plaintiff the defendant has not adduced any evidence and also she has not cross-examined PW-1. It is very pertinent to note that the evidence of PW-1 has gone un-challenged and un-impeached and further I have no reasons to disbelieve the evidence of un-challenged evidence of PW-1. In this regard I would like to rely upon the decision reported in **I.L.R. 2009 KAR 1534**, wherein his lordship held that: **When party not entered the witness box and subjected to cross-examination-Adverse inference to be drawn against that party as per the principles contained in illustration (g) of Section 114 of the Evidence Act**". Accordingly, an

adverse inference has to be drawn against the defendant herein. In the light of the above rulings and discussion, I am of the opinion that the plaintiff has proved his case preponderance of probabilities. Hence, I hold that the plaintiff is entitled to the relief as prayed. Hence, I answered point No.1 in the **affirmative.**

16. **Point No.2:-**In the result, this court proceed to pass the following.

**ORDER**

**Suit of the plaintiff is decreed with costs as under:**

**Defendant is hereby directed to execute registered sale deed in favour of plaintiff, according to the terms of agreement dated: 30/01/2017 and also further directed to handover the physical possession of suit property in favour of the plaintiff herein within**

**three months after execution of the sale-deed.**

**Further, the defendant, her agent and all the other persons claiming through her, is hereby restrained from alienating the suit property by way of sale, gift or mortgage or by creating any charge over the suit property.**

**In the event, the defendant failed to execute sale-deed as directed, the plaintiff is entitled to get sale-deed executed through Court Commissioner by execution proceedings.**

**Draw a decree accordingly.**

(Typed to my dictation over the Computer by the Stenographer, corrected by me, initialed and then pronounced by me in the Open Court, on this 17<sup>h</sup> day of March-2020)

**(M. MAHESBABU),**  
Senior Civil Judge, Aland.

**ANNEXURE**

**LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF:**

PW-1 Mansing Rathod S/o Sitaram Rathod;

**LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS:**

... N I I ...

**LIST OF DOCUMENTS EXHIBITED FOR THE PLAINTIFF:**

Ex.P-1 Agreement for Sale;  
Ex.P-1(a) Signature.  
Ex.P-2 C C of Mutation.  
Ex.P-3 to 6 RORs.  
Ex.P-7 Legal Notice.  
Ex.P-8 Postal Receipt.  
Ex.P-9 Postal Acknowledgment.

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**LIST OF DOCUMENTS EXHIBITED FOR THE DEFENDANTS:**

... N I L ...

**(M. MAHESHBABU),**  
Senior Civil Judge, Aland.