

**IN THE COURT OF THE IV ADDITIONAL CIVIL JUDGE &
J.M.F.C. AT MADDUR**

Present: - SMT. TRUPTI DHARANE.

B.A. LL.M

IVth Addl. Civil Judge & J.M.F.C. Maddur.

ORIGINAL SUIT NO. 360/2017

DATED THIS THE 2ND DAY OF APRIL 2018

1. Jayalakshmi W/o Somu , Aged about 50 years,
House wife and agriculturist, R/o Sadolalu Village,
Kasaba Hobli, Maddur Taluk, Mandya District.

(By Sri.K.S.,Advocate)

..... Plaintiff

V/s.

1. S.B. Prathap D/o Late. Boregowda,
Aged about 28 years, Agriculturist

2. S.B. Priyanka D/o Late. Boregowda
Aged about 24 years,

Both are R/o Sadolalu Village, Kasaba Hobli,
Maddur Taluk, Mandya District.

(Placed Exparte)

.....Defendants

Date of Institution of the Suit : 22.09.2017

Nature of the Suit : Specific Performance of
Contract

Date of Commencement of recording
of the evidence : 11.01.2018

Date on which the judgment was
Pronounced : 02.04.2018

TOTAL DURATION	Years	Months	Days
	-00-	-06-	-11-

JUDGMENT

The plaintiff has filed this suit for specific performance of contract against the defendants.

2. The case of the plaintiff in brief is that, the suit property bearing Survey no. 137/2C measuring total extent of 0.04.08.00 situated at Sadolalu village, Kasaba Hobli, Maddur taluk. The suit property boundaries are as follows;

Towards East :Land of Gowramma W/o Late Puttalingaiah

Towards West :Land of B Mallegowda

Towards North : Land of S.L. Ningegowda

Towards South : Land of S.L. Mallesh

and another property bearing Survey no. 145/7A, measuring total extent of 0.02.00 situated at Sadolalu

village, Kasaba Hobli, Maddur taluk. The suit property boundaries are as follows;

Towards East :Land of Prema W/o Mallegowda

Towards West :Land S.L. Boregowda

Towards North : Land of S.L. Shankar

Towards South : Land of S.L. Mallesh and defendants are absolute owner in acutal possession and enjoyment of suit schedule property. The deceased S K Vinoda W/o Late Boregowda was the mother of defendant no. 1 and 2. The deceased S K Vinoda W/o Late Boregowda and defendants no. 1 and 2 are the absolute owners and in possession of suit schedule property. The defendants due to their legal necessity i.e., for their domestic expenses and discharge of hand loans agreed to sell the suit schedule property in favour of plaintiff for sum of RS 1,20,000/- and entered into a sale agreement on 13-03-2014. The defendants have received an advance amount of Rs.1,00,000/- and have executed a Registered Sale Agreement in favour of plaintiff before the witnesses, agreeing to execute the sale deed within 2 years from the date of aforesaid sale agreement by collecting necessary documents and by receiving the remaining sale consideration amount of Rs 20,000. Thereafter mother of defendant no. 1 and 2 S K Vinoda demised

living behind defendant no. 1 and 2 as her legal heirs and they succeeded to the estate of deceased S K Vinoda. Plaintiff insisted defendants to execute absolute sale deed by receiving balance sale consideration. But the defendants have postponed the same by assigning one or the other reasons. In spite of repeated requests, demands defendants did not come forward to execute sale deed. Therefore plaintiff got issued a legal notice dated: 08-02-2016 which was duly served on defendants and also on their mother S K Vinoda. Even after death of mother of defendants plaintiff got issued another legal notice dtd. 10.03.2017 but the same was intentionally avoided by the defendants. The defendants have not performed their part of contract in terms of the alleged agreement. The plaintiff has always been ready and willing to perform his part of contract. But the defendants failed to perform their part of contract. The plaintiff has, therefore, prayed for a decree of specific performance of contract in his favor. In the alternate the plaintiff has also prayed for the decree for refund of earnest money with an interest at 24% per annum by way of damages.

3. The summons was served upon defendants, they did not appear before the court hence placed *ex parte*.

4. In order to prove the case of the plaintiff has examined herself as PW.1 and got marked Ex.P.1 to 17. Further on behalf of plaintiff, he examined two witnesses as PW2 and PW3.

5. Heard the counsel for plaintiff and perused the materials available on record.

6. The points that arise for my consideration are as follows:

1. Whether the plaintiff is entitled for the relief of specific performance of contract as prayed by him?

2. Whether the plaintiff is alternatively entitled for recovery of advance amount with damages from defendant as prayed for?

3. What order or decree?

7. My answer to the above points are as follows :

Point No.1 : In the Affirmative

Point No.2 : Does not arise for consideration

Point No.3 : As per final order for the following ;

REASONS

8. **POINT No 1 and 2:** I have already stated above the case of the plaintiff. The plaintiff to prove her case

has examined as PW.1 and two witnesses as PW.2 and PW3 have restated the facts as in the plaint averments.

9. The plaintiff has produced the original Sale Agreement as Ex.P.1. It reveals that it is executed by the deceased S K Vinoda and defendants on 13.03.2014 in favour of plaintiff. It pertains to suit schedule property which are Survey no. 137/2C measuring total extent of 0.04.08.00 and Survey no. 145/7A, measuring total extent of 0.02.00 situated at Sadolalu village, Kasaba Hobli, Maddur taluk. It contains the signatures as Ex.P1(a) is the signature of the plaintiff and Ex. P 1(b) to Ex.P1(d) are signatures of defendants, EX.P1(e) and (f) are signatures of witnesses, Ex.P1(g) is the signature of Deed writer. Ex.P. 2 is the Form no. 15 encumbrance certificate, Ex. P 3 and 4 are the RTC extracts of suit schedule property standing in the name of deceased S K Vinoda, Ex.P 5 is the legal notice, Ex.P 6 to 8 are Postal Receipts, Ex.P 9 to 11 Postal Acknowledgement, Ex.P 12 death certificate of late S K Vinoda, Ex.P 13 Legal notice, Ex.P 14 and 15 Postal Receipts, Ex. P 16 and 17 RPAD covers written with shara as addressee absent. Ex.P 16 (a) and 17 (a) are the legal notices.

10. The witness by name Shankaregowda examined himself as PW.2 and identified his signature on Ex.P1, which is Ex.P1(f). The deed Writer Prasanna chandra examined himself as PW3 and identified Ex.P. 1 i.e. Agreement to sale and signatures over it. The witnesses vouched about the agreement of sale between plaintiff and defendants. It is also averred in the plaint and deposed by way of affidavit that the plaintiff is and was always ready and willing to perform his part of contract and getting the registered sale-deed executed. But inspite of several request and demands defendants have postponed the same and have committed breach of agreement to execute the sale deed

11. It was always open for the defendants to appear in this case and to contest the case by filing their written statement. But the defendants has not done so. Inspite of personal service of summons, they did not appear before court and hence placed exparte. Under these circumstances, this court finds no reasons to disbelieve the case of plaintiff. As already noticed above the Ex.P-1 agreement of sale is a registered document. The plaintiff has given her oral evidence in support of her case. The witness and the scribe of the Ex.P-1

document has also given oral evidence and they too have supported the case of plaintiff. Hence by considering the oral evidence of PW.1 to 3 and Ex.P1, which is registered agreement of sale in respect of the suit schedule property executed by defendants in favor of the plaintiff, this court is of the the opinion that the defendants have agreed to sell the suit schedule property in favor of the plaintiff for the consideration mentioned therein. So also on perusal of the other documents, it appears that he has always been ready and willing to perform his part of agreement. In view of above discussion, this court is of the opinion that the plaintiff is able to prove the suit transaction. The evidence produced by plaintiff is sufficient to believe his case. Hence, for these reasons the point No.1 is answered in the affirmative and the point No.2 is answered as 'does not arise for consideration'.

12. Point No 3 :For the reasons stated while discussing Point Nos.1 and 2, I proceed to pass the following;

ORDER

The suit of the plaintiff is decreed with cost.

The defendant no. 1 and 2 are directed to execute Registered Sale Deed in favour of the plaintiff regarding suit schedule property and hand over the

possession within 3 months from the date of the decree by receiving the balance sale consideration of Rs 20,000/- from the plaintiff and on failure to do so, the plaintiff is at liberty to get the Court Commissioner appointed to execute the sale deed and registered through Court as per agreement Ex.P.1 on payment of balance consideration amount.

Draw decree accordingly.

(Dictated to the typist, corrected and then pronounced in open court on this 02th day of April 2018)

(TRUPTI DHARANE)

IV Addl.Civil Judge and JMFC

Maddur

ANNEXURE

WITNESSES EXAMINED FOR THE PLAINTIFF:-

PW.1: Jayalaxmi

PW.2: Shankaregowda

PW.3: Prasanna chandra

DOCUMENTS MARKED FOR THE PLAINTIFF:-

Ex.P1(a) : Signature of the plaintiff

Ex. P 1(b) to Ex.P1(d) : Signatures of defendants,

EX.P1(e) and (f) : Signatures of witnesses,

Ex.P1(g) : The signature of Deed writer.

Ex.P. 2 : The Form no. 15 encumbrance certificate,

Ex. P 3 and 4 : The RTC extracts of suit schedule property standing in the name of deceased S K Vinoda,

Ex.P 5 : The legal notice,

Ex.P 6 to 8 : The Postal Receipts,

Ex.P 9 to 11 : Postal Acknowledgement,

Ex.P 12 : Death certificate of late S K Vinoda,

Ex.P 13 : Legal notice,

Ex.P 14 and 15 : Postal Receipts,

Ex. P 16 and 17 : RPAD covers written with shara as addresse absent.

Ex.P 16 (a) and 17 (a) : The legal notices.

WITNESSES EXAMINED FOR THE DEFENDANTS:-

N I L

DOCUMENTS MARKED FOR THE DEFENDANTS:-

N I L

IV ADDL.C.J. & J.M.F.C.MADDUR.

(Judgment pronounced in open court vide separately)

The suit of the plaintiff is decreed with cost.

The defendant no. 1 and 2 are directed to execute Registered Sale Deed in favor of the plaintiff regarding suit schedule property and hand over the possession within 3 months from the date of the decree by receiving the balance sale consideration of Rs 20,000/- from the plaintiff and on failure to do so, the plaintiff is at liberty to get the Court Commissioner appointed to execute the sale deed and registered through Court as per agreement Ex.P.1 on payment of balance consideration amount.

Draw decree accordingly.

(TRUPTI DHARANE)

IV Addl.Civil Judge and JMFC

Maddur