

KAKB520000012019



IN THE COURT OF THE PRL. CIVIL JUDGE, CHITTAPUR

Present

Sri. Subhashchandra Rathod,

B.A., LL.M.

Prl. Civil judge & J.M.F.C., Chittapur

Dated on this the 13th day of August-2021

O. S. No. 1/2019

PLAINTIFF:

Ramling S/o Rachanna Kodadur,
Age: 38 Years, Occ. Agriculture,
R/o Mogla village, Tq: Chittapur
Dist. Kalaburagi.

(By Smt. M.V.L. Advocate)

V/s

DEFENDANT:

Mallikarjun S/o Dodda Venkatayya,
Age: 30 years, Occ. Agriculture,
R/o Mogla village,
Tq. Chittapur, Dist. Kalaburagi

(Deft. by Sri. S.P.S. Advocate.)

Date of institution : 03-01-2019
Nature of the Suit : Specific performance
Date of commencement : 27-05-2019
of recording evidence
Date of closing of evidence : 27-05-2019
Judgment pronounced : 11-08-2021

Total duration : Years Months Days
02 07 10

Prl. Civil Judge, Chittapur
J U D G M E N T

This is a suit instituted by the plaintiff against the defendant for the relief of specific performance of contract.

2. In brief the facts of the case are as follows;

The plaintiff pleaded that, the defendant is the owner and possessor of the suit land bearing Sy.No.119/6 measuring 1 acre 25 guntas situated at Mogla village, Tq: Chittapur bounded by to the East: Land of Shrishail. To the West: Land of Mogalayya. To the North: Land of Kashanna Bedar & to the South: Halla. That the defendant to meet out the legal necessity and to clear of the old family debts offered the above said suit land for sale to the plaintiff. The plaintiff accepted the offer of sale and agreed to purchase the suit land for total consideration of Rs.2,50,000/-. Accordingly, the defendant executed an agreement of sale without possession document bearing No. 3245/15-16 on 05-08-2015 in favour of the plaintiff after receiving part consideration amount of Rs.2,04,000/-. That as per the agreement of sale the balance consideration amount 46,000/- is to be paid at the time of sale deed.

That defendant has agreed to execution of the sale deed within one year from the date of agreement of sale after complying the formalities of survey 11 E map etc. for registration. But the defendant promised to execute the sale deed after some period citing flimsy reasons such as land is to be surveyed etc. That the plaintiff is always ready and willing to perform his part of contract and bear the expenses of the registration of sale deed. That many time the plaintiff approached the defendant to execute the registered sale deed as per the agreement dated 05-08-2015, but the defendant always postponed the execution of sale deed on one pretext or the other. Fed up with the attitude of the defendant, finally plaintiff got issued legal notice dated 07-01-2018. The defendant replied to the said notice on 16-02-2018 denying the execution of the agreement of sale in favour of the plaintiff. Hence, the plaintiff is constrained to sue and defendant and prays to decree the suit as prayed for.

3. The suit summons issued by this court is duly served on the defendant. The defendant appear through his counsel but even after giving sufficient opportunities did not filed the written statement. Hence the written statement of defendant is taken as not filed.

4. To substantiate the case of the plaintiff, the plaintiff himself examined as PW-1 and got marked documents at Ex.P-1 to Ex.P-9. The defendant neither filed written statement nor cross examined PW-1.
5. Heard argument of plaintiff side, argument of defendant taken as nil and perused the material on record.
6. On the basis of the pleadings, the points that arise for my consideration are as follows:

POINTS

- 1) Whether the plaintiff proves the defendant has executed agreement of sale on 05-08-2015 in respect of suit property for consideration amount of Rs.2,50,000/- and received part consideration amount of Rs.2,04,000/-?
 - 2) Whether the plaintiff further proves that, he is ever ready and willing to perform his part of contract?
 - 3) Whether plaintiff is entitled to the relief of specific performance of contract?
 - 4) What order, or decree?
7. My findings on the above points are as follows:
Point No.1: In the affirmative
Point No.2: In the affirmative
Point No.3: In the affirmative

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

REASONS

8. **Point No.1 and 2:** These points are interconnecte to each other. Hence, I have taken up these points together for common discussion to avoid the repetition of facts, evidence and reasonings on these points.
9. In this case the plaintiff relied on the oral evidence of PW-1 and documentary evidence at Ex.P.1 to 9. The defendant, though he appeared through his advocate neither he has filed written statement nor cross examined PW-1. During the course of argument, the counsel for the plaintiff argued reiterating the plaint and evidence on record and averments and prays to decree the suit.
10. The document at Ex.P.2 to 4 are the ROR of Sy. No.119/6, Ex.P.5 is the encumbrancer certificate, goes to show that the defendant being the owner and possessor of the suit property has executed agreement of sale as per document at Ex.P.1 on 05-08- 2015 in respect of suit land after receiving part consideration amount as pleaded by the plaintiff. PW-1 also deposed reiterating the plaint averments and said evidence is remained unchallenged.
11. The document at Ex.P-6 is the legal notice got issued by the plaintiff to the defendant, Ex.P-7 is

the postal receipt, Ex.P-8 is postal acknowledgement, Ex.P-9 is the reply to legal notice, goes to show that, before filing the present suit the plaintiff got issued legal notice to the defendant and requested him to execute the sale deed as per the terms of agreement.

12. On perusal of document at Ex.P-9 which is reply given by the defendant it is noticed that, the defendant has denied the execution of agreement of sale as pleaded by the plaintiff. He took contention that, he took loan amount of Rs. 1,50,000/- from the plaintiff in the years 2015 agreeing to repay the same within one year and has executed security deed for the said amount. But these contentions are not proved by the defendant. Therefore, these contentions are not acceptable.

13. The oral and documentary evidence on record remained unchallenged as the defendant neither filed the written statement nor cross examined PW- 1. Hence, there is no reason to disbelieve the case of the plaintiff and evidence on record. The plaintiff by producing oral and documentary evidence proved the execution of agreement for sale by the defendant, payment of part consideration amount and also proved that, he is ever ready and willing to perform his part of a contract. Hence the point No.1 to 3 answered in the affirmative.

14. **Point No.3:** While answering point No.1 and 2 this court came to conclusion that this plaintiff has proved execution of agreement for sale by the defendant in question and also proved the part payment of consideration amount and readiness and willingness. Hence, it is held that the plaintiff is entitle for the relief of specific performance of contract in respect suit property. Accordingly point No.3 is answered in affirmative.
15. **Point No.4 :** In view of the above reasons and findings on point No. 1 to 3, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby decreed with cost.

The defendant is hereby directed to executed the registered sale deed in favour of the plaintiff in respect of suit property by receiving balance consideration amount of Rs.46,000/- within three months from the date of order.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, after typing, corrected, signed and then pronounced by me in the open Court on 13th day of August – 2021)

(Sri.Subhaschandra Rathod)
Prl.Civil Judge, Chittapur

ANNEXURE

1. **List of Witnesses examined for the Plaintiff:**

PW-1 : Ramling S/o Rachanna Kodadur.

2. **List of Witnesses examined for the Defendant:-**

- Nil-

3. **List of Documents exhibited for the Plaintiff:**

Ex.P-1 : Agreement of sale without possession

Ex.P.1(a) & (b) : Signatures

Ex.P.2 : Copy of ROR of R.S.No.119/6,

Ex.P.3 : ROR of R.S.No.119/6,

Ex.P.4 : ROR of R.S.No.119/6.

Ex.P.5 : Encumbrancer certificate,

Ex.P-6 : Legal notice issued by the plaintiff,

Ex.P-7 : Postal receipt,

Ex.P-8 : Postal acknowledgement,

Ex.P-9 : Reply to legal notice.

4. **List of Documents exhibited for the Defendant:**

- Nil-

Prl. Civil Judge, Chittapur