

KAKB610002472017



Presented on : 21-11-2017
Registered on : 23-11-2017
Decided on : 25-07-2026
Duration : 8 years 8 months 2 days

**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,
JEWARGI.**

PRESENT:- Smt. Tayyaba Sultana, B.A., LL.B.,
Senior Civil Judge & JMFC.,
Jewargi.

Dated this the 25th day of July -2026

OS No.97/2017 and OS No.169/2023

PARTIES IN OS NO.97/2017

PLAINTIFFS:-

1. Jyothi W/o Hanamanthraya
(D/o Shantappa),
Age: 30 years,
Occ: Household and
Agriculture,
R/o Chetnalli, Post: Asantapur,
District Vijayapur,
Now Residing at Nearalagi,
Taluk Sindagi,
District Vijajaypur.
2. Preeti W/o Shankar
(D/o Shantappa),
Age: 28 years, Occ: Household and
Agriculture,
R/o Gabasavalagi, Post: Gabasavalgi,
Taluk Sindagi, District Vijayapur.

[By Sri P. P. K., Advocate]

//Versus//**DEFENDANTS:**

1. Shantappa S/o Basappa Hugar,
Age: 56 years,

2. Ramesh S/o Shantappa Hugar,
Age: 32 years,
Occ: Private Service, Agriculture,

3. Veeresh S/o Shantappa Hugar,
Age: 26 years, Occ: Driver,
Both R/o Post: Neerlagi,
Taluk Sindagi, District Vijayapur.

4. Basavaraja S/o Ayyappa Hugar,
Age: 45 years, Occ: Agriculture,
R/o Bilwar, Post: Bilwar,
Taluk Jewargi, District Kalaburagi.

[By Sri Y. G. P., Adv for defendant No.1]
[Defendant Nos.2 and 3 are Exparte]
[By Sri J.V.H., Adv for defendant No.4]

Date of institution of the Suit	23-11-2017
Nature of the suit	Partition and Separate Possession, Declaration, Injunction & Rectification for ROR
Date of commencement recording of evidence	22-11-2018
Date on which the judgment was pronounced	25-07-2026
Total duration	8 years, 8 months, 2 days.

(Smt.Tayyaba Sultana)
Senior Civil Judge & JMFC,
Jewargi.

KAKB610008422023



Presented on : 08-08-2023
Registered on : 08-08-2023
Decided on : 25-07-2026
Duration: 2 years, 11 months, 17 days.

PARTIES IN O.S.NO.169/2023**PLAINTIFF:-**

Basawaraj S/o Ayyappa Hugar,
Age: 47 years, Occ: Agriculture,
R/o Bilawar village,
Taluk Jewargi, District Kalaburagi.

[By Sri J. V. H., Advocate]

//Versus//**DEFENDANT:**

Shantappa S/o Basappa Hugar,
Age: 58 years, Occ: Agriculture,
R/o Neeralagi,
Taluk Sindagi,
District Vijayapur.

[By Sri Y. G. P., Adv]

Date of institution of the Suit	08-08-2023
Nature of the suit	Specific Performance of contract.
Date of commencement recording of evidence	05-08-2021

Date on which the judgment was pronounced	25-07-2026
Total duration	2 years, 11 months, 17 days.

(Smt.Tayyaba Sultana)

Senior Civil Judge & JMFC,
Jewargi.

::COMMON JUDGMENT::

1. The plaintiffs in OS No.97/2017 have filed the suit against the defendants for the relief of partition and separate possession, declaration, injunction and rectification of ROR. The plaintiff in OS No.169/2023 has filed the suit against the defendant for the relief of Specific performance of contract and injunction.
2. The plaintiff has filed suit for specific performance of contract before the Civil Judge and JMFC, Jewargi in OS No.81/2019. As per the order passed by Hon'ble Prl. District Judge, Kalaburagi. In the order it is directed to OS No.81/2019 and OS 97/2017 tried together. As per the direction OS No.81/2019 transferred to this court and assign the new number as OS No.169/2023.

3. **The brief facts of the plaintiffs case in OS No.97/2017 as under:**

The description of suit property Sy.No.26/3, totally measuring 4 acres 24 guntas, situated at Sadanapur (D) circle Ijeri, Taluk Jewargi, District Kalaburagi, bounded by East: Village Boundary, West: Land Sy.No.24 and 27, North: Land Sy.No.25 and South: Land Sy.No.28. The plaintiffs No.1 and 2 are daughters of the defendant No.1 and defendants No.1 and 3 the real brothers to plaintiffs and sons of the defendant No.1. The suit properties are all ancestral properties and the plaintiffs and defendant Nos.1 to 3 are the joint owners and possessors. The defendant No.4 is nowhere concerned to the family of plaintiffs and defendants No.1 to 3 and the suit property.

4. It is further case of the plaintiffs that, the defendant No.4 without there being any legal title, illegally, surreptitiously and clandestinely got mutated his name, in the ROR in respect of the suit property in his name with the active support of the unscrupulous Revenue Officials on the false and bogus concocted documents behind the back of the plaintiffs defendant No.1 to 3 and plaintiffs. It is relevant to

state here that the father of plaintiffs is the only son to his father namely Basappa.

5. It is further case of the plaintiffs that, the plaintiffs approached the defendant Nos.1 to 3 and demanded for legitimate 1/5th share each by metes and bounds on 9th day of April, 2017, in respect of suit schedule property, the defendant No.1 postponed the same by one or another pretext and refused to give the share of the plaintiffs, then only plaintiff hurried to the offices concerned and obtained the certified copies, the officials not issued the certified copies of once, they issued in different dates. The defendant No.4 as to dupe the legitimate rights of the plaintiffs and defendants Nos.2 and 3 in collusion with the unscrupulous Revenue Officials got created Mutation entry in his name. The above facts constitute the cause of action and immediate cause arose to file the suit on 9th day of April, 2017, when the defendant Nos.1 to 3 refused for the same. With these pleadings the plaintiffs prayed for decree the suit.
6. After institution of the suit, the summons were served on defendants, defendant No.1 appeared through his

counsel, but not filed written statement. On the other hand the defendant No.4 appeared through his counsel and filed his Written Statement. The defendant Nos.2 and 3 did not appear before the court. Hence, defendant Nos.2 and 3 were placed exparte.

7. **The written statement filed by the defendant No.4 is to the following effect:**

The defendant No.1 being the absolute owner and in possession of the suit property has entered into an agreement for sale with the defendant No.4, the defendant No.1 has executed a deed of agreement for sale on Rs.10 rupees of stamp. The consideration amount of the suit properties fixed at Rs.52,100/- and Rs.20,000/- received by defendant No.1 from the defendant No.4. The defendant No.1 agreed to receive the Rs.32,000/- after July 1998 and executed the register sale deed whenever he is called upon the him to execute the sale deed after July 1998. The said deed of agreement has been attesting witnesses by name Gundanna, Bhimaraya, Somanath and Malanna. In pursuance of said deed of agreement for sale dated 09-05-1998 the defendant No.1

has received balance consideration amount of Rs.32,000/- from the defendant No.4 and the defendant No.1 has got entered the name of defendant No.4 in the ROR and further assured the defendant No.4 that he will execute the register sale deed whenever called upon to him by the defendant No.4. The defendant No.4 on the assurance of defendant No.1 to execute the register sale deed of suit property in his favour he kept quiet till the date of filing the suit by the daughters of defendant No.1 against the defendants. The present suit is filed by the defendant No.1 through his daughters only to avoid the execution of the sale deed by the defendant No.1. The suit is collusive suit.

8. It is further case of the defendant No.4 that, the plaintiffs and defendant Nos.1 to 3 are colluded and file the false suit to deprive the legitimate rights of the defendant No.4 on the basis of agreement for sale executed by defendant No.1 in favour of defendant No.4. The plaintiffs and defendant No.1 to 3 have got knowledge about the execution of agreement for sale in favour of defendant No.4 in respect of the suit property.

9. It is further case of the defendant No.4 that the plaintiffs have filed false suit and interim application for not to alienate. The plaintiffs are not entitle for any relief much less of temporary injunction order. The plaintiffs and defendant Nos.1 to 4 belongs to the same caste and nearest brothers in relation, hence the defendant No.4 to help the family of defendant No.1 has purchased the suit property. The defendant No.1 for his bare family and legal necessity has entered into an agreement for sale on 09-05-1998 and received entire consideration amount and performed the marriage of plaintiffs and defendant Nos.2, 3 and gone to the Neralagi, Taluk Sindagi for his lively hood. The defendant No.4 was and is always ready and willing to perform his part of contract and ready to take the register sale deed at his expenses. The defendant NO.4 is even now ready and willing to perform is part of contract and ready to take the sale deed at his expenses. The defendant No.4 is filing separate suit for specific performance contract for sale in respect of the suit property in view of filing suit by the defendant No.1 through his daughters. The suit of the plaintiff is not maintainable and plaintiffs are not entitle for share as the

suit properties is not the ancestral property of plaintiffs and defendant Nos.1 to 3. The defendant No.1 is absolute owner and he has got every right to sell the same to the defendant No.4. Hence, prays to dismiss the suit with cost.

10. **The case of the plaintiff in brief in O.S.No.169/2023 is as under:**

The suit property is an agricultural land bearing Sy.No.26/3, measuring 4 acres, 24 guntas, bounded on East: Village Boundary, West Land: Sy.No.24 and 27, North land: Sy.No.25, South: Land Sy.No.28, situated at Sadnapur (D) village, Taluk Jewargi, District Kalaburagi. The defendant was the owner and in possession of suit property and the name of defendant is entered in the ROR as of its owner and possessor.

11. It is case of the plaintiff that, the defendant was in need of money for his bare family and legal necessity i.e., for performance of marriage of his children and to discharge his antecedent debts. The defendant offered to sell the suit property to the plaintiff. The plaintiff agreed to purchase the suit property. After negotiation the

consideration amount of the suit property was fixed at Rs.13,000/- per acre and total 52,100/- is fixed. Both parties that the survey of suit property, is to be conducted and the consideration amount is to be paid as per the survey report.

12. It is further case of the plaintiff that, the plaintiff has paid Rs.20,000/- on 09-05-1998 and agreed to pay remaining balance consideration amount Rs.32,000/- after July 1998 and to get the sale deed registered when ever called upon by the defendant to do so. According the plaintiff paid Rs.32,000/- after July 1998 and to get the sale deed registered when ever called upon by the defendant to do so. According the plaintiff paid Rs.32,000/- after July 1998. The defendant after receiving balance consideration amount of Rs.32,000/- has agreed to execute the registered sale deed after preparing necessary document i.e., preparing survey sketch i.e., 11e, etc. There after mutated the suit property in the name of plaintiff by mutation No.24 dated 26-02-2015 as the plaintiff and defendant are the nearest brother and belongs to same caste and agreed to execute the register

sale deed if necessary as and when he is called upon to do so.

13. It is further case of the plaintiff that, the plaintiff is always ready and willing to perform his part of contract i.e., to get the register sale deed registered at his expenses. The plaintiff is even now ready and willing to perform his part of contract i.e., to get the register sale deed registered at his expenses as the plaintiff has paid consideration amount to the defendant.
14. It is further case of the plaintiff that, the period is not fixed in the agreement for sale dated 09-05-1998. The balance consideration amount is to be paid after July-1998 and the plaintiff has paid balance consideration amount of Rs.32,000/- to the defendant and the registered sale deed is to be executed by defendant as and when called upon by the plaintiff. Hence, the time is not essence of contract.
15. It is further case of the plaintiff that, since the defendant is not residing in the village Bilawar, Taluk Jewargi, as he has gone to the village Neeralagi, Taluk Sindagi which is native place of wife of defendant, the defendant always assuring to the plaintiff that he will execute the register

sale deed in favour of plaintiff. The plaintiff several times requested to the defendant personally and through the attesting witnesses then the defendant told that he has already got entered in the name of plaintiff in the ROR and he will come to the village and will execute the register sale deed after getting survey and other connected records. Finally when the plaintiff made a forcibly pleas for executing of sale deed in the month of March-2017 then the defendant has got filled a civil suit through his daughter against himself and other children and against the plaintiff on the file of Sr.Civil Judge, at Jewargi in OS No.97/2017 which is pending consideration. The defendant along with his supporters came upon the suit property and asserted his right of ownership over the suit property and denied to execute the register sale deed on 10-06-2019.

16. It is further case of the plaintiff that, in view of filing Civil suit by the daughter of defendant it has become clear that the defendant has no interest to execute the the sale deed in favour of plaintiff in respect of suit property hence, the plaintiff constrained to file this suit for specific performance of contract for sale or in the alternative to return of

consideration amount with damages. The above stated facts constitute the case of action arose to the plaintiff when the defendant has go filed a civil suit through his daughter Jyothi before this Court in OS No.97/2017 against himself, other children and plaintiff. The cause of action also arose on 10-06-2019 when the defendant came upon the suit property and asserted his title over the suit property and when he finally refused to execute the register sale deed of suit property as per the request made by plaintiff on 10-06-2019.

17. It is further case of the plaintiff that, the suit of plaintiff is valued as on the basis of consideration amount fixed in the agreement for Sale dated July 1998 Rs.52,100/- (Fifty Two thousand One Hundred) as per Section 41 of Karnataka Court and Suits Valuation Act and Court Fee of Rs.2,760/- is paid which is sufficient. The suit for the purpose of jurisdiction as per section 50 is valued at Rs.52,100/- (Fifty Two Thousand One Hundred), which is the consideration amount fixed in the agreement for Sale dated July 1998. With these pleadings the plaintiff prayed for decree the suit.

18. After institution of the suit in OS No.169/2023, the summons were served on defendant, defendant appeared through his counsel and filed his Written Statement.

19. **The written statement filed by the defendant is to the following effect:**

The averments of the plaint filed by the plaintiff are false, baseless and dismiss the suit with cost. The defendant not sale suit land and the suit land not ancestral property of plaintiff. The suit property is ancestral property of the defendant and join possession of him and his children. The plaintiff was created false document pertaining to the suit land. The plaintiff has not provided any justification for any action taken after 2017, when this document was already in existence.

20. It is further case of the defendant that, on the basis of the copy of document produced by the plaintiff has been written after taking the signatures of all the persons and any other signature in it is indicated below as the signature of the buyer. The specific survey number, hissa and boundaries have not been recorded in the said document. The amount in rupees has been altered in

figures and according to the document, there was an agreement to register the very next day after July 1998. However, after July 1998, until the defendant's children filed Suit No. 97/2017, the plaintiff took no action. Therefore, this is a document that is barred by the limitation.

21. It is further case of the defendant that, the document not executed by the defendant to the plaintiff. The false document is created document with the revenue officials. The question of Survey Sketch No. 11E does not arise and it does not bear any signature of the defendant. The plaintiff has not given any money to the defendant, nor has any receipt been executed in that regard. Further the plaintiff's plaint does not specify the date, the place, or in whose presence the money was allegedly paid. Since the present suit is barred by limitation, the plaintiff has no cause of action. Therefore, Paragraph 9 of the plaintiff's plaint is specifically denied. The Court fee paid on the fabricated document is not recognized under the law. It is also not binding on defendant No. 1. Therefore, in the interest of justice and equity it is just and proper to dismiss the suit of plaintiff to meet the end of justice.

22. Based on the pleadings of both the parties, the following issues are framed in **O.S.No.97/2017:-**

:: ISSUES ::

1. Whether the plaintiffs prove that they and defendant Nos.1 to 3 are the members of Hindu Undivided joint family?
2. Whether the plaintiffs further prove that suit land is the ancestral and joint family properties of themselves and defendant Nos.1 to 3 and they are in joint possession?
3. Whether the plaintiffs further prove that defendant No.3 got mutated his name in the revenue records relating to suit land illegally?
4. Whether the defendant No.4 proves that he acquired the rights over the suit land in pursuance of Agreement of Sale executed by defendant No.1 on 09-05-1998?
5. Whether the plaintiffs are entitled for the reliefs as sought for?
6. What order or decree?

ADDITIONAL ISSUES

1. Whether defendant No.1 proves that, suit is barred by limitation?
 2. Whether the defendant No.1 further proves that, suit is not properly valued and Court fee paid on the plaint is insufficient?
23. Based on the pleadings of both the parties, the following issues have been framed in **O.S.No.169/2023**.

:: ISSUES ::

1. Whether the plaintiff proves that, the defendant has executed an agreement of sale on 09-05-1998 agreeing to sale the suit schedule property in his favour for total consideration amount of Rs.52,100/- by receiving amount of Rs.20,000/-?
2. Whether the plaintiff proves that, he has always been ready and willing to perform his part of contract?
3. Whether the defendant proves that, suit is barred by limitation?

4. Whether the plaintiff is entitled for alternative relief as prayed for?
5. Whether the plaintiff is entitled for relief as specific performance of contract as prayed for?
6. What order or decree?

RECASTED ISSUE NO.1

1. Whether the plaintiff proves that, the defendant has executed an agreement of sale on 09-05-1988 agreeing to sell the the suit property in his favour for total consideration amount of Rs.52,100/- by receiving earnest money of Rs.20,000/- and plaintiff had also paid Rs.32,000/- to the defendant?
24. In order to prove the issues in OS No.97/2017 the plaintiff No.1 has got examined herself as P.W.1 and got marked the documents in OS No.97/2017 as per Ex.P.1 to P.21. On the other hand, the defendant No.4 got examined himself as D.W.1 and got marked the documents in OS No.97/2017 as per Ex.D.1 to D.6.

25. In order to prove the issues in OS No.169/2023 the plaintiff Basawaraj S/o Ayyappa Hugar got examined himself as P.W.1 and also examined Two witnesses on his behalf as PW.2 Somnathayya and PW.3 Bhimaraya Asagi and got marked the documents as per Ex.P.1 to Ex.P.21. On the other hand, the defendant Shantappa S/o Basappa Hugar got examined as D.W.1 and not produced the document behalf of him.
26. Heard the arguments on both sides.
27. My answers to the above issues in OS No.97/2017 are as here under:

ANSWERS

ISSUE No.1	: In Affirmative
ISSUE No.2	: In Affirmative
ISSUE No.3	: In Affirmative
ISSUE No.4	: In Negative
ISSUE No.5	: In Affirmative
ADDITIONAL ISSUE No.1	: In Negative
ADDITIONAL ISSUE No.2	: In Negative
ISSUE No.6	: In As per final order for the following

28. My answers to the above issues in OS No.169/2023 are as here under:

ANSWERS

ISSUE No.1	:	In Affirmative
ISSUE No.2	:	In Affirmative
ISSUE No.3	:	In Negative
ISSUE No.4	:	In Affirmative
ISSUE No.5	:	In Negative
Recasted ISSUE No.1	:	In Affirmative
ISSUE No.6	:	In As per final order for the following

:: REASONS ::

29. **Issue No.1 to 5 and Addl. Issue No.1 and 2 in O.S.No.97/2017 and Issue No.1 to 5 and Recasted Issue No.1 in O.S.No.169/2023:** Since these issues are interlinked they are taken up together for discussion in order to avoid repetition of facts and evidence.
30. It is the claim of the plaintiffs in OS No.97/2017 that, the plaintiffs No.1 and 2 are the daughters of the defendant No.1 and defendants No.2 and 3 the real brothers to plaintiffs and sons of the defendant No.1. The suit properties are all ancestral properties and the plaintiffs and defendant Nos.1 to 3 are the joint owners and possessors. The defendant No.4 is nowhere concerned to

the family of plaintiffs and defendants No.1 to 3 and the suit property.

31. It is further claim of the plaintiffs that, the defendant No.4 without there being any legal title, illegally, surreptitiously and clandestinely got mutated his name, in the ROR in respect of the suit property in his name with the active support of the unscrupulous Revenue Officials on the false and bogus concocted documents behind the back of the plaintiffs defendant No.1 to 3 and plaintiffs. The father of plaintiffs is the only son to his father namely Basappa.
32. It is further claim of the plaintiffs that, the plaintiffs approached the defendant Nos.1 to 3 and demanded for legitimate 1/5th share each by metes and bounds on 9th day of April, 2017, in respect of suit schedule property, the defendant No.1 postponed the same by one or another pretext and refused to give the share of the plaintiffs, then only plaintiff hurried to the offices concerned and obtained the certified copies, the officials not issued the certified copies of once, they issued in different dates. The defendant No.4 as to dupe the legitimate rights of the plaintiffs and defendants Nos.2 and 3 in collusion with the

unscrupulous Revenue Officials got created Mutation entry in his name. The above facts constitute the cause of action and immediate cause arose to file the suit on 9th day of April, 2017, when the defendant Nos.1 to 3 refused for the same.

33. It is claim of the plaintiff in O.S.No.169/2023 that, the defendant was the owner and in possession of suit property and the name of defendant is entered in the ROR as of its owner and possessor. The defendant was in need of money for his bare family and legal necessity i.e., for performance of marriage of his children and to discharge his antecedent debts. The defendant offered to sell the suit property to the plaintiff. The plaintiff agreed to purchase the suit property. After negotiation the consideration amount of the suit property was fixed at Rs.13,000/- per acre and total Rs.52,100/- is fixed. Both parties that the survey of suit property, is to be conducted and the consideration amount is to be paid as per the survey report.
34. It is further claim of the plaintiff that, the plaintiff has paid Rs.20,000/- on 09-05-1998 and agreed to pay remaining

balance consideration amount Rs.32,000/- after July 1998 and to get the sale deed registered when ever called upon by the defendant to do so. According the plaintiff paid Rs.32,000/- after July 1998 and to get the sale deed registered when ever called upon by the defendant to do so. According the plaintiff paid Rs.32,000/- after July 1998. The defendant after receiving balance consideration amount of Rs.32,000/- has agreed to execute the registered sale deed after preparing necessary document i.e., preparing survey sketch i.e., 11e, etc. There after mutated the suit property in the name of plaintiff by mutation No.24 dated 26-02-2015 as the plaintiff and defendant are the nearest brother and belongs to same caste and agreed to execute the register sale deed if necessary as and when he is called upon to do so.

35. It is further claim of the plaintiff that, the plaintiff is always ready and willing to perform his part of contract i.e., to get the register sale deed registered at his expenses. The plaintiff is even now ready and willing to perform his part of contract i.e., to get the register sale deed registered at his

expenses as the plaintiff has paid consideration amount to the defendant.

36. It is further claim of the plaintiff that, the period is not fixed in the agreement for sale dated 09-05-1998. The balance consideration amount is to be paid after July-1998 and the plaintiff has paid balance consideration amount of Rs.32,000/- to the defendant and the registered sale deed is to be executed by defendant as and when called upon by the plaintiff. Hence, the time is not essence of contract.
37. It is further claim of the plaintiff that, since the defendant is not residing in the village Bilawar, Taluk Jewargi, as he has gone to the village Neeralagi, Taluk Sindagi which is native place of wife of defendant, the defendant always assuring to the plaintiff that he will execute the register sale deed in favour of plaintiff. The plaintiff several times requested to the defendant personally and through the attesting witnesses then the defendant told that he has already got entered in the name of plaintiff in the ROR and he will come to the village and will execute the register sale deed after getting survey and other connected records. Finally when the plaintiff made a

forcibly pleas for executing of sale deed in the month of March-2017 then the defendant has got filled a civil suit through his daughter against himself and other children and against the plaintiff on the file of Sr.Civil Judge, at Jewargi in OS No.97/2017 which is pending consideration. The defendant along with his supporters came upon the suit property and asserted his right of ownership over the suit property and denied to execute the register sale deed on 10-06-2019.

38. It is further claim of the plaintiff that, in view of filing Civil suit by the daughter of defendant it has become clear that the defendant has no interest to execute the the sale deed in favour of plaintiff in respect of suit property hence, the plaintiff constrained to file this suit for specific performance of contract for sale or in the alternative to return of consideration amount with damages. The above sated facts constitute the case of action arose to the plaintiff when the defendant has go filed a civil suit through his daughter Jyothi before this Court in OS No.97/2017 against himself, other children and plaintiff. The cause of action also arose on 10-06-2019 when the defendant came upon the suit property and asserted his title over the

suit property and when he finally refused to execute the register sale deed of suit property as per the request made by plaintiff on 10-06-2019.

39. The plaintiffs in order to prove their contention got examined the plaintiff No.1 as PW.1 in OS No.97/2017 , who reiterated the plaint averments in her examination-in-chief affidavit and got marked in all 21 documents as per Ex.P.1 to Ex.P.21. Among them, Ex.P.1 to Ex.P.6 are the RTC extracts pertaining to the land Sy.No.26/3, for the year 1963-64 to 1992-93, total measuring 2 acres 24 guntas, stands in the name of Basappa S/o Ayyappa. Ex.P.7 is the RTC extracts pertaining to the land Sy.No.26/3, for the year 1993-94 to 1997-98, total measuring 4 acres 24 guntas, stands in the name of Basappa S/o Ayyappa. Ex.P.8 is the RTC extracts pertaining to the land Sy.No.26/3, for the year 1998-99 to 2002-03, total measuring 4 acres 24 guntas, stands in the name of Shantappa S/o Basappa. Ex.P.9 to Ex.P.11 are the RTC extracts pertaining to the land Sy.No.26/3, for the year 2015-16 to 2017-2018, total measuring 4 acres 24 guntas, stands in the name of Basavaraj S/o Ayyappa. Ex.P.12 is the Mutation Register. Ex.P.13 is certified copy

of Form No.21. Ex.P.14 is certified copy of Mutation Register. Ex.P.15 is certified copy of Checklist. Ex.P.16 is certified copy of Release Deed. Ex.P.17 is the certified copy of Relinquishment Deed. Ex.P.18 is certified copy of Family Tree. Ex.P.19 is the RTC extracts pertaining to the land Sy.No.26/*/3, for the year 2014-2015, total measuring 4 acres, 24 guntas, stands in the name of Shantappa S/o Basappa. Ex.P.20 certified copy of Tonch map. Ex.P.21 is the village map of Sadanapur.

40. To prove his contention, the plaintiff in OS No.169/2023 got examined himself as PW.1, who reiterated the plaint averments in his examination-in-chief affidavit and got marked in all 21 documents as per Ex.P.1 to Ex.P.21. Among them, Ex.P.1 and Ex.P.2 are the RTC extracts pertaining to the land Sy.No.26/3, for the year 1983-84 to 1992-93, total measuring 2 acres 24 guntas, stands in the name of Basappa S/o Ayyappa. Ex.P.3 is the RTC extracts pertaining to the land Sy.No.26/3, for the year 1993-94 to 1997-98, total measuring 4 acres 24 guntas, stands in the name of Basappa S/o Ayyappa. Ex.P.4 to Ex.P.15 are the RTC extracts, pertaining to the land Sy.No.26/3, for the year 1998-99 to 2013-2014, total

measuring 4 acres 26 guntas, stands in the name of Shantappa S/o Basappa. Ex.P.16 to Ex.P.20 are the RTC extracts pertaining to the land Sy.No.26/3, for the year 2014-2015 to 2018-2019, total measuring 4 acres, 24 guntas, stands in the name of Basavaraj S/o Ayyappa. Ex.P.21 is the copy of Sale deed for the year 1998.

41. On the other hand it is the case of the defendant No.4 in OS NO.97/2017 that, the defendant No.1 being the absolute owner and in possession of the suit property has entered into an agreement for sale with the defendant No.4, the defendant No.1 has executed a deed of agreement for sale on Rs.10 rupees of stamp. The consideration amount of the suit properties fixed at Rs.52,100/- and Rs.20,000/- received by defendant No.1 from the defendant No.4. The defendant No.1 agreed to receive the Rs.32,000/- after July 1998 and executed the register sale deed whenever he is called upon the him to execute the sale deed after July 1998. The said deed of agreement has been attesting witnesses by name Gundanna, Bhimaraya, Somanath and Malanna. In pursuance of said deed of agreement for sale dated 09-05-1998 the defendant No.1 has received balance

consideration amount of Rs.32,000/- from the defendant No.4 and the defendant No.1 has got entered the name of defendant No.4 in the ROR and further assured the defendant No.4 that he will execute the register sale deed whenever called upon to him by the defendant No.4. The defendant No.4 on the assurance of defendant NO.1 to execute the register sale deed of suit property in his favour he kept quiet till the date of filing the suit by the daughters of defendant No.1 against the defendants. The present suit is filed by the defendant No.1 through his daughters only to avoid the execution of the sale deed by the defendant No.1.

42. It is further case of the defendant No.4 in OS NO.97/2017 that, the plaintiffs and defendant Nos.1 to 3 are colluded and file the false suit to deprive the legitimate rights of the defendant No.4 on the basis of agreement for sale executed by defendant No.1 in favour of defendant No.4. The plaintiffs and defendant No.1 to 3 have got knowledge about the execution of agreement for sale in favour of defendant No.4 in respect of the suit property.

43. It is further case of the defendant No.4 in OS NO.97/2017 that, the plaintiffs have filed false suit and interim application for not to alienate. The plaintiffs are not entitle for any relief much less of temporary injunction order. The plaintiffs and defendant Nos.1 to 4 belongs to the same caste and nearest brothers in relation, hence the defendant No.4 to help the family of defendant No.1 has purchased the suit property. The defendant No.1 for his bare family and legal necessity has entered in to an agreement for sale on 09-05-1998 and received enter consideration amount and performed the marriage of plaintiffs and defendant Nos.2, 3 and gone to the Neralagi, Taluk Sindagi for his lively hood. The defendant No.4 was and is always ready and willing to perform his part of contract and ready to take the register sale deed at his expenses. The defendant No.4 is even now ready and willing to perform is part of contract and ready to take the sale deed at his expenses. The defendant No.4 is filing separate suit for specific performance contract for sale in respect of the suit property in view of filing suit by the defendant No.1 through his daughters. The suit of the plaintiff is not maintainable and plaintiffs are not entitle for

share as the suit properties is not the ancestral property of plaintiffs and defendant Nos.1 to 3. The defendant No.1 is absolute owner and he has got every right to sell the same to the defendant No.4.

44. In order to prove the same, the defendant No.4 of O.S.No.97/2017 got examined himself as D.W.1 and got marked the documents as per Ex.D.1 to Ex.D.6. Among them, Ex.D.1 is the certified copy of sale deed dated 09-05-1998. Ex.D.2 is the certified copy of Order Sheet in OS No.81/2019. Ex.D.3 is the certified copy of plaint in OS No.81/2019. Ex.D.4 is the RTC extract pertaining to the land Sy.No.26/3, for the year 1993-94 to 1997-98, total measuring 4 acres, 24 guntas, stands in the name of Basappa S/o Ayyappa. Ex.D.5 is the RTC extract pertaining to the land Sy.No.26/3, for the year 2017-2018, total measuring 4 acres, 24 guntas, stands in the name of Basavaraj S/o Ayyappa. Ex.D.6 is the Mutation extract.
45. On the other hand it is the case of the defendant in OS No.169/2023 that, the defendant not sale the suit land and the suit land not ancestral property of defendant. The suit property is ancestral property of the defendant and joint

possession of him and his children. The plaintiff was created false document pertaining to the suit land. The plaintiff has not provided any justification for any action taken after 2017, when this document was already in existence.

46. It is further case of the defendant in OS No.169/2023 that, on the basis of the copy of document produced by the plaintiff has been written after taking the signatures of all the persons and any other signature in it is indicated below as the signature of the buyer. The specific survey number, hissa and boundaries have not been recorded in the said document. The amount in rupees has been altered in figures and according to the document, there was an agreement to register the very next day after July 1998. However, after July 1998, until the defendant's children filed Suit No. 97/2017, the plaintiff took no action. Therefore, this is a document that is barred by the limitation.

47. It is further case of the defendant in OS No.169/2023 that, the document not executed by the defendant to the plaintiff. The false document is created document with the

revenue officials. The question of Survey Sketch No. 11E does not arise and it does not bear any signature of the defendant. The plaintiff has not given any money to the defendant, nor has any receipt been executed in that regard. Further the plaintiff's plaint does not specify the date, the place, or in whose presence the money was allegedly paid. Since the present suit is barred by limitation, the plaintiff has no cause of action. It is also not binding on defendant No.1. In order to prove the same, the defendant in O.S.No.169/2023 got examined himself as DW.1 and not marked any documents.

48. Upon being carefully going through the pleadings of parties in OS No.97/2017, there is no dispute regarding relationship between the plaintiffs and defendant No.1 to 3. The plaintiffs in OS No.97/2017 claiming that, the property is ancestral property and the plaintiffs and defendant No.1 to 3 are joint owners and possessors. In order to prove the same the plaintiffs have relied on Ex.P.1 to Ex.P.15. On perusal of the same it shows that Ex.P.1 and Ex.P.2 are the RTC extracts pertaining to the land Sy.No.26/3, for the year 1983-84 to 1992-93, total measuring 2 acres 24 guntas, stands in the name of

Basappa S/o Ayyappa who is the grand father of plaintiffs.

Ex.P.3 is the RTC extracts pertaining to the land Sy.No.26/3, for the year 1993-94 to 1997-98, total measuring 4 acres 24 guntas, stands in the name of Basappa S/o Ayyappa who is the grand father of plaintiffs .

Ex.P.4 to Ex.P.15 are the RTC extracts, pertaining to the land Sy.No.26/3, for the year 1998-99 to 2013-2014, total measuring 4 acres 26 guntas, stands in the name of Shantappa S/o Basappa who is the defendant No.1. On careful perusal of these documents, one thing is clear that suit property is the ancestral property of plaintiff and defendant No.1 to 3.

49. It is significant to note here that , the entire burden lies on the defendant No.4 in OS No.97/2017 and plaintiff in OS No.169/2023 to prove his case with all preponderance of probabilities. It is his case that the defendant by name Shantappa S/o Basappa Hugar, was in need of money for his bare family and legal necessity i.e., for performance of marriage of his children and to discharge his antecedent debts, he offered to sell the suit property to the plaintiff in OS No.169/2023. After negotiation the consideration amount of the suit property was fixed at Rs.13,000/- per

acre and totally 52/100 is fixed. Further the plaintiff Basawaraj S/o Ayyappa has paid Rs.20,000/- on 09-05-1998 and agreed to pay remaining balance consideration amount Rs.32,000/- after July 1998 and agreed to pay remaining balance consideration amount Rs.32,000/- after July 1998 and to get the sale deed registered when ever called upon by the defendant Shantappa S/o Basappa Hugar to do so. The plaintiff is always ready and willing to perform his part of contract i.e., to get the register sale deed registered at his expenses as the plaintiff has paid entire consideration amount to the defendant. The period is not fixed in the agreement for sale dated 09-05-1998. The balance consideration amount is to be paid after July-1998 and plaintiff has paid balance consideration amount of Rs.32,000/- to the defendant and the registered sale deed is to be executed by defendant as and when called upon by the plaintiff, hence the time is not essence of contract. But, DW.1 in OS No.97/2017 in his cross-examination has admitted that, the plaintiffs are the daughters of shantappa. Further he admitted that ದಿನಾಂಕ 09-05-1998 ರಂದು ದಾವಾ ಸ್ವತ್ತು ಬಸಪ್ಪ ತಂದೆ ಅಯ್ಯಪ್ಪರವರ ಹೆಸರಿನಲ್ಲಿತ್ತು ಎಂದರೆ ನಿಜ. ದಿನಾಂಕ 09-05-1998 ರಂದು ಕ್ರಯದ

ಕಾರಾರು ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ ಎಂದರೆ ನಿಜ. From these admission of the DW.1 clearly goes to show that, the defendant No.4 aware about the suit property is an ancestral property of plaintiffs and defendant Nos.1 to 3 in OS No.97/2017.

50. Further I have carefully perused the cross-examination of DW.1. During his cross-examination the DW.1 admitted that, 1997 ವರೆಗೆ 2 ಎಕರೆ 24 ಗುಂಟೆ ಜಮೀನು ಮಾತ್ರ ಬಸಪ್ಪರವರ ಹೆಸರಿನಲ್ಲಿತ್ತು ಎಂದರೆ ನಿಜ, ದಾವೆ ಸಲ್ಲಿಸುವ ಸಮಯದಲ್ಲಿ ದಾವಾ ಸ್ವತ್ತಿನ ವಿಸ್ತೀರ್ಣ 2 ಎಕರೆ 24 ಗುಂಟೆ ಆಗಿತ್ತು ಎಂದರೆ ನಿಜ. ದಿನಾಂಕ 09-06-1998 ರಂದು 1 ನೇ ಪ್ರತಿವಾದಿ ಶಾಂತಪ್ಪರವರ ಹೆಸರಿಗೆ 2 ಎಕರೆ 24 ಗುಂಟೆ ಎನ್ನುವುದನ್ನು ತೆರವು ಮಾಡಿ 4 ಎಕರೆ 24 ಗುಂಟೆ ಎಂದು ನಮೂದಿಸಲಾಗಿರುತ್ತದೆ ಎಂದರೆ ನಿಜ. ನನ್ನ ಕ್ರಯದ ಕಾರಾರು ಆಗುವ ಸಮಯದಲ್ಲಿ ದಾವಾ ಸ್ವತ್ತಿನ ವಿಸ್ತೀರ್ಣ 2 ಎಕರೆ 24 ಗುಂಟೆ ಮಾತ್ರ ಇತ್ತು ಎಂದರೆ ನಿಜ. On perusal of the EX,P8 RTC extract of the suit property from the year 1998 to 2003, it shows that the land Sy No.26/3 measuring 4 acres 24 guntas stands in the name of Shantappa. Further in his cross-examination the DW.1 deposed that, ಒಂದನೇ ಪ್ರತಿವಾದಿ ಬರೆದುಕೊಟ್ಟಿದ್ದಾನೆ ಎಂದು ಹೇಳುವ ಹಕ್ಕು ಬಿಡುಗಡೆ ಪತ್ರವನ್ನು ನೋಂದಣಿ ಮಾಡಿಸಿರುವುದಿಲ್ಲ. ಅದನ್ನು 4 ವರ್ಷಗಳ ಹಿಂದೆ ಬರೆಸಿಕೊಂಡಿರುತ್ತೇನೆ. ಸದರಿ ಪತ್ರಕ್ಕೆ 1 ನೇ ಪ್ರತಿವಾದಿಯ ಮಕ್ಕಳು ಸಹಿ ಮಾಡಿರುವುದಿಲ್ಲ. The DW.1 deposed that, the defendant No.1 Shantappa has executed the

relinquishment deed in his favour, but this contention not has not stated in his plaint in OS No.163/ 2023 not in his written statement filed in Os No.97/2017. From this one thing is clearly goes to show the conduct of the DW,1 Basavaraj. More over there is no recital in respect of Survey number in the Ex.P21 Agreement of sale.

51. PW.1 Basavaraj S/o Ayyappa in OS No.169/2023 in order to prove his contention got examined two witnesses as PW.2 and PW.3. PW.2 and PW.3 are attesting witnesses to the agreement of sale. PW.2 and PW.3 who filed their examination-in-chief affidavits and supported the case of the plaintiff Basavaraj. I would like to drawn my attention towards the Ex.P.21 produced in OS No.169/2023, Ex.P.21 Original Sale Agreement for the year 1998, The signatures of attesting witnesses PW.2 and PW.3 are appeared and marked as Ex.P.21 (d) and (c).

52. For the above circumstances, passing of decree for specific performance of contract is purely under the discretion of the Court u/s 20 of Specific Relief Act. Before granting such a kind of relief, the Court should see comparative hardship of both parties and also their

conduct has to be considered. Further it should be seen whether the defendant in OS No.169/2023 will be put to hardship which he or she has not foreseen, at the time of entering into agreement. Moreover, the DW1 of OS No.163/2023 by name Shantappa in his cross-examination clearly deposed that, ನಮಗೆ ಕೊಡಬೇಕಾಗಿರುವ ಹೊಲದ ಎಲ್ಲಾ ಹಣ ನಮಗೆ ಮುಟ್ಟಿದೆ ಎಂದರೆ ನಾನು ಹೊಲವನ್ನು ಮಾರಿಲ್ಲ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ. ನೀವು ಬೇರೆ ಊರಿನಲ್ಲಿ ಇರುತ್ತಿರುವುದರಿಂದ ನಿಮ್ಮ ಮಕ್ಕಳ ಮದುವೆ ಖರ್ಚು ಮತ್ತು ವಿದ್ಯಾಭ್ಯಾಸದ ಖರ್ಚಿಗಾಗಿ ಹೊಲವನ್ನು ಮಾರಿದ್ದೀರಿ ಎಂದರೆ ಹೊಲವನ್ನು ಮಾರಿಲ್ಲ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ. From this version of DW1 clearly reveals that, he did not deny about receiving of consideration amount, but he has taken the contention that, he has not sold the suit property in favour of plaintiff Basavaraj. Further I would like to draw my attention towards Ex.P21 agreement of sale. On perusal of the same it shows that, the defendant No.1 Shantappa has need of money for his family necessity he has executed the agreement of sale in favour of plaintiff Basavaraj. From the above one thing is clear that, the defendant has put his signature on Ex.P21. Here it is pertinent to note that the signature was also marked in the presence of the defendant Shantappa and his counsel. At the time of

marking of the signatures, the defendant or counsel for defendant has not raised any objection in respect of marking of the signature of the defendant and witnesses. Further the defendant has not taken any action against the plaintiff. Further there is no hurdle for the defendant to registered the case against the plaintiff before the police or competent court. This itself goes to show that, the defendant Shantappa has executed an agreement of sale in favour of plaintiff.

53. Here it is significant to note that at the time of execution of the agreement of sale by the defendant Shantappa infavour of plaintiff Basavaraj S/o Ayyappa. the suit property not divided between the plaintiffs and defendant No.1 to 3 in OS,No 97/2017. Moreover the defendant Shantappa has no right to execute any documents in favour of any person in respect of suit property. Therefore, if this court declined from granting the main relief of specific performance of contract in favour of the plaintiff in OS No.169/2023 then he may not be put to any such hardship or inconvenience rather than the plaintiffs in OS No.97/2017. Therefore, considering all the facts and circumstances of case this Court is of the opinion that, it is

necessary to pass an alternative relief of refund of advance money with interest of Rs.6% per annum.

54. The defendant No.4 in OS No.97/2017 has taken the specific contention that, suit is barred by limitation and suit is not properly valued and court fee paid on the plaint is insufficient. In order to prove the same the defendant No.4 has not lead any conveyancing evidence and not produced any documentary evidence.
55. The defendant No.4 in OS No.169/2023 has taken the specific contention that, suit is barred by limitation. On perusal of the Ex.P21 agreement of sale it reveals that no time is fixed for execution of register sale deed by the defendant. The general rule with respect to immovable property is, time is not essence of contract. Hence taking into consideration the material available on record, this court is the opinion that, the suit filed by the plaintiff is not barred by limitation.
56. After considering all these facts and circumstances of the case, this Court is of opinion that the plaintiffs in OS No.97/2017 have proved that the suit property is agricultural land bearing Sy.No.26/3, total measuring 4

acres 24 guntas, situated at Sadanapur (D) Circel Ijer, Taluk Jewargi, District Kalaburagi, bounded by East village Boundary, West Land Sy.No.24 and 27, North: Land Sy.No.25 and South: Land Sy.No.28 is the ancestral and joint family properties of plaintiffs and defendant No.1 to 3 in OS No.97/2017. **Therefore, I proceed to answer Issue Nos.1 to 3 and 5 in affirmative, Issue No.4 and additional issue No.1 and 2 are negative in OS No.97/2017.**

57. Also the evidence on record reveals that, the plaintiff in OS No.169/2023 has proved that the defendant Shantappa S/o Basappa has executed the agreement of sale as per Ex.P.21 in favour of plaintiff in OS No.169/2023 for the consideration amount of Rs.52,100/-. The suit property is the ancestral and joint family property of the defendant Shantappa and he has no exclusive right over the suit property to execute any documents in favour of any one without consent of his family members. But the defendant by name Shantappa S/o Basappa has executed the Agreement of sale in favour of plaintiff in OS No.169/2023 in respect of suit schedule property, therefore, the defendant Shantappa S/o Basappa is liable

to refund the said amount to the plaintiff in OS No.169/2023 with interest. **Therefore, I proceed to answer Issue No.1, 2 and 4 and recasted issue No.1 in affirmative and Issue No.3 and 5 negative OS No.169/2023.**

58. **ISSUE No.6 both case:-** In view of reasons on issues No.1 to 5 and Additional issues Nos.1 and 2 of OS No.97/2017 and Issues Nos.1 to 5 and Re-casted Issue No.1 of OS No.169/2023, I proceed to pass the following:

COMMON ORDER

The suit of the Plaintiffs in O.S.No.97/2017 is hereby decreed with cost.

The suit of the plaintiff in OS No.169/2023 is hereby partly decreed with cost.

The plaintiffs in OS No.97/2017 are entitled for 1/5th each share in the suit land bearing Sy.No.26/3, total measuring 4 acres 24 guntas, situated at Sdanapur (D),

Ijeri village, Taluk Jewargi, District
Kalaburagi.

Consequently, the plaintiff in OS
No.169/2023 is entitled for refund of
Rs.20,000/- **(Twenty Thousand only)**
from the defendant with interest @
Rs.6% per annum from the date of
agreement till realization.

Draw preliminary decree
accordingly in OS No.97/2017

Draw decree accordingly in
OS No.169/2023

*(Dictated to the Stenographer directly on computer, corrected by me
and then pronounced by me in open court on this the 25th Day of July,
2026).*

(SMT. TAYYABA SULTANA)
Sr. Civil Judge & JMFC,
Jewargi

ANNEXURE**IN OS No.97/2017****List of witnesses examined on behalf of the Plaintiffs:**

P.W.1 : Jyoti W/o Hanamantraya

List of exhibits marked on behalf of the Plaintiffs:

Ex.P.1 to 8 : C/C of RTC extracts

Ex.P.9 to 11 : RTC extracts

Ex.P.12 : Mutation extract

Ex.P.13 : Form No.21

Ex.P.14 : Mutation extract

Ex.P.15 : Tapasana Patti

Ex.P.16 and 17 : Request letters

Ex.P.18 : Family pedigree

Ex.P.19 : RTC extract

Ex.P.20 : Tonch Map

Ex.P.21 : Village Map

List of witnesses examined on behalf of the Defendants:

D.W.1 : Basavaraj S/o Ayyappa

List of exhibits marked on behalf of the Defendants:

Ex.D.1 : C/C of Agreement of Sale dated 09-05-1998

Ex.D.2 : C/C of the order sheet in OS No.81/2019

Ex.D.3 : C/C of the plaint in OS No.81/2019

Ex.D.4 : C/C of the RTC extracts

Ex.D.5 : RTC extracts

Ex.D.6 : Mutation extracts

ANNEXURE**IN OS No.169/2023****List of witnesses examined on behalf of the Plaintiffs:**

P.W.1 : Basavaraj S/o Ayyappa Hugar
P.W.2 : Somanathayya S/o Karabasayya
P.W.3 : Bhimaraya Asagi S/o Hanamantraya Hugar

List of exhibits marked on behalf of the Plaintiffs:

Ex.P.1 to 4 : C/C of RTC extracts
Ex.P.5 to 20 : RTC extracts
Ex.P.21 : Original Agreement of sale dated 09-05-1998
Ex.P.21(a) : Signature of Shantappa
Ex.P.21(b) : Signature of Mallanna
Ex.P.21(c) : Signature of Bhimaraya
Ex.P.21(d) : Signature of Somanath
Ex.P.21(e) : Signature of Mallanna
Ex.P.21(f) : Signature of Shivaputrappa

List of witnesses examined on behalf of the Defendants:

D.W.1 : Shantappa S/o Basappa Hugar.

List of exhibits marked on behalf of the Defendants:

-Nil-

Senior Civil Judge & JMFC
Jewargi.