



**THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
VIRAJPET.**

Dated this the 25th day of June, 2026.

:PRESENT:

Sri. Manjunatha R, **B.A.L, LL.B.**
Senior Civil Judge & JMFC, Virajpet.

O.S.No.2/2021

PLAINTIFF:-

Smt. M.M.Jayalaxmi.
W/o. C.M. Devaiah,
Aged about 63 years,
R/o. Kallubane,
Arji Village & Post.
Virajpet Taluk,
Kodagu District.

(By Sri.M.A.Kiran. Adv.,)

-Vs-

DEFENDANT:-

Poolanda.N.Uthaiah,
S/o. late Nanaiah,
Aged 74 years.
R/o. Appayya Swamy Road,
Udaya Nivas,
Virajpet Town & Post,
Virajpet Taluk,
Kodagu District.

(By Sri.B.S.Pushparaj, Adv.,)

Nature of the Suit : Recovery of Money

Date of filing : 05.01.2021

Date of Commencement of
record of evidence : 12.10.2023

Date of closing evidence : 27.04.2026



Date on which the
Judgment is pronounced : 25.06.2026

Duration of suit : Year/s Month/s day/s
05 05 20

Sd/-xxx
(Manjunatha. R),
Senior Civil Judge & JMFC,
Virajpet.

-: J U D G M E N T:-

The plaintiff has filed this suit against the defendant to recover money of Rs.10,06,379/- with interest at 9% p.a from the date of suit till realization and for such other reliefs.

2. The crux of the plaintiff's case in brief is as follows:- The plaintiff is a retired Government Teacher, out of her retirement benefits she intended to purchase a residential house. The defendant was agreed to sell his residential house premises situated in Sy.No.44/2C, measuring 2½ cents i.e., 703 sq.ft. at Block No.2 in Appayya Swamy road, Virajpet town, Kodagu District. After deliberation the defendant agreed to sell his property for total sale consideration of Rs. 26,00,000/-. Likewise, the plaintiff also agreed to purchase it. Accordingly, both are entered into an agreement of sale dated 11.07.2017 and under the said agreement of sale plaintiff paid Rs.7,70,000/- as advance sale consideration amount. The defendant



acknowledge the receipt of said amount by endorsing on it. The defendant has agreed to execute registered sale deed in-favour of plaintiff on or before 15.01.2018. The plaintiff was ever ready and willing to perform her part of contract having balance sale consideration amount. After some discussion and deliberations held between the plaintiff and defendant in the presence of elders, the defendant pleaded guilty under the guise that the residential premises is under repair, leakage, cracked and in dilapidated conditions. Hence, it requires major repairs and all certain repairs made he will sell off the same to the plaintiff. Believing the version of the same, defendant has agreed for his pretendeness. Due to shock and dismay, the defendant with an eye to grab money by wrongful means, cheated the plaintiff. The plaintiff was under severe ill health and taking treatment for the same. Hence, she was not in a position to contact her advocate and to sue against defendant within time. As per the terms of agreement of sale the defendant failed to execute registered sale deed in-favour of plaintiff in respect of suit schedule property. Thereby the defendant has violated the terms of the agreement of sale with an intention to grab money. Hence, the plaintiff constrained to file this suit.

3. In pursuance of receipt of suit summons the defendant entered his appearance through his counsel and filed written statement, wherein he has admitted due execution of



agreement of sale and receipt of Rs.7,70,000/- as advance sale consideration amount from the plaintiff under the agreement of sale. The plaintiff was never ready and willing to perform her part of contract. The defendant never committed any illegality on his part and also not tried to grab money. The defendant being an absolute owner of residential premises has agreed to sell it for his medical treatment, as he was suffering from cardiac disease. The plaintiff and her men after ascertaining the title and physical verification entered into an agreement of sale and paid Rs.7,70,000/- in phased manner. The defendant is ever ready and willing to perform his part of contract. But the plaintiff did not come forward to get the sale deed. The plaintiff has not approached the Court with clean hands and he has cheated the plaintiff. The defendant is residing in the house premises and it is in good condition. It requires no such major repairs as stated by the plaintiff. The plaintiff is trying to wriggle out the contract by stating unwarranted reasons. The defendant is ever ready to execute and register valid sale deed, if the plaintiff's pay the balance consideration amount. The defendant has repaid a sum of Rs.2,50,000/- to the plaintiff out of the advance sale consideration amount received by him. Hence, he is ready to pay the received balance amount if he able to sell the agreement schedule property to the prospective purchasers. The suit has no merit. The plaintiff ought to have file the suit for the relief of Specific Performance and not for money



recovery. The plaintiff is guilty of suppression of facts. Hence prays for dismissal of suit.

4. Based on the pleadings of the parties, my predecessor in office has framed the following issues :-

1. Whether the plaintiff proves that the defendant has executed sale agreement dated 11.07.2017 agreeing to sell the suit property to the Plaintiff for sale consideration of Rs.26,00,000/-?
2. Whether the plaintiff further proves that advance money of Rs.7,70,000/-has been paid to the defendant at the time of agreement towards part performance of contract?
3. Whether the plaintiff is entitled to amount of Rs.10,06,379/- with interest 9% p.a.?
4. Whether the defendant proves that he has repaid amount of Rs.2,50,000/- out of the sale consideration to the plaintiff?
5. Whether the plaintiff is entitled to the relief as prayed for?
6. What order or decree?

5. In order to substantiate the case of the plaintiff, the plaintiff got examined herself as PW.1 and got marked 6 documents at Ex.P.1 to 6. Ex.P-7 is confronted through DW.1 in his cross examination. Similarly the defendant got examined himself as DW.1 but he did not produce any documents on his behalf.



6. Heard the arguments of learned counsel for plaintiff and defendant.

7. On perusal of the arguments canvassed by the rival counsels and on perusal of oral as well as documentary proof, my findings to the above Issues are as under:-

Issue No.1:-	In the Affirmative.
Issue No.2:-	In the Affirmative.
Issue No.3:-	Partly in the Affirmative.
Issue No.4:-	In the Affirmative.
Issue No.5:-	Partly in the Affirmative.
Issue No.6:-	As per the final order for the following:

:-: R E A S O N S:-

8. ISSUE Nos.1 and 2:- These issues are taken up together for consideration since they are inter linked with each other and for better appreciation of material evidence placed on record by the parties to the suit.

9. No doubt I have already set out the pleadings of both side at the inception of judgment, just to make a beginning I would like to narrate their rival contentions in few sentences. It is the specific case of the plaintiff that, the defendant being an absolute owner of residential house situated in Sy.No.44/2C, block No. 2 of Virajpet Town, entered into an agreement of sale dated 11-07-2017 agreeing to sell it to



the plaintiff for total sale consideration of Rs.26,00,000/- and received Rs.7,70,000/- as an advance sale consideration in a phased manner and agreed to execute registered sale deed on or before 15-01-2018 by procuring all necessary documents. The plaintiff was ever ready and willing to perform her part of contract, but the defendant pleading about repair works of building took time, later failed to perform his part of contract. The plaintiff by causing legal notice expressed her ready and willingness, but the defendant failed to comply it, which made her to file this suit. Per contra defendant admitted the execution of agreement of sale as well as receipt of advance sale consideration amount. But he has denied his default in execution sale deed. According to him, the plaintiff was not ready and willing to perform her part of contract. Hence, agreement has not enforced and right now he is ready to execute sale deed, if balance sale consideration is paid.

10. The initial burden is always on the plaintiff to prove the plaint assertion. In order to prove the case of the plaintiff, she got examined herself as PW-1 by filing an affidavit in-lieu of examination-in-chief. The affidavit evidence of PW-1 is nothing but a replica of plaint averments. Therefore, I need not to recapitulate those facts again at this stage. To corroborate oral testimony, PW-1 has produced 6 documents, which have been marked at Ex.P-1 to Ex.P-6. Ex.P-1 is legal notice dated 09.12.2020 issued by the plaintiff counsel on her behalf to the defendant, calling him to



receive the balance sale consideration amount and execute registered sale deed or in the alternative refund advance amount. Ex.P-2 is postal acknowledgment for having service of legal notice to the defendant. Ex.P-3 is reply notice dated 29.12.2020 issued by the defendant counsel to the plaintiff stating that inspite of readiness of defendant, plaintiff has failed to get the sale deed by paying balance sale consideration amount. Ex.P-4 is bank statement of plaintiff. Ex.P-5 and 6 are notary certified Aadhar card and PAN card of plaintiff. Ex.P-7 is agreement of sale dated 11.07.2017 confronted through DW-1. In order to substantiate the case of the defendant and to disprove the case of the plaintiff, the counsel for defendant cross-examined PW-1 at length. In the cross-examination, PW-1 has stated about entering into an agreement of sale with the defendant to purchase residential premises for Rs.26,00,000/- and payment of Rs.7,70,000/- as an advance sale consideration amount in a phased manner to the defendant. Further she has stated that as on 15.01.2018 she had balance sale consideration amount and orally requested the defendant to execute sale deed in her favour. Regarding entering into an agreement of sale and payment of advance amount is concerned, the oral testimony of PW-1 is corroborated with plaint averments.

11. In order to substantiate the case of the defendant, he got examined himself as DW-1 by filing an affidavit in -lieu of examination-in-chief. The affidavit evidence of



DW-1 is nothing but a replica of written statement averments. Therefore, I need not to recapitulate those facts again at this stage. In order to corroborate the oral testimony of DW-1, he has not produced any documents before the Court. In order to substantiate the case of the plaintiff and to disprove the defence of the defendant, the counsel for plaintiff cross examined DW-1 at length. In the cross examination, DW-1 identified the agreement of sale dated 11.07.2017 and his signatures thereon at Ex.P-7(d) to (f). Further DW-1 admitted the execution of Ex.P-7 and receipt of advance sale consideration of Rs. 4,00,000/-. Regarding receipt of advance sale consideration is concerned the DW-1 deposed contrary to his own affidavit evidence. The counsel for plaintiff by cross-examining DW-1 proved the due execution of agreement of sale and receipt of part sale consideration amount.

12. The counsel for plaintiff vehemently argued that, the defendant being an absolute owner of residential premises agreed to sell it to the plaintiff for a total sale consideration of Rs.26,00,000/- and executed an agreement of sale as per Ex.P-7 by receiving an advance sale consideration amount of Rs.7,70,000/- and agreed to execute registered sale deed on or before 15-01-2018. After execution of Ex.P-7, the defendant has failed to perform his part of contract despite of repeated request made by the plaintiff. Hence, the plaintiff has caused legal notice to the defendant. In spite of receipt of notice, he



has issued untenable reply. The defendant in his written statement he never disputed the execution of agreement of sale and receipt of advance amount. In the cross examination DW-1 clearly admitted about execution of agreement of sale and receipt of advance amount. As per the terms of agreement of sale, the plaintiff was always ready and willing to perform her part of contract, but the defendant failed to perform his part of contract. Hence, the plaintiff has purchased other property, therefore, she filed the present suit to recover the advance amount paid by her under Ex.P-7. The plaintiff has proved her case by placing oral as well as documentary evidence. Hence, prays to decree the suit. Per contra, the counsel for defendant vehemently argued that the defendant never denied about execution of agreement of sale as well as receipt of advance sale consideration amount. The defendant was always ready and willing to perform his part of contract. But, the plaintiff never come forward to get the registered sale deed in her favour. As such she is not entitled to recover the advance amount. Hence prays to dismiss the suit.

13. In the light of the arguments, canvassed by the rival side counsels, let me to scrutinize the oral as well as documentary evidence led by the parties to determine the issues involved in this case. This is a simple suit for recovery of money of Rs, 10,06,379/- paid under agreement of sale by plaintiff to defendant to purchase of residential premises owned by him. The defendant being an absolute owner of



residential premises agreed to sell it to the plaintiff. Accordingly, he has executed an agreement of sale dated 11-07-2017 for total sale consideration of Rs.26,00,000/- and received Rs.7,70,000/- as advance sale consideration. The defendant in his written statement para No. 12(b) he has clearly admitted about entering into an agreement of sale to sell his residential premises to the plaintiff for total sale consideration of Rs.26,00,000/- and receipt of Rs.7,70,000/- as advance sale consideration amount. The admission given by the defendant in the written statement is judicial admission and it is made in the pleadings regarding a particular fact in issue, such fact need not be proved by adducing evidence.

14. The DW-1 in his affidavit evidence as well as in the cross-examination he has clearly admitted about due execution of Ex.P-7 agreement of sale dated 11-07-2017 for a total sale consideration of Rs.26,00,000/- and receipt of advance amount of Rs.7,70,000/- in phased manner. On perusal of assertion made in the written statement as well as in the oral testimony of DW-1 it is crystal clear that, on 11-07-2017 the defendant by agreeing to sell his residential premises executed an agreement of sale in-favour of plaintiff and received earnest money of Rs.7,70,000/- in a phased manner from the plaintiff. Regarding execution of Ex.P-7 agreement of sale and receipt of advance sale consideration amount is concerned the averments made in



the plaint is corroborated with the written statement averments as well as evidence of DW-1. It is settled law that admission is the best piece of evidence. The defendant himself has admitted the execution of agreement of sale and receipt of advance amount by filing written statement. Therefore, this Court has held that the plaintiff has proved the due execution of Ex.P-7 agreement of sale and payment of advance amount Rs. 7,70,000/- towards part performance of contract. With these observations, this Court has answered Issue **Nos.1 and No.2 in the “Affirmative”**

15. Issue Nos. 3 and 5:- These two issues are related to the entitlement of reliefs by the plaintiff hence, both issues are taken up together for common discussion.

16. The plaintiff is claiming Rs.10,06,379/- with future interest at 9% per annum from the date of suit until realization. The plaintiff by calculating interest at 9% on the principal amount of Rs.7,70,000/- claiming said amount. The defendant in the written statement as well as in his oral testimony he has stated about repayment of Rs.2,50,000/- to the plaintiff. In order to prove the same the counsel for defendant cross examined PW-1. In the cross-examination para No. 2 page No. 10 the PW-1 unequivocally admitted about receipt of Rs.2,50,000/- from the defendant. In view of the above said evidence, it appears that out of total sale consideration amount, the defendant repaid Rs, 2,50,000/-



and he is liable to pay only Rs. 5,20,000/- to the plaintiff. As such the plaintiff is entitled to recover a sum of Rs, 5,20,000/- from the defendant.

17. Now the question regarding awarding of interest. The plaintiff is claiming interest at 9% per annum. Of Course, in the agreement there is no clause regarding repayment of advance amount along with interest. The defendant has agreed to execute the sale deed on or before 15-01-2018. After expire of said agreed period the defendant has not taken any steps to perform his part of contract. The defendant received advance sale consideration amount in the year 2017 and he has utilized the said amount and he has not taken any steps for its repayment. Regarding calculating the interest at 9 % is concerned there is no clause in the agreement of sale. In the absence of the same, while awarding of interest the Court has to consider other surrounding circumstance. While considering the facts and circumstances of the case and also the conduct of the parties this Court is of the opinion that an interest to the tune of 6% p.a. from the date of agreement till its realization will be serve the ends of justice. With these observation, this Court answered **Issue Nos. 3 and 5 Partly in the "Affirmative"**.

18. Issue No.4:- The burden of prove this issue is on the defendant. According to the defendant out of advance sale consideration amount he has repaid Rs.2,50,000/- to the



plaintiff. The PW-1 in her cross-examination, she has clearly admitted that out of Rs. 7,70,000/-, the defendant repaid Rs.2,50,000/- to her. The said admission is substantiate the defence set up by the defendant. The counsel for defendant by cross-examining PW-1, has successfully proved that the defendant has repaid Rs.2,50,000/- out of sale consideration to the plaintiff. Hence, there is no need to discuss much on this aspect. Therefore, this Court answered **Issue No. 4 in the “Affirmative”**.

19. Issue No.6 :- In view of my findings on above issues, this Court proceeds to pass the following:

:O R D E R:

The suit of the plaintiff is decreed-in-part with costs.

It is ordered and decreed that the plaintiff is entitled for recovery of Rs.5,20,000/- with simple interest at the rate of 6% p.a., from the date of agreement of sale dated 11-07-2017 to till realization of entire amount from the defendant.

The defendant is directed to pay the decretal amount to the plaintiff within a period of three months, if he has failed to pay the same, then the plaintiff is at liberty to approach the Court in accordance with law.



Draw decree accordingly.

(Dictated to the Stenographer, transcribed and computerized by her, transcript revised, corrected and pronounced by me, in the Open Court, dated this the **25th** day of **June, 2026**).

Sd/-xxx
(Manjunatha R),
Senior Civil Judge & JMFC,
Virajpet.

ANNEXURE

Witnesses examined for the plaintiff:

PW.1 : M.M.Jayalakshmi.

Documents exhibited on behalf of the plaintiff:

Ex.P.1 : Legal notice.
Ex.P.2 : Postal acknowledgment.
Ex.P.3 : Reply notice.
Ex.P.4 : Bank statement.
Ex.P.5 & 6 : Notarized copy of Aadhar card and
Pan card
Ex.P.7 : Agreement of sale.
Ex.P.7(a) to (c) : Signature of PW.1.
Ex.P.7(d) to (f) : Signature of DW.1.
Ex.P.7(g) to (h) : Signatures of witnesses.

Witnesses examined for the defendant:

DW.1 : Sri.P.N.Uthaiah.



Documents exhibited on behalf of defendant:

NIL

Sd/-xxx
(Manjunatha R),
Senior Civil Judge & JMFC,
Virajpet.