

KAKL410024982023



Presented on : 21-07-2023
Registered on : 24-07-2023
Decided on : 06-08-2026
Duration : 3 years, 16 days

**IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.,
MULBAGAL**

Present: **Sri.GOWDA JAGADEESHA RUDRE**
B.Com., L.L.B.
Senior Civil Judge and JMFC., Mulbagal.

DATED ON THE 06th DAY OF AUGUST-2026

O.S.No.97/2023

PLAINTIFF/S:-		Sri.P.Rajendra Prasad S/o P.Venkatramappa, Aged about 36 years, R/at: Javanapalli Village, V.Kota Mandalam, Palamaner Taluk, Chittor District. Andhrapradesh.
Plaintiff R/by:- Sri.V.H.N., Advocate.		
V/s		
DEFENDANT/S:-	1.	Sri.Venkatappa S/o late Kothapalla @ Kothapalli Kadirappa, Aged about 77 years.
	2.	Sri.D.V.Narasimhappa S/o Venkatappa,

		Aged about 49 years, Both R/at: Dommasandra Village, Tayalur Hobli, Mulbagal Taluk, Kolar District.
Defendants R/by:- Sri.C.V.S., advocate.		

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

The Plaintiff has filed this suit seeking specific performance of contract based on a registered sale agreement dated 06.11.2021 stated to have been executed by the Defendants agreeing to sell the suit schedule property and in the alternatively refund of earnest money of Rs.14,50,000/- with interest.

2. The suit schedule property is the landed property bearing Sy.No.154/1, totally measuring 2-20 acres out of which 1-20 acres situated at Dommasandra Village, Tayalur Hobli, Mulbagal Taluk, Kolar District bounded on: East by: D.N.Narayanaswamy share land; West by: Own land of Defendant No.1 and 2 and Rayappa land; North by: Own land of Defendant No.1 and 2 and South by: Government Kodi Halla.

3. The gist of the Plaintiff's case is that, the Defendant No.1 being the owner of the suit schedule property due to financial

difficulties, the Defendant No.1 and 2 made an offer to sell suit schedule property in his favour. He agreed to purchase the same for total sale consideration amount of Rs.15,00,000/-. The Defendant No.1 and 2 executed the sale agreement dated 06.11.2021 in favour of the Plaintiff before the Sub-Registrar, Mulbagal in presence witnesses.

4. As per the sale agreement, the Plaintiff has paid Rs.14,50,000/- as earnest money and it was agreed that the sale deed would be executed within 1 year 06 months after obtaining relevant documents pertaining to the suit schedule property. After the completing the fixed period the Plaintiff has demanded to execute the sale deed by receiving the remaining sale consideration of Rs.50,000/- but, the Defendants went on postponing the same for one or another reason. Thereby, the Plaintiff was constrained to issue a legal notice dated 09.05.2023 through his advocate, calling upon the Defendants to execute a sale deed and it was duly served on Defendants but, they did not comply the same. The Plaintiff is always ready and willing to pay the balance sale consideration and get the suit schedule property conveyed in his favour. **With these**

averments, the Plaintiff prayed to decree her suit as sought for.

5. In pursuance of the suit summons, the Defendants appeared through their advocate and among them Defendant No.2 filed detailed written statement and Defendant No.1 adopted the same by filing memo.

6. The Defendants denied the entire plaint averments in toto and called upon the Plaintiff to put strict proof of the same. The Defendants have set up a defence that, whenever they were in financial difficulty, they used to borrow hand loans from the Plaintiff and thereafter clear the said loans. In the same manner, the Defendants borrowed a hand loan of Rs.2,00,000/- from the Plaintiff on interest at the rate of 2% per month. However, on this occasion, the Plaintiff imposed a condition that the Defendants should subscribe their signatures on certain papers. Accordingly, the Defendants, believing the representation of the Plaintiff, subscribed their signatures on the said papers. Thereby, taking advantage of the signatures so obtained, the Plaintiff created the alleged sale agreement without the knowledge or consent of the Defendants. The Defendants came to know about the alleged sale agreement

only when the Plaintiff issued a notice to them. They were in regular in paying monthly interest to the Plaintiff from 10.06.2021 but, since from 03 months Plaintiff did not accept the interest for the best reasons known to him. The Defendants are ready to repay the amount of Rs.2,00,000/- with interest. It is further contended that, the suit property is granted under Dharkasth thereby, suit property cannot be alienated, as the alienation is barred under the provisions of the P.T.C.L. Act. **With these contentions, the Defendants prayed for dismissal of the suit with costs.**

7. On the basis of the pleadings this Court has framed following issues:-

ISSUES

1. Whether the Plaintiff proves that, Defendants have executed Registered Sale Agreement dated 06.11.2021 agreeing to sell the suit property for total consideration of Rs.15,00,000/-?
2. Whether the Plaintiff further proves that, he had paid to the Defendants earnest money of Rs.14,50,000/- towards part performance of contract?
3. Whether the Plaintiff further proves that, he always ready and willing to perform his part of contract?

4. Whether the Defendants prove that, Sale Agreement dated 06.11.2021 is concocted and created as pleaded in para No.8 is their written statement?
5. Whether the Plaintiff is entitled to the relief of Specific Performance of the Contract?
- 6 What Order or Decree?

8. The Plaintiff in order to substantiate his case, himself examined as PW-1 and produced as many as 9 documents as per Ex-P.1 to 9. In support of his case got examined three independent witnesses as PW-2 to 4. On the other hand, the Defendant No.2 examined herself as DW-1 and produced as many as 6 documents as per Ex-D.1 to 6.

9. Heard both sides and perused the oral and documentary evidence table before the Court.

10. The Court answers to the above Issues are as under:-

- Issue No.1 : In the Negative.
- Issue No.2 : In the Affirmative.
- Issue No.3 : In the Affirmative.
- Issue No.4 : In the Negative.
- Issue No.5 : Partly in the Affirmative.

Issue No.6 : As per final Order
for the following:-

REASONS

11. **ISSUE NO.1, 2 AND 4:-** These Issues are interlinked to each other, hence they are taken up together for common discussion and to avoid repetition of facts.

12. The Specific Performance of Contract is the remedy developed by principle of equity. Specific Relief is relief in specie. It is remedy which aims at the exact fulfillment of an obligation. In other words the Specific Performance is compelling a party to do precisely what he ought to have done without coerced by Court. Some of the requisites which are required to be proved by a party in order to get the relief of specific performance is; *a) A valid and concluded contract existed between the parties; b) That the claimant was ready and willing and capable to perform his part of obligation of contract; c) The defendant refused or was unable to perform his part of the obligation in the contract and such refusal or non-performance by the defendant has resulted in a loss for which monetary compensation is not an adequate relief.*

13. As per Section 104 to 106 of Bharatiya Sakshya Adhiniyam, 2023, the burden is always upon the Plaintiff to establish his/her case in accordance with law. It is the Plaintiff who is the Dominus Litis to his/her case who asserts his right over the plaint schedule property and the burden is bestowed on him/her to prove the same. In this regard, a legal maxim which reads as “*ACTORI INCUMBIT ONUS PROBANDI*” also plays a vital role.

14. It is well settled law that, execution of a document does not mean merely signing, but signing by way of assent to the terms of the contract embodied in the document. Execution consists in signing a document written out and read over and understood and does not consist of merely signing a name upon a blank sheet of paper. It is a solemn act of the executant who must own up the recitals in the instrument and there must be clear evidence that he put the signature after knowing the contents of document fully. To be executed, a document must be in existence; where there is no document in existence there cannot be execution. Mere proof or admission that a person's signature appears on a document cannot by itself amount to execution of a document. Furthermore, registration of the documents does not dispense with the necessity

of proof of execution when the same is denied. Thus, execution of document is not mere signing of it. With these prelude let proceed further.

15. To prove his case the Plaintiff himself examined as PW-1 and he has reiterated the entire plaint averments in toto. Further to substantiate his case he has produced the registered sale agreement dated 06.11.2021 as Ex-P.1, Ex-P.2 and 3 are RTC and mutation extracts, Ex-P.4 office copy of legal notice dated 09.05.2023, Two postal receipts at Ex-P.5 and 6, two postal acknowledgments at Ex-P.7 and 8 and reply notice dated 09.06.2023 at Ex-P.9.

16. On the other hand, the Defendant No.2 examined himself as DW-1 and reiterated the contention of the written statement in toto. Further to substantiate their case DW-1 has produced the 4 in numbers hand written RTC extracts at Ex-D.1 to 4, caste certificate at Ex-D.5 and income certificate at Ex-D.6.

17. It is the case of the Plaintiff that, the Defendants executed Ex-P.1 agreement of sale in respect of the suit property in his favour by receiving part sale consideration of Rs.15,00,000/- from him in the presence of the attesting witness agreeing to sell

the suit property. On examination of the sale agreement at Ex-P.1, it reveals that, the sale agreement is a registered one. The recitals show that the Defendants have jointly agreed to sell suit schedule property bearing Sy.No.154/1 totally measuring 1 acre 20 guntas out of 2 acre 20 guntas in favour of the Plaintiff. On further perusal of recitals, it shows that the Plaintiff had paid Rs.14,50,000/- out of the total sale consideration of Rs.15,00,000/- as earnest money. The recital also reveals that for the family necessity of the Defendants have agreed to sell the suit property to the Plaintiff. The sale agreement also recites that he agreed to execute the registered sale deed after producing Mutation, RTC extract, 11-E sketch, E.C, Family tree and other connected documents.

18. It has come in cross examination that, the Plaintiff permanent resident of Javanpalli Village of Andrapradhesh state. He is not only agriculturist by profession and also does welding work. It has further come in evidence that, the suit property came to be granted in favour of Defendant No.1 in the year 1982 under Dharkasth and Defendants are belongs to S.C. community. PW-1 specifically denied the suggestions as false that, no sale transaction has been taken placed in between himself and Defendants. He also

denied the suggestion as false that, as security to the hand loan the sale agreement in question came to be executed in his favour.

19. The Plaintiff has examined the attesting witnesses namely, Lakshminarayana and Venkteshappa as PW-2 and 3. In their chief affidavits they deposed about the execution of sale agreement valuable consideration of Rs.15,00,000/- and payment of earnest money of Rs.14,50,000/ in their presence. They further deposed that, the Defendants agreed to execute registered sale deed with the span of 1 year 6 months by receiving balance sale consideration of Rs.50,000/-. Ever since then, the Plaintiff is ready and willing to perform his part of contract. Likewise, scribe G.V.Venkatappa was examined as PW-3 he deposed he prepared sale agreement as per direction of Plaintiff and Defendants. Further fixation of time period of 1 year 6 months for performance of contract and registration of sale agreement on 06.11.2021 in the Sub-Registrar, Office Mulbagal.

20. PW-2 in his cross examination stated that, he has only affixed his signature to the sale agreement for having admitted about the receipt of money by the Defendants but, he has not gone through with contents of the sale agreement. When a question was

posed to him as to when did the Defendants had agreed to repay the amount borrowed from the Plaintiff, he expressed his ignorance.

21. It is interesting to note that, when suggestion was posed to PW-3 stating that, the Defendant No.2 has availed hand loan he voluntarily deposed that, by executing sale agreement hand loan was availed. It was further suggested to him that the what was the agreed period for repayment of the hand loan availed by the Plaintiff, to which the witness stated that the same was to be repaid within 2-3 years. He further admitted the suggestion as true that, if the hand loan availed by the Plaintiff is repaid, he, being the middleman, has no objection to get cancell the sale agreement. Whereas, PW-3, the scribe, in his cross-examination, stated that he was not aware of the purpose for which the sale agreement came to be executed.

22. In contrast to the evidence of Plaintiff witnesses, it is also necessary for this Court to weigh properly the evidence given by the Defendants. The Defendant No.2/DW-1 in his chief affidavit, reiterated the defence taken in the written statement. In his cross-examination, he denied the suggestion as false that they have executed a sale agreement in favour of the Plaintiff agreeing to sell

the suit schedule property for a total sale consideration of Rs.15,00,000/-. He further denied the suggestion as false that, in part performance of the contract, They have received Rs.14,50,000/- as earnest money. He admitted his signature confronted to him thereby, his signature came to be marked as Ex-P.1(d). He also admitted that, along with him his father also subscribed his signature.

23. The admissions made by PW-3 in his cross-examination, as discussed above, lend credence to and probabalise the defence of the Defendants that the sale agreement at Ex.P-1 was executed merely as security for the hand loan availed. It is pertinent to note that the admissions of PW-3 is not stray admissions; on the contrary, witness has categorically not only admitted but volunteered himself that the sale agreement in question was executed solely as a document securing the loan advanced to Defendants. It is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and same does not need any further corroboration. This view of the Court finds support from the decision of the Hon'ble Apex Court in the matter of Ahmedsaheb

[dead] by L.Rs and others Vs. Sayyed Ismail reported in (2012) 8 Supreme Court Cases 516.

24. The Hon'ble Apex Court in Vimal Chand Ghevarchand Jain v/s Ramakant Eknath Jadoo, reported in (2009) 5 SCC 713 held that Section 91 read with Section 92 does not act as a bar to oral evidence as to true nature of a document. Relevant extract is hereunder: "31. Indisputably when the true character of a document is questioned, extrinsic evidence by way of oral evidence is admissible".

25. The very fixation of a period of 1 year 6 months for the performance of the obligation of securing documents required for registration, despite such documents having been kept ready at the time of execution of the sale agreement itself, raises serious doubts about the case set up by the Plaintiff. Further, when the plaintiff knew that the suit property is granted land under Dharkasth proceeded to purchase the same from the defendants are considered on the touchstone of preponderance of probabilities, this circumstance supports the defence that the sale agreement in question was executed merely as security for the loan availed.

26. Though the Plaintiff has succeeded in establishing that the Ex-P.1 was signed by the Defendants, mere proof of signatures by itself does not establish due execution of the document or acceptance of its contents by the Defendants. The burden squarely lies upon the Plaintiff to prove that the executant consciously executed the agreement agreeing to sell the suit schedule property. Accordingly, the Plaintiff has failed to prove the contents of the agreement of sale at Ex-P.1. Though the Plaintiff is successful in proving the execution of the document but, not for the purpose of sale of the suit property but, for the purpose of security to the hand loan. However, the transmission of the Rs.14,50,000/- by the Plaintiff to the Defendants under Ex-P.1 is not in dispute. Accordingly, Court answer the Issue No.1 in the Negative, Issue No.2 in the Affirmative and Issue No.4 in the Negative.

27. **ISSUE NO.3:-** It is the case of the Plaintiff that, he was always ready and willing to perform his part of the contract and get the sale deed in his name. It is also stated by the Plaintiff that, the Defendants with one or the other reason postponed execute of sale deed despite her request. It is argued that he has already paid the

substantial sale consideration and he is only waiting for the Defendants execute registered sale deed in his name.

28. It is the case of the Plaintiff that he was always ready and willing to perform his part of contract. PW-1 has stated that he had approached the Defendants many times requesting them to come forward and execute registered sale deed in his favour. As the Defendants did not come forward to execute the sale deed in his favour had issued a legal notice calling upon the Defendants to come forward and execute registered the sale deed. All these attempts made by the Plaintiff also fully supported by the evidence of PW-1 to 3. The entire evidence of PW-1 goes to show that he has approached the Defendants to execute registered sale deed in favour of him. It is noted that, the Plaintiff has paid 14,50,000/- out of total sale consideration of Rs.15,00,000/-. The remaining sale consideration only Rs.50,000/- which is a meager amount. Considering all the above discussion this Court holds that the Plaintiff has proved that he was and is ready and willing to get the sale deed registered in his name. Accordingly, the Court answers the Issue No.3 in the Affirmative.

29. **ISSUE NO.5:-** The ordinary rule is that specific performance should be granted. It ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief. As said above, the Plaintiff has proved the execution of agreement.

30. The learned advocate for the Defendants by relying on Ex-D.5 contended that, they are belongs to community of Schedule Caste and suit property was granted land thereby, alienation of the land is barred under P.T.C.L Act. Thereby, the Defendants contends that execution of sale agreement in respect of suit property is void-abinitio in view of the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. It has come in cross examination of PW-1 that, the Defendants have belongs to S.C community and suit schedule property is granted land under Darkasth.

31. On plain reading of Section 4 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 clearly goes to show that no agreement is considered as lawful in respect of the properties, which were the subject of the Government grant made in favour of the SC/ST

community, unless the previous permission was obtained. Further, as per the provisions of the said Act, the Assistant Commissioner, is the exclusive authority to issue or not to issue any such permission in favour of the persons belongs to SC/ST community permitting them to sell any of the granted land.

32. Keeping this provision Court has gone through with entire plaint averments in detail. No where in the plaint the Plaintiff averred that, the suit property is falls under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 or the Defendants are belonging in to SC/ST Community. However, Ex-D.5 and also admission elicited from the mouth of PW-1 it is evident that, the Defendants are belongs to community of Schedule Castes and suit property is granted under Darkasth.

33. At this stage, it is worth to rely upon decisions of Hon'ble High Court of Karnataka reported in 2011 (2) KCCR 1961(DB) between P. Gurunath V/s The Assistant Commissioner, Bellary District and Others and 2007 (3) KCCR 1577 between Sri. Venkatanarayanappa V/s Siddappa wherein it was held that "An agreement to sell without previous permission U/Sec.4(2) of

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 is null and void and void abinitio". Further, the co-ordinate Bench of the Hon'ble High Court of Karnataka in the case of Smt.Satyam Lakshmi Vs. Sri K.M.Krishna Murthy and Others in CRP No.509/2012 dated 07.03.2022 where it was held that, such an agreement in respect of a granted land as defined in the PTCL Act is void and unenforceable in the court of law.

34. The Defendants were able to prove that the property brought under sale agreement was granted under Dharkasth and they are belongs to community of Schedule Castes. Even after such knowledge to the the Plaintiff at the time of entering into agreement no recitals incorporated stipulating the condition that the transaction would be proceeded after obtaining prior permission from the Government. In that view of the matter, the Court is of the considered opinion that the agreement of sale dated 06.11.2021 is unenforceable in a Court of law. The suit for specific performance of the agreement of sale is not maintainable in the eye of law. The suit is clearly barred by the provisions of the PTCL Act. Therefore, there

is no impediment to conclude that the Plaintiff cannot pursue the suit for the relief of specific performance.

35. In the instant case, it is not in dispute from the findings given in Issue No.1 is that the Plaintiff had paid a sum of Rs.14,50,000/- to the Defendants in presence of witnesses at the time of the execution of the Sale Agreement at Ex-P.1. The Plaintiff has sought for refund of the earnest money as an alternative relief. The Plaintiff even though succeeded in proving that the sale agreement was executed in his favour as per Ex-P.1 and he has paid Rs.14,50,000/-, but he fails to prove the contents of sale agreement. Section 22 of the Specific Relief Act provides as to power of Court to grant relief for possession, partition, refund of earnest money etc., in the instant case, specific prayer is sought for by the Plaintiff for refund of earnest money. Section 22 empowers the Court to grant the said relief. As discussed herein above, the execution of agreement is duly proved by the Plaintiff. In view of the foregoing discussion, the Plaintiff is not entitled to the discretionary relief of specific performance. Justice and equity demands that whatever the advance amount paid, should be returned with reasonable interest.

36. With regard to rate of interest, Section 34 of CPC vests with the discretion of the Court to award interest. Keeping in mind the totality of the facts and circumstances of the case, it is just and proper that the owners i.e., Defendants be directed to refund of Rs.14,50,000/- together with interest at 6% p.a. from the date of agreement till the date of payment. Hence, Issue No.5 is answered in the Partly Affirmative .

37. **ISSUE NO.6:-** For foregoing reasons, the Court proceed to pass the following:-

ORDER

The suit of the Plaintiff is decreed in part as hereunder:-

The relief of specific performance of contract is hereby rejected.

The alternative relief of refund of earnest money is decreed.

The Plaintiff is entitled to the refund of earnest money of Rs.14,50,000/- with interest at the rate of 6% p.a., from 06.11.2021, till realisation of the said amount.

The Defendants shall pay the said amount within three (3) months from the date of decree. Failing which the Plaintiff is at liberty to recover the same by due process of law.

Parties are directed to bear their own costs.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, revised and corrected then pronounced by me on 06th day of August-2026)

(GOWDA JAGADEESHA RUDRE
Senior Civil Judge and JMFC.,
Mulbagal.

A N N E X U R E		
<u>List of witnesses examined on behalf of the Plaintiff:-</u>		
PW-1	:	P.Rajendra Prasad.
PW-2	:	Lakshminarayana.
PW-3	:	Venkateshappa.
PW-4	:	G.V.Venkatappa.
<u>List of documents marked on behalf of the Plaintiff:-</u>		
Ex.P.1	:	Agreement of sale dated 06.11.2021.
Ex.P.2	:	RTC extract.
Ex.P.3	:	Mutation extract.
Ex.P.4	:	Office copy of legal notice dated 09.05.2023.
Ex.P.5 & 6	:	Postal receipts.
Ex.P.7 & 8	:	Postal acknowledgments.

Ex.P.9	:	Reply notice dated 09.06.2023.
<u>List of witnesses examined on behalf of the Defendant:-</u>		
DW-1	:	D.V.Narasimhappa.
<u>List of documents marked on behalf of the Defendant:-</u>		
Ex.D.1 & 2	:	Hand written RTC extracts.
Ex.D.3 & 4	:	RTC extracts.
Ex.D.5	:	Cast certificate.
Ex.D.6	:	Income certificate.

Senior Civil Judge and JMFC.,
Mulbagal.