

KAKL410032512024



Presented on : 04-10-2024
Registered on : 04-10-2024
Decided on : 17-07-2026
Duration : 1 years, 9 months, 13 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 17th DAY OF JULY-2026

O.S.No.129/2024

PLAINTIFF/S:-		M/s Starlit Assetz Private Ltd. Office at Unit No.412, 4 th Floor, Prestige Center Point, Cunningham Road, Bengaluru-560052. Represented by its Director, Mr.Mohammed Hayat Nisar Ahamed.
Plaintiff R/by:- Sri.A.K., Advocate.		
V/s		
DEFENDANT/S:-		Mrs.Shahzadi Rahmath W/o Mr.Mohammed Rahmathull Khan, Aged about 73 years, R/at: No.27, 2 nd Cross, 1 st Main, Behind KEB, Lazar Road Layout, Cooke Town, Fraser Town, Bengaluru - 560005.
Defendant R/by: Sri.K.C.A, 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 11.10.2021 and also Modified Agreement of sale dated 19.05.2022 stated to have been executed by the Defendant agreeing to sell the suit "A" "B" and "C" schedule properties.

2. It is averred that, the Plaintiff is a company incorporated under the Companies Act 1956 and is engaged in the business of agricultural farm development and real estate properties development. In order to expand its business operations, the Plaintiff had envisioned a scheme of agricultural farm development in and around Bangalore City.

3. It is averred that, the Plaintiff was contacted by the Defendant during January 2021 as the owner of all that piece and parcel of land totally measuring 31 Acres 6 guntas. The Defendant owned the entire land as her self-acquired property by virtue of several sale deeds, comprising of Survey Nos. 112, 150, 137, 139, 140, 141 and 142 all situated at Devarayasamudra Village, Avani Hobli, Mulabagal Taluk Kolar District. The Defendant represented to the Plaintiff that the total measurement of the land amounted to 31 Acres 6 Guntas. The Defendant expressed her interest and

willingness to sell all the aforesaid properties as collective and integrated properties to the Plaintiff and the Plaintiff was desirous to buy all the aforesaid properties as collective and integrated properties from the Defendant.

4. Thereafter, the Plaintiff and the Defendant entered into a registered Agreement to Sell dated 11.10.2021 for all the aforesaid 7 properties for a valuable total sale consideration of Rs.14,90,00,000/-. The Plaintiff paid an advance sale consideration of Rs.5,70,20,000/- to the Defendant by cheques and Demand Drafts on different dates, the receipt of which has been acknowledged by the Defendant.

5. Pursuant to Clause No.3 of the Agreement, the Defendant has agreed and undertaken to assist and support the Plaintiff in obtaining any missing title documents and further undertook to satisfy the completeness of the property documents of the Schedule Properties and assure that the Defendant has an absolute, clear and marketable title to the Schedule Properties and further to extend full co-operation to the Plaintiff in securing all permissions and sanctions required for the developmental activities. Further, as per Clause 5 of the Agreement to Sell, the Defendant agreed to fully cooperate with the Plaintiff to execute one or more sale deeds in the name of the

Plaintiff or any of its nominees, in part or in full, at the time of conveying/executing the absolute sale deed.

6. Pursuant to execution of the Agreement, the Defendant handed over copies of the title deeds, copies of the RTCs, Encumbrance Certificates, Mutation, Akarband, Tippani, copy of area map for the entire area and patta book. Thereafter, upon review of the aforesaid documents and comparison of the area measurement of the properties in the title documents with the official Government Survey of the contiguous land with reference to Tippani and Akarband, carried out at the behest of the Plaintiff, it disclosed shortage in the extent of land area available in Survey No.142 described as suit "C" schedule property.

7. The Plaintiff thus, undertook the exercise of obtaining an official survey sketch for every survey number and it was ascertained that Survey No.112 described as suit "B" schedule property was not bifurcated/phodied and Survey No.142 i.e., "C" schedule property did not measure 12 Acres 9.08 guntas as represented by the Defendant and as was stipulated in their title deeds and RTC produced by the Defendant; in fact the extent of land in Sy.No.142 was found to be less than 12 Acre and 9.08 Guntas as was represented by the Defendant in the Agreement.

8. The official Government survey showed the area of the land in Survey No.142 as 9 Acres and 37 Guntas, out of which 1 Acre and 29 Guntas is Kharab land and the remaining saleable land is 8 Acres and 08 Guntas and the same tallies with the official land record documents, Tippani, Akarband and survey records. Hence, the remaining portion of total extent of saleable land available in Sy.No.142 schedule "C" Property is 8 Acres 08 guntas.

9. The Defendant on being confronted with the said issue acknowledged these findings and undertook to take immediate steps for an official Government survey of her own and to obtain necessary official survey sketch from the jurisdictional Tahasildar's/ADLR's office, in a short period of time, to verify, determine and decide the actual extent of land available in Survey No.142 on the basis of its Akarband and Tippani. In order not to delay completion of the transaction and at the request of the Defendant to satisfy her demand for additional payments to meet her financial commitments, the Plaintiff and the Defendant agreed to execute a registered sale deed in respect of 5 Survey Numbers.

10. Accordingly, with the said assurance and commitment, the Defendant executed an Absolute Sale Deed in favour of the Plaintiff on 19.05.2022 with respect to 5 Survey Numbers that included

Sy.No.137, 139, 140, 141 and 150 in total measuring an extent of 16 Acres 12 Guntas described as schedule "A" property for a total sale consideration of Rs.3,76,25,000/-. The sale consideration was paid in full by the Plaintiff by cheques and Demand Drafts on different dates, the receipt of which has been acknowledged by the Defendant.

11. It is averred that with respect to the remaining two Survey Numbers i.e., schedule "B" and "C" property it was explicitly agreed by the Defendant that the said properties would be conveyed to the Plaintiff upon arranging and completing official Phodi in respect of schedule "B" property and carrying out Government survey and phodi of the land in respect of schedule "C" property to determine the actual extent of available land as per the Tippani and Akarband in a timely manner.

12. As the Defendant was not ready with the requisite Phodi and official survey documents, the Plaintiff and Defendant, entered into a Modified Agreement to Sell dated 19.05.2022 in furtherance to and in conjunction with the aforesaid Registered Agreement to Sell. As per, the Clauses 1 and 3 of the Modified Agreement, it was agreed that the sale price for Survey No.112 schedule "B" property is Rs.75,00,000/- per acre amounting to a total sale consideration of

Rs.1,95,00,000/- against which an advance sale consideration amounting to Rs.43,95,000/- was paid by the Plaintiff to the Defendant by Demand Draft, the receipt of which has been acknowledged by the Defendant.

13. According to Clauses 2 and 4 of the said Modified Agreement, the sale consideration for Survey No.142 schedule "C" property was agreed at Rs.75,00,000/- per acre for a total 'provisional' sale consideration of Rs.9,18,75,000/- against which an advance sale consideration amounting to Rs.4,50,00,000/- was paid by the Plaintiff to the Defendant by Cheques/Demand Draft on different date, the receipt of which has been acknowledged by the Defendant.

14. It is further averred that, as per the Clause 4 of the Modified Agreement the Defendant irrevocably agreed that the actual total sale consideration in respect of schedule "C" property shall be determined on the basis of the extent of legal, valid and saleable land available as per Government survey and that the Plaintiff shall be liable to pay only to the extent of available land that is legal, valid and saleable, as determined by Government survey and evidenced by latest and relevant official survey map and Tippani and Akarband issued by the competent authorities thereto

within 2 months from the date of the said Modified Agreement. It was further irrevocably agreed by the Defendant that the remaining sale consideration will be paid within 8 months subject to the full and satisfactory compliance with the stipulations set forth in Clause-2 and Clause 4 of the Modified Agreement.

15. The Defendant has failed to perform the obligation she has undertaken under Clauses 3 of the Modified Agreement to arrange for completion of phodi in respect of schedule "B" Property and to procure and provide all the latest and relevant documents to satisfy the completeness of the property documents and to substantiate and assure that the Defendant has an absolute, clear and legal marketable title over the said property until this date although the three months' time-limit given in the Modified Agreement has been overly delayed to the detriment of the Plaintiff. The Plaintiff has performed all its obligations under the said Modified Agreement in a timely manner and is ready and willing to pay the balance sale consideration and execute sale deed subject to Defendant compliance with the terms of the said Agreement.

16. The Defendant has similarly evaded and failed to perform the obligation she has undertaken under Clause 4 of the aforesaid Modified Agreement to arrange and carry out an official Government

survey in respect of schedule "C" Property tallying with official Tippani and Akarband to ascertain and determine the actual extent of land available that is legal, valid and saleable and to procure and provide all the latest and relevant survey map, Tippani and Akarband and other relevant documents in relation thereto to substantiate and assure that the Defendant has an absolute, clear and legal marketable title over the said property until this date although the 2 months' time-limit given in the Modified Agreement to complete this obligation has far exceeded by now.

17. The Defendant is deliberately and wailfully avoiding official Government survey of schedule "C" property due to the fact that the representation made by the Defendant in the aforesaid Agreement and the Modified Agreement for 12 acres and 9.08 guntas of land, as shown in Phani and RTC, is erroneous and misrepresentative as the Defendant is fully aware that according to official Government survey sketch and the Tippani and Akarbhand that are in possession of the Defendant actually show 9 Acres and 37 Guntas of land, out of which 1 Acre and 29 Guntas is Karab land and the remaining available and saleable land is 8 Acres and 08 Guntas, and not 12 acres and 9.08 of land as erroneously shown in the Phani (RTC) and unlawfully claimed by the Defendant.

18. The official government survey carried out for schedule "C" Property, at the behest of the Plaintiff, also confirms the fact that out of the total extent of land in Sy.No.142, i.e., 9 Acres 37 Guntas, out of which 1 Acre and 29 Guntas is Kharab land and the remaining available and saleable extent of land is 8 Acres 08 Guntas and this tallies with Akarbhand and Tippani and other land records maintained with the Government authorities; and that Defendant's claim for 12 Acres 9.08 Guntas saleable land is baseless and wrongful.

19. The Defendant has approached the Thasildar, Mulbagal Taluk; The Assistant Director Land Records (A.D.L.R), Mulbagal Taluk and also the Joint Director of Regional Land Records (J.D.L.R), Bangalore Division, to change/increase the extent of land area shown in the Tippani and Akarbhand, which is 8 Acres and 08 Guntas, to 12 acres and 9.08 guntas as erroneously shown in Phani/RTC, knowing well that the extent of land shown in phani/RTC 15 inaccurate and does not tally with official Government survey sketch, Tippani and Akarbhand. This request of the Defendant has not been accepted by the ADLR on the ground that the area of schedule "C" Property recorded in the Akarbhand is 9 Acres and 37 Guntas, out of which 1 acre and 29 Guntas is kharab land and 8

Acres and 08 Guntas is the balance land as evidenced by ADLR letter No.1/2023-334 dated 12.12.2023.

20. It is also averred that, the survey sketch prepared by the land surveyor and attached to the ADLR's report also confirms that total area of Survey No.142 measures 9 Acres and 37 Guntas as recorded in Akarbhand out of which 1 Acre 29 Guntas is kharab land is the saleable land. On the basis of the aforesaid report of the ADLR and the land surveyor's survey sketch attached thereto, the Joint Director Land Records, in his letter No.P.R.51/23-24 Dated 03.01.2024, has instructed the ADLR that since the area as per detailed survey is equal to the Tippani and Akarbhand area to give appropriate instructions to the Defendant to rectify Phani (RTC) to state the land area therein according to the area shown in the Tippani and Akarband.

21. On the basis of the above findings and instructions of the Government Authorities, it is confirmed that the area of schedule "C" Property is determined as 9 Acres and 37 Guntas, out of which 1 acre and 29 Guntas is Kharab land and saleable land is 8 Acres and 08 Guntas, and that the findings of the government authorities confirms and validates the just and legal position taken by the

Plaintiff from the beginning in May 2022 and notified to the Defendant.

22. As such, as per the terms of the Modified Agreement to Sell, with respect to schedule "B" Property, the agreed rate for the land being Rs.75,00,000/- per acre, the actual total sale consideration would be Rs.1,95,00,000/- for 2 Acres 24 Guntas of land. Out of this, the Defendant has already received an advance sale consideration in the amount of Rs.43,95,000/- from the Plaintiff. Thus, the balance sale consideration payable by the Plaintiff to the Defendant is Rs.1,51,50,000/-.

23. The Plaintiff has the necessary funds to pay the balance sale consideration and is willing and ready to pay the balance consideration and seek execution and registration of the sale deed for the schedule "B" and "C" Properties, and this has been clearly communicated to the Defendant. However, the Defendant is not willing and refusing to honour the terms of the said agreements and has failed to agree to execute sale deed and register the same in favour of the Plaintiff, despite several verbal and E-mails and the last being on date 31.05.2023.

24. The Defendant has received such mails, and has issued dubious, frivolous, irrelevant and vague replies thereto and failed to

fulfill her obligations. This mischievous and deceitful action on the part of the Defendant is causing delays in the consummation of the sale transaction and execution of the sale deed in Plaintiff's favour since 19.05.2022 until now and this has resulted in time delays and huge financial losses to the Plaintiff.

25. Furthermore, it is a matter of grave concern to the Plaintiff that the Defendant, in connivance with her immediate family members, is making desperate attempts to contact real estate brokers to sell/alienate the both schedule "B" and "C" Properties to third parties. The Plaintiff had got issued Legal Notice dated 13.02.2024, which was duly served on the Defendant on 15.02.2024, pointing out the delays caused by her to perform her contractual obligations and her violation of the terms of the Agreements and calling upon her to execute and register sale deed in respect of both schedule "B" and "C" Properties. The Defendant has issued a Reply Notice dated 26.02.2024 making vague denials.

26. The Plaintiff even after the issuance of the Legal Notice and the receipt of the Reply Notice, with the intention to amicably resolve the dispute, tried time and again to negotiate with the Defendant and requested the Defendant to accept the balance Sale Consideration and get the Sale Deed executed in favour of the

Plaintiff. However, the Defendant for reasons known to her failed to come forward and get the Sale Deed executed.

27. The Plaintiff in the last week of September 2024, ascertained that the Defendant has been making hectic efforts to alienate the both schedule "B" and "C" Properties and create third party rights over the said Property and defeat the Plaintiff rightful rights and interest. The Defendant has also been obstructing the Plaintiff herein from accessing the schedule "A" Properties that is already purchased by the Plaintiff.

28. The Plaintiff has the financial resources and is ready and willing to pay the balance sale consideration to the Defendant and get the sale deed executed in respect of the both schedule "B" and "C" Properties. The defendant behavior, delays and refusal of the Defendant to comply with and adhere to the terms and conditions of the agreements executed between the Plaintiff and Defendant has constrained the Plaintiff to approach this Hon'ble Court in order to protect its rights and legal and valid entitlements over the both schedule "B" and "C" Properties to file this suit. The Plaintiff has also obtained Financial Facility Letter dated 27.09.2024 issued by the Union Bank of India, Bangalore to show that the Plaintiff has

sufficient funds to pay the balance sale consideration and get the Sale Deed executed.

29. The Plaintiff has paid substantial Sale consideration under the Agreements for both schedule "B" and "C" Properties amounting to Rs.4,93,95,000/- and always has been ready and willing to pay the balance total sale consideration totally amounting to Rs.3,16,50,000/- and obtain the Sale Deed in its favour. The Plaintiff has necessary funds readily available and is ready to pay the balance Sale consideration to get the Sale Deed executed. **With these averments, the plaintiff prays to decree his suit for suit schedule "B" and "C" Properties with costs.**

30. The Defendant appeared before the Court through his advocate and filed written statement wherein, she admitted the execution sale agreement dated 11.10.2021 executed by him in favour of Plaintiff agreeing to sell the suit "A , B and C" schedule properties. He further admitted the receipt of Rs.5,70,30,000/- through cheques, demand drafts and RTGS. However, he denied the rest of the plaint averments as false and frivolous and called upon the Plaintiff to put strict proof of the same.

31. The Defendant admitted her ownership in respect suit "A, B and C" schedule properties totaling to 31.06 acres. He

contended that, he has agreed to sell the 31.06 acres of land in different survey numbers for a total sale consideration of Rs.16,19,80,000/- at the rate of Rs.52,00,000/- per acre as per an agreement dated 15.05.2022. The Defendant has so far received a total advance against all 31.6 acres, a total sum of Rs.7,40,40,000 only. The Plaintiff is still under obligation to pay a sum of Rs.1,07,20,000/- (Cost of 5 survey No.8,47,60,000 at 52 Lakhs per acre MINUS the total advance so far paid Rs.7,40,40,000/-(Paid via bank Rs.8,70,20,000/- minus the cash amount of R.1,29,80,000/- returned back to Plaintiff Rs.7,40,40,000/-) and the remaining balance the Defendant has to receive would be Rs.16,19,80,000 minus Rs.7,40,40,000 total (bank + cash) comes to Rs.8,79,40,000/-. The Defendant has to receive the said balance sale consideration and execute the registered sale deed in favour of the Plaintiff. However, the Plaintiff has not paid the balance sale consideration within the stipulated period as he has no financial capacity to pay the above said balance consideration.

32. It is further contended that, as per the stipulated terms and condition of the agreement of sale, the Plaintiff was not ready with the entire sale consideration and further he pleaded his inability to

meet the entire sale consideration, as such as per his willingness he has asked the Defendant to execute registered sale deed in respect of five survey numbers; accordingly the Defendant without any alternative as per the wish of the Plaintiff executed registered sale deed in favour of the Plaintiff on 19.05.2022 in respect of suit "A" schedule properties. At the time of registration of the said sale deed in respect of suit "A" schedule properties the Plaintiff has paid only Rs.7,40,40,000/- only leaving a balance of Rs.1,07,20,000/- still to be paid via bank to settle the full cost for all 31.6 acres. **With these contentions, the Defendant prayed for dismissal of the suit with costs.**

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

ISSUES

1. Whether the Plaintiff proves that, Defendant has executed registered sale Agreement dated: 11.10.2021, agreeing to sell the suit "A, B & C" schedule properties for total sale consideration of Rs.14,90,00,000/- ?
2. Whether the Plaintiff further proves that, he has paid to the Defendant on the said date of Sale Agreement earnest money of Rs.5,70,20,000/- towards part performance of contract?

3. Whether the Plaintiff further proves that, the parties thereafter executed a modified agreement to sell dated 19.05.2022 in continuation of the registered agreement to sell dated 11.10.2021, recording the manner of performance, payments made, and the obligations relating to phodi of Sy. NO. 112 (Suit "B" schedule) and survey of Sy. NO. 142 (Suit "C" schedule)?
4. Whether the Plaintiff proves that the actual extent of land in Sy. No. 142 (Suit "C" schedule) is 9 acres 37 guntas of which the actual legal valid and saleable land is 8 acres 8 guntas?
5. Whether the plaintiff proves that the Defendant failed to perform her obligations to complete phodi of Sy. No. 112 (Suit "B" schedule) and official survey of Sy. No. 142 (Suit "C" schedule) and to execute the corresponding sale deeds?
6. Whether the Defendant proves that the land in Sy. No. 142(Suit "C" schedule) measures 12 acres 9.08 guntas and that consideration shall be paid at current market rate?
7. Whether the Defendant proves that there existed any other agreement dated 15.05.2022 fixing the rate of Rs. 52,00,000/- per acre and involving alleged cash transactions, and that the said document governs that transaction between the parties as pleaded in para No. 45 from top 12th line in her written statement?

8. Whether the Plaintiff further proves that, he is/was always ready and willing to perform his part of contract?
9. Whether the Plaintiff is entitled to the relief of Specific Performance of the Contract in respect of Suit "B and C" schedule properties?
10. What Order or Decree?

34. In order to prove the case of the Plaintiff Company, the Director of the Plaintiff Company examined as PW-1 by filing affidavit in lieu of oral examination-in-chief and got marked 24 documents as per Ex-P.1 to 24.

35. In rebuttal, the husband of Defendant as GPA holder himself examined by filing affidavit in lieu of oral examination-in-chief as DW-1 and relied upon 22 documents as Ex-D.1 to 22. The Court Commissioner/ADLR-Mulbagal is also examined himself as CW-1 and he also got marked 19 documents as per Ex-C.1 to 19.

36. Heard both sides. Perused the oral, documentary evidence and written notes of arguments submitted by the Plaintiff.

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

Issue No.1 : In the Affirmative.

Issue No.2 : In the Affirmative.

Issue No.3 : In the Affirmative.

Issue No.4 : In the Affirmative.

Issue No.5 : In the Affirmative.

Issue No.6 : In the Negative.

Issue No.7 : In the Negative.

Issue No.8 : In the Affirmative.

Issue No.9 : In the Affirmative.

Issue No.10 : As per final Order
for the following:-

REASONS

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

39. 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 monitory compensation is not an adequate relief.

40. 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/her 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.

41. Before dwelling into analysing the disputed facts, it is relevant for the bird's eye view of the case of the Plaintiff in the nutshell. It is case of the Plaintiff that because of financial necessity the Defendant decided to sell the suit schedule properties described as “A, B and C” schedule measuring in all 31 acres 6 guntas the sale consideration was mutually fixed at Rs.14,90,00,000/- and thereby registered sale agreement dated 11.10.2021 came to be entered into and at that time earnest money of Rs.5,70,20,000/- was paid in pursuance of the said agreement for sale. It is further averred during

scrutiny of the relevant documents pertaining to the suit properties, it came to light that extent of land described in respect of suit "C" schedule property did not correspond with the survey records. It was further noticed that Sy.No.112 which is described as "B" schedule property was not phodied. Therefore, the Plaintiff and Defendant mutually agreed to postpone the execution of the sale deed in respect of suit "B and C" properties and decided to get registration of the suit "A" schedule properties on 19.05.2022. Thereby, the Defendant executed registered sale deed in respect of suit "A" schedule properties for total sale consideration of Rs.3,76,25,000/-. The entire sale consideration was paid through cheques as well as demand drafts.

42. Subsequently, on same day i.e., 19.05.2022 Modified Agreement sale came to be entered into explicitly agreeing that suit "B and C" schedule properties will be conveyed upon completing the official Phodi of suit "B" schedule property and Government Survey and Phodi of the suit "C" schedule property. It is further case of the Plaintiff that, as per the survey records the total area of the suit property is 9 acres 37 guntas inclusive of 1 acre 29 guntas of karab land. Thereby, the saleable land is only 8.08 acres. But, the Defendant falsely contending that the total extent of the suit

property is saleable extent of the land is 12 acres 9.8 guntas including the 1 acre 29 guntas of Kharab land. Thereby, the Defendant intentionally postponing the process of execution of the sale deed in respect of suit "B and C" suit properties. At last on 13.02.2024, the Plaintiff got issued legal notice to the Defendant calling upon her to execute said deed in favour of the Plaintiff. But, the Defendant replied the notice on 26.02.2024 making of vague denials. As such, without having any efficacious remedy, the Plaintiff has filed this suit for specific performance of contract.

43. In support of the case of the Plaintiff, the Plaintiff himself stepped into witness box and filed affidavit in lieu of oral examination in chief and examined as PW-1 and got marked 24 documents as per Ex-P.1 to 24. In order to nullify the claim of the Plaintiff and to substantiate the contention of the Defendant, the learned Advocate for the Defendant has cross examined PW-1 at length.

44. On the other hand, the case of the Plaintiff is attacked by the Defendant contending that no Modified Agreement of sale came to be executed and the correct extent of the suit "C" schedule property is 12 acres 09.08 guntas as recorded in the oldest RTC extracts. The Defendant further contended that, apart from the sale

agreement dated 19.05.2022 marked at Ex-P.1, there was another agreement dated 15.05.2022 under which a consideration was fixed at Rs.52,00,000/- per acre in respect of suit "A, B and C" schedule properties. The Defendant further contended that apart from the sale consideration fixed under Ex-P.1, there was an agreement between them to pay Rs.1,29,80,000/- in cash by the Plaintiff. The Defendant in his written statement further contended that the sale consideration with regard to suit "A" schedule property to the tune of Rs.1,07,20,000/- is yet to be received from the Plaintiff. The Defendant further contended that the Plaintiff is having no financial capacity and he is not ready and willing to get sale deed in his favour. Another tool of attack is that the sale consideration in respect of suit "B and C" schedule property should be now calculated at the current market rate. With these contentions, the Defendant prayed for dismissal of the suit with costs.

45. In support of these contentions, the GPA holder of the Defendant, who is none other than the husband of Defendant, stepped into witness box and filed affidavit in lieu of oral examination in chief and examined himself as DW-1. He got marked 22 documents as per Ex-D.1 to 22. In order to nullify the claim of the

Defendant and to substantiate the contention of the Plaintiff, the Plaintiff advocate has cross examined the DW-1 at length.

46. It is the specific positive assertion of the Plaintiff that Defendant executed the agreement for sale in respect of the suit "A to C" schedule properties. So far as, execution of Ex-P.1 registered sale agreement is concerned, is not in dispute. It is noted that, the Defendant in the written statement at para no.5 and 6 itself admitted about the execution of the sale agreement and receipt of advance sale consideration of Rs.5,70,20,000/-. The learned advocate for the Defendant himself made suggestions to PW-1 during cross-examination, indicating therein that as per Ex-P.1, totally 31 acres 6 guntas was agreed to be sold for total sale consideration of Rs.14,90,00,000/-. The said suggestion by the learned Advocate for the Defendant can be found place in Para Nos.9, 19, 30 and 47. Moreover, Ex-P.1 is a registered sale agreement, there shall be a presumption of the genuineness of the document and the burden to prove the contrary is upon the Defendant. Thereby, the transaction indicated in the said sale agreement is true and genuine. It is noted that Ex-P.1 was partly came to be performed by executing sale deed in respect of "A" schedule properties as per Ex-P.2. Under Ex.P.2, the Defendant has

admitted about the receipt of Rs. 3,76,25,000/-. Thereby, this Court is of the opinion that admitted facts need not be proved as provided under Section 53 in Bharatiya Sakshya Adhiniyam, 2023. When the written document is crystal clear then there is no room for oral evidence contrary to that effect and this aspect is enshrined under Section 97 of Bharatiya Sakshya Adhiniyam. Hence, the Plaintiff proves the execution of sale agreement in his favour executed by the Defendant as per Ex-P.1 agreeing to sell the suit properties. The Plaintiff has discharged his burden of proving the execution of agreement of sale and receipt of advance consideration. **Accordingly, the Court answers Issue No.1 and 2 in the Affirmative.**

47. **ISSUE NO.3 & 6**:- These issues are interlinked to each other, hence they are taken up together for common discussion and to avoid repetition of facts.

48. It is the case of the Plaintiff that since the suit "B" schedule property was not produced and suit "C" schedule property was according to Defendant, totally measures 12 acres 9 guntas and Defendant was ready/insisting to execute sale deed in respect of suit "C" schedule property to the extent of 12 acres 9 guntas instead of available/saleable land measuring 8 acres 8 guntas, the

registration of the sale deed was mutually postponed in respect of suit "B and C" schedule properties and sale deed was came to be executed in respect of suit "A" schedule property on 19.05.2022. On very same day, the Plaintiff and Defendant mutually agreed to enter into Modified Agreement of sale dated 19.05.2022, till Phodi of the suit "B" schedule property is completed and determination of the actual extent of the available land for sale in "C" schedule property. Despite this, the Defendant was unable to get the survey records rectified to show that the actual extent of the suit "C" schedule property is 12 acre 9 gunats and not 8 acre 8 guntas within the stipulated period. Therefore, the Plaintiff constrained to file this suit seeking specific performance of the contract as per the sale agreement at Ex.P.1 and Modified Agreement of sale at Ex.P.21

49. It is significant to note that, even though the Defendant in his written statement very specifically denied the execution of the Modified Agreement to sale at Ex-P.21 but, in his cross-examination, at para No.15, admitted twice that the Modified Agreement shown to him contains signature of his wife/Defendant and himself/DW.1. However, he volunteered that Sub-Registrar has rejected to register the said document for the reason that, it was undervalued. He also admitted the suggestion as true at Para No.16 that, at the time of

execution of the Modified Agreement, he did not raise any of the objection with regard to recitals/clauses written in it. He further admitted the suggestion as true in his cross-examination at Para No.18 that, by going through with the entire contents of the Modified Agreement he has subscribed his signatures. Further, at Para No.31 he admits that he has not taken any legal steps to cancel Modified Agreement on the pretext that no consideration made mentioned therein was received by him.

50. It is further significant to note at para No.34 of his cross-examination, he specifically admitted the suggestion as true that as per Modified Agreement to sell, the sale consideration of Rs.75,00,000/- per acre was mutually fixed in respect of suit "B and C" schedule properties. Now coming to the cross-examination of PW-1, the learned Advocate for the Defendant confronted Xerox copies of two documents named and styled as Modified Agreement to sell. The witness admitted the documents by going through with the contents written therein. Therefore, both the xerox copies of documents are came to be marked as Ex-D.2 and Ex-D.3.

51. The Court has gone through the contents of Ex-D.2 and 3 in detail by comparing with Ex-P.21. The Court noticed that the recitals in the said documents are identical with the Ex-P.21 except

the fill in the blanks and absence of the signatures. Although, the learned advocate for the Defendant confronted Ex-D.2 and D.3 during cross-examination, but he fails to canvas before this Court what was the necessity of these two documents before the Court when original was very well produced before the Court. As already noted supra, the contents of all these three documents are identical and does not differ. The only difference is that Ex-D2 and D3 are the photocopies of Ex-P.21 taken before the subscription of the signatures of the parties. Therefore, Ex-D.2 and D3 are not helpful to the Defendant in any manner.

52. Furthermore, it has come in cross-examination of DW-1 at Para No.28 that there is no clause in the sale agreement at Ex-P.1 which allows him to seek payment of consideration as per the current market value of the properties. He further goes to admit that there is no clause in any of the agreements entered into by the Plaintiff and Defendant which allows the Defendant to seek current market value of the suit properties. It is pertinent to note that the Defendant has not produced any documentary evidence to establish that the Plaintiff had agreed to purchase the suit property at the prevailing market value. In fact, the Defendant attempted to confront with two unregistered document during the cross-

examination of PW-1 but, witness refused to admit the documents as well as contents written therein. The Defendant has not made any attempt to produce documents confronted to PW.1 during cross-examination before the Court during his side evidence. Thereby, this Court conclude that the Defendant has failed to prove before the Court that there was any agreement between the Plaintiff and Defendant which allows the Defendant to seek consideration as per the current market value of the properties. Thereby, his Court holds that the Defendant and his husband/DW-1 and their children going through with the contents of Ex-P.21 have subscribed their signatures by agreeing to execute sale deed in respect of suit "B" and "C" schedule properties as per clauses written therein within. **Accordingly, the Court answers Issue No.3 in the Affirmative and Issue No.6 in the Negative.**

53. **ISSUE No.4:-** It was argued that, the suit "C" schedule property totally measures 12 acres 9 guntas therefore, the Plaintiff is supposed to pay consideration to the said extent but, the Plaintiff is wrongly claiming that available land is only 8 acres 8 gunats. He is ready to execute sale deed in respect of 12 acres 9 guntas.

54. The Plaintiff craves to rely on Ex-P.6 to 8 and 10 and argued that the actual saleable land is 8 acres, 8 guntas only.

Therefore, he is ready to get sale deed in respect of suit “B and C” schedule properties for a consideration fixed at Ex-P.21 Modified Agreement to Sell. With these rival claims, the Court has gone through with the oral and documentary evidence tabled before the Court.

55. Ex-P.8 and 9 are the Order passed by the Assistant Director of Land Records (ADLR) and survey records reveals that total extent of the suit “C’ schedule property is 9 acre 37 guntas including 1 acre 29 guntas Karab land. Ex-P.10, is the Order passed by the Joint Director of Land Records (JDLR) dated 12.12.2023 wherein he affirmed the findings recorded by the ADLR. The JDLR specifically observed in his Order that though RTC reflectes a larger extent, the actual extent available upon survey was significantly lower. The JDLR also found that actual extent of the suit schedule property is 9 acre 37 guntas inclusive of 1 acre 29 guntas of Kharab land.

56. Since, this suit involved a only dispute as to correct extent of the suit “C” schedule property, the Court Commissioner/ADLR-Mulbagal came to be appointed with the consent of both parties in an attempt to resolve the dispute amicably. Both the parties have filed their memo of instructions. The Court Commissioner in his report marked that Ex-C.7 to 9, also opined that total extent of suit

“C” schedule property is 9 acres 37 guntas including 1 acre 29 guntas of Kharab land thereby, available land for sale as 8 acre 8 guntas. The Court Commissioner arrived said conclusion on the basis of survey sketch, Village Map, Survey Records, Tipani, Akarband and Pakkabook which are marked in his evidence. The Court Commissioner was examined before the Court as CW-1 and was subjected to a detailed cross-examination by the learned advocate for the Defendant. The learned Advocate for the Defendant suggested to CW-1 that he supposed to survey adjacent survey numbers where suit properties are situated to which CW-1 answered that, he has surveyed the land as per the boundaries stone fixed in the suit schedule “C” property. It is noted that, keeping the rival contention of the parties, the Court Commissioner was only directed to survey the land which is possession of the Defendant and accordingly, he has surveyed the land and submitted his report. Therefore, this Court finds no fault with report submitted by the Court Commissioner. Even though, he was cross examined in length nothing material was elicited to substantiate the defence set up by the Defendant.

57. No doubt, DW-1 during its evidence relied upon the old RTC and mutation extract pertaining to the suit “C” schedule

property, wherein the total extent of the "C" schedule property is recorded as 12 acres of 20 guntas inclusive of 23 guntas of Kharab land. The documents relied upon by the Defendants are very old revenue documents and on the basis of said documents, this Court cannot ignore the recent documents produced by the Plaintiff to show that the actual extent of the suit "C" schedule property is 8 acres 8 guntas because they are in consonance with Ex. P.6, 8 and 10 and Court commissioner report. Accordingly, the Court conclude that, the Plaintiff established that actual extent of the suit "C" schedule property is 9 acres 37 guntas inclusive of 1 acre 29 guntas of Kharab land thereby, the saleable land is 8 acres 8 guntas only. **Accordingly, the Court answers Issue No.4 in the Affirmative.**

58. **ISSUE NO.7:-** The Defendant first time during cross-examination confronted PW-1 with alleged agreement dated 15.05.2022 under which the consideration was fixed at Rs.52,00,000/- per acre and Rs.1,29,80,000/- in cash was agreed to be paid to the Defendant. PW-1 refused to admit the documents and contents written therein confronted to him. It is noted that the Defendant has not made any attempt to produce the said document before the Court. Further, he has not produced any other documents

to show that as per the alleged sale agreement, the Plaintiff supposed to pay them any amount of cash. In absence of any documents to disprove Ex-P.1 and P.21, this Court unable to accept the case of the Defendant that there was any other sale agreement except the Ex-P.1 and P.21 in between the parties. **Accordingly, Court answered Issue No.7 in the Negative.**

59. **ISSUE No.8:-** It is well settled principle of law that readiness and willingness are 2 different aspects. Both the aspects can also be inferred from the conduct of the parties. Readiness indicates the financial capacity of a party to pay the balance sale consideration and get the sale deed executed. Willingness indicates his eagerness to have sale deed at the earliest.

60. It is case of Plaintiff that the Defendant has not come forward to execute a registered sale deed in his favour. At this juncture the crucial aspect which the Plaintiff has to prove is that of his ready and willingness to perform his part of contract. To prove this aspect the conduct of Plaintiff from the date of agreement till the date of filing of the suit has to be looked into.

61. 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 Defendant has to

get phodi dhurasti of the suit "B" schedule property and survey of the suit "C" schedule property as per the Modified Agreement to Sell and intimate the same to the Plaintiff so as to get the sale deed registered in his name within 8 months.

62. It is argued on behalf of the Plaintiff that he has already paid the part consideration and is ready to pay balance sale consideration and he was only waiting for the Defendant to get the phodi dhurasti and survey to ascertain correct extent of the suit "B" and "C" schedule properties. It is also contended by the Plaintiff that the Defendant prolonged the execution of registered sale deed on one pretext or the other.

63. The Plaintiff to prove readiness has relied upon Ex-P.16 dated 27.09.2024 and Ex-P.23 dated 01.12.205 financial facility letters issued by the Union Bank of India indicating therein that they have already sanctioned Rs. 6,00,00,000/- as loan to the Plaintiff. On combine reading of Ex-P.1, 21, 16 and 23 it is clear that the Plaintiff has already paid part consideration and also got financial capacity to pay remaining sale consideration.

64. It is evident that, the Plaintiff has approached the Defendant on various occasions requested to her to execute sale deed as per Ex-P.11 and 14 which are the legal notice and E-

mail communications. Since she did not come forward to execute registered sale deed he sent legal notice calling upon the Defendant to execute the registered sale deed in respect of suit 'B' and "C" schedule properties by receiving balance sale consideration which proves willingness to get the sale deed.

65. The Plaintiff has shown his readiness and willingness through out the period of agreement. Ex-P.16 and 23 dated financial facility letters issued by the Union Bank of India is the documentary evidence to show readiness to perform contract by the side of the Plaintiff. Payment of maximum sale consideration shows readiness on the part of the Plaintiff. The conduct of the Plaintiff prior and subsequent to the filing of the suit along with other attending circumstances is evident that he is ready and willing to perform his part of contract through out. Viewing from any angle, this Court does not find any reason to distrust the version of the Plaintiff. On assessing entire evidence in the light of oral and documentary evidence and in the principles enshrined, preponderance of probabilities tilts in favour of the Plaintiff herein. **Accordingly, the Court answers issue No.8 in the Affirmative.**

66. **ISSUE NO.5 AND 9**:- These issues are interlinked to each other, hence they are taken up together for common discussion and to avoid repetition of facts.

67. It is admitted before the Court that Phodi proceedings in respect of the suit "B" schedule property is not yet completed. The Defendant is still unable to prove before the Court that the actual extent of his land is 12 acres 9 guntas, but not the 8 acres 8 guntas as claiming by the Plaintiff. PW-1 in his cross examination at para No.36 stated that he has not come forward to execute sale deed in respect of suit "B and C" schedule property because, the Plaintiff is insisting him to execute sale deed only in respect of 8 acres 8 guntas. He also admitted the suggestion as true that he has not come forward to register the sale deed in respect of suit "B and C" schedule properties because he failed to get rectification of the survey documents pertaining to the suit "B and C" schedule property.

68. Now coming to the entitlement of the relief by Plaintiff is concerned, the Plaintiff has proved the very execution of Ex-P.1 and P.21 before the Court. He has paid consideration towards both "B and C" schedule properties as narrated supra. Further he has also proved that he was always ready and willing to perform his part of

contract. The Plaintiff has approached the Court of justice with clean hands to avail relief of specific performance. Viewing from any angle, this Court does not find any reason to brush aside the case of the Plaintiff. Considering, all the above discussion this Court holds the Plaintiff is entitled for the relief of specific performance of agreement of sale as claimed in this suit. **Hence, the Court answers Issue No.5 and 9 in the Affirmative.**

69. **ISSUE No.10**:- For foregoing reasons, the Court proceed to pass the following:-

ORDER

The suit of the Plaintiff for the relief of Specific Performance of Contract is decreed with costs as hereunder:-

The Defendant is directed to execute a registered sale deed in favour of Plaintiff in respect of suit "B & C" schedule properties after receiving the balance sale consideration of Rs.1,51,05,000/- in respect of suit "B" schedule property and Rs.1,65,00,000/- in respect of suit "C" schedule property from

the Plaintiff within three months from the date of this Judgment.

Further, in default on the part of the Defendant to execute the registered sale deed within three months from the date of this Judgment, the Plaintiff can seek for an execution of sale deed through the process of the Court.

The Plaintiff shall bear the necessary expenses for registration of the sale deed.

Draw decree accordingly.

(Judgment dictated to the Adalat sound recorder, corrected and then pronounced by me in the Open Court on this the 17nd day of July-2026.)

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

A N N E X U R E		
List of witnesses examined on behalf of the Plaintiffs:-		
PW-1	:	Mohammed Hayat Nisar Ahamed
List of documents marked on behalf of the Plaintiffs :-		
Ex.P.1	:	Original sale deed dated 11.10.2020.
Ex.P.2	:	Original sale deed dated 19.05.2025.
Ex.P.3 & 4	:	RTC extract.
Ex.P.5	:	C/c of Akarband.
Ex.P.6	:	Sketch.
Ex.P.7	:	Survey sketch.

Ex.P.8	:	C/c Order passed by ADLR, Mulbagal.
Ex.P.9	:	3 page survey sketch.
Ex.P.10	:	Letter dated 03.01.2024.
Ex.P. 11	:	Office copy of legal notice dated 13.02.2024.
Ex.P.12	:	Reply notice dated 26.02.2024.
Ex.P.13	:	Account Statement
Ex.P.14	:	Copy of e-mail message.
Ex.P.15	:	Certificate under Section 63(4)(C) of BNS.
Ex.P.16	:	Letter dated 27.09.2024 issued by Union Bank of India, Cooktown Branch.
Ex.P.17 & 18	:	Two Akarband.
Ex.P.19	:	Village map.
Ex.P.20	:	Bank Statement.
Ex.P.21	:	Additional agreement of sale dated 19.05.2022.
Ex.P.22	:	Letter dated 09.12.2025 issued by District Registrar, Kolar.
Ex.P.23	:	Letter dated 01.12.2025 issued by Union Bank of India
Ex.P.24	:	Copy of WP.No.8949/2026.
List of witnesses examined on behalf of Defendant:-		
DW-1	:	Mohammed Rahamatulla Khan.
List of documents marked on behalf of Defendants:-		
Ex-D.1	:	Copy of legal review dated 04.04.2022.
Ex.D.2	:	Copy of Ex-P.21.
Ex.D.3	:	Another Copy of Ex-P.21.
Ex.D.4	:	Original G.P.A.
Ex.D.5	:	Cheque repayment receipt.
Ex.D.6	:	RTC extract.
Ex.D.7 & 8	:	Hand written RTC extract.
Ex.D.9	:	C/c of Order passed by Mysore Revenue Appellate Tribunal, Bangalore dated 27.08.1965 in I.A. Appeal No.387/1965.
Ex.D.10	:	C/c of Appeal Memorandum and C/c of Order sheet in Appeal No. 4248/1964.
Ex.D.11	:	Mutation extract.
Ex.D.12 & 13	:	C/c of Mutation extracts.

Ex.D.14	:	Patta and receipt Book.
Ex.D.15	:	Tax paid receipt.
Ex.D.16	:	Original sale deed dated 01.09.1999.
Ex.D.17	:	Original sale deed dated 18.06.1971.
Ex.D.18	:	Original sale deed dated 03.10.1979.
Ex.D.19	:	Original sale deed dated 28.04.1982.
Ex.D.20	:	C/c of Order in WP.No.8949/2026 dated 01.04.2026 passed by Hon'ble High Court of Karnataka.
Ex.D.21	:	Copy of letter dated 08.04.2026.
Ex.D.22	:	Internet copy of the application.

List of witnesses examined on behalf of Court Commissioner:-

CW-1	:	Shivalingaiah.H
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List of documents marked on behalf of Court Commissioner :-

Ex-C.1	:	Commissioner warrant.
Ex-C.2	:	Notice and two postal receipts.
Ex-C.3	:	Mahazar.
Ex-C.4	:	Joint memo of instruction.
Ex-C.5	:	Letter dated 06.02.2026.
Ex-C.6	:	Answers for Plaintiffs and Defendants questions.
Ex-C.7 to 9	:	Sketchs.
Ex-C.10	:	C/c of Village map.
Ex-C.11	:	Joint survey sketch.
Ex-C.12	:	Letter dated 13.11.2026.
Ex-C.13	:	RTC extract.
Ex-C.14	:	C/c of survey sketch.
Ex-C.15	:	Original Tippani.
Ex-C.16	:	Two pages Akarband.
Ex-C.17	:	Another Akarband.
Ex-C.18	:	Objection petition.
Ex-C.19	:	Rejoinder to the objection.

Senior Civil Judge and JMFC.,
Mulbagal.