

KAKP200005192012



**IN THE COURT OF THE Ist ADDITIONAL CIVIL JUDGE AND
JMFC AT KUSHTAGI**

Present: - Sri. Mahantesh Choulagi.,BA.LLB
Ist Addl. Civil Judge and JMFC,
Kushtagi

Dated this the 01st day of August, 2026

Original Suit No.482/2012

Plaintiff/s	:	Sri.Yamanoorapa S/o Mareppa Elagera, Age:32 Years, Occ:Agriculture, R/o Marakumbi, Now R/at Tavaragera, Tq:Kushtagi, Dist:Koppal.
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(Rep by Sri.S.S.I., Adv.,)

-V/s-

Defendant/s	:	Smt.Mahiboee w/o Hasenasab Bannu, Age:47 years, Occ:Household, R/o Basavannag camp, Tavaragera, Tq:Kushtagi, Dist:Koppal.
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(Rep.By Sri.V.S.S., Adv.,)

1.	Date of institution of the suit	30.08.2012		
2.	Nature of the suit	Specific Performance of Contract		
3.	Date of the commencement of the recording of the evidence	26.11.2014		
4.	Date on which the Judgment was pronounced	01.08.2026		
5.	Total duration	Years	Months	Days
		13	11	02

JUDGMENT

The plaintiff has filed this suit against the defendant for the relief of specific performance of contract to enforce the agreement of sale dated 22-05-2010.

SUIT SCHEDULE PROPERTY

Sl.No.	House property No.	Measurement	Situated
1.	461	30X30=900 square feet	Ward No.17 Tavaragera town

2. In nutshell plaintiff case is that:-

2.1. The defendant is the absolute owner of the house bearing No.461 measuring 30X30 feet situated at Tavaragera town, Kushtagi Taluk, Koppal District. The defendant and her son both executed sale agreement as

to suit house property for the benefit of family necessities. The defendant entered into a registered agreement of sale dated **25-02-2010** with plaintiff agreeing to sell the suit property for a total sale consideration of **Rs.3,00,000/-**. The defendant has received a sum of **Rs.2,50,000/-** as part payment of the sale consideration and agreed to receive the balance sale consideration of **Rs.50,000/-** by executing the registered sale deed in favour of plaintiff. On many occasions the plaintiff approached and requested the defendant to execute the registered sale deed by receiving the balance sale consideration of **Rs.50,000/-**. But defendant went on postponing the same by one or the other reasons. plaintiff has been ready and willing to perform his part of contract. But the defendant failed to perform his part of the contract as per the agreement of sale. Thereafter, the plaintiff finally got issued legal notice dated **04-06-2012** to the defendant calling upon him to execute sale deed. In spite of that, the defendant neither replied and nor comply the same. The plaintiff has been ready and willing to perform his part of contract. But the defendant has failed to perform his part of the contract as per the agreement of sale.

3. In pursuance to the summons issued by this Court, the defendant appeared through his counsel and filed written statement as under;

3.1. The defendant is not alone the absolute owner of the suit schedule property and the suit property is the joint family property of the family of the defendant. Further, contended that one shankrappa who is the witness of the deed and Plaintiff colluded and created forged deed to grab the property. The panchayat Tavaragera issued Hakku Patra in favour of the defendant under one of conditions that suit property should not sale to the anybody for 25 years from the date issued Hakku patra and the above said transaction is void under law. The plaintiff never ready and willing to perform his part of contract. The suit is barred by law of limitation. With these prayed to dismiss the suit.

4. On the basis of pleadings and documents, the issues framed:

Issue No.1	Whether the plaintiff proves that, defendant has executed agreement of sale dated:25.02.2010 and received advance of Rs.2,50,000/- ?
Issue No.2	Whether the plaintiff proves that, he was ready and willing to perform his part of contract

Issue No.3	Whether the defendant proves that market value of the suit property is more than 10,00,000/- ?
Issue No.4	What order or decree ?

5. In order to establish the plaintiff case, the plaintiff examined as PW.1 to PW3 and Exs.P1 to 4 marked and closed his side. As shown under;

Exhibits	Documents
Ex.P.1	Agreement of sale deed dated:25.02.2010
Ex.P.2	Akarbandh
Ex.P.3	Legal notice dated:04.06.2012
Ex.P.4	Postal Acknowledgment

5.1 In order to establish the defendant case, the defendant examined as DW.1 and DW.2 and Exs.D1 to 7 marked and closed her side. As shown under;

Exhibits	Documents
Ex.D.1	Form No.3
Ex.D.2	Letter issued by Tavaragera Gram Panchayath
Ex.D.3	Letter of Tavaragera CMC
Ex.D.4	General Power of Attorney

Ex.D.5	Legal notice dated:02-08-2019
Ex.D.6	Postal receipt
Ex.D.7	Postal acknowledgment

5.2. Learned counsel for the defendant relied the following citation;

* **2026 (1) Kar. L.R. 174.** This citation is related to the readiness and willingness of the contract. Hence, does not aid to the case of the defendant.

5.3. In regarding to present case, The Chief officer of Pattana Panchayath Tavaragera examined as CW.1 and Exs.C1 to 6 marked and closed his side. As shown under;

Exhibits	Documents
Ex.C.1	Akarabndh year of 2012-13
Ex.C.2	Form No.3
Ex.C.3	Attested letter of the Chief officer of Pattana Panchayath Tavaragera
Ex.C.4	Hakku Pathra
Ex.C.5	Details of families without house sites and housing
Ex.C.6	Letter issued by Karnataka Electricity Board

6. Heard the arguments of Learned Counsel for the plaintiff and meticulously perused the material on record.

7. My findings to the above said issues are as follows:

Issue No.1: In the **Affirmative;**

Issue No.2: In the **Affirmative;**

Issue No.3: In the **Negative;**

Issue No.4: **As per final order,
for the following;**

:-REASONS:-

8. Issue No.1:- The plaintiff has filed the present suit for specific performance of agreement dated 25-02-2010. **In order to substantiate this,** the plaintiff himself examined as PW-1 by filing affidavit evidence. In the course of affidavit evidence, PW-1 to P.W.3 reiterated the contentions taken in the course of the plaint. Therefore, I need not recapitulate those facts again at this stage.

9. The learned counsel for the plaintiff argued that the documentary evidence produced by the plaintiff clearly shows that the defendant executed a registered agreement of sale by receiving substantial amount from the plaintiff. The plaintiff has been ready and willing to perform his part of contract. But the defendant failed to perform his part of

the contract as per the agreement of sale. The defendant did not file written statement to rebut the contentions of the plaintiff. As such, he prayed to decree the suit.

10. Now, let me examine the as to execution of agreement. In the case on hand, there is no dispute that suit property is belongs to the defendant and also undisputed that, the defendant has executed the agreement of sale in favour of the plaintiff as it clearly indicated from the pleadings of written statement at page No.2 22nd line reproduced ***"That, the Panchayath issued Hakku Patra on condition that, the said plot is not sold to any body in any manner for period of 25 years from the date of issuing the Hakku Patra"***. This lines clearly disclosed that the defendant executed the agreement of sale in favour of the plaintiff and only alleging by the defendant that the agreement of sale is invalid under law. Hence, execution of agreement need not be proved by the plaintiff under Section 58 of the Indian Evidence Act since it is judicial admission by the defendant in the written statement.

10.1. Further, the perusal of the Ex.P.1 Registered agreement of sale deed clearly shows that, the defendant executed the agreement of sale in favour of the plaintiff on

dated:22.05.2010 for consideration of amount of Rs.3,00,000/- for the benefit and legal necessity of the family of the defendant and on the same day defendant received the amount of Rs.2,50,000/- as earnest money. In the said agreement defendant's son namely Khaleel Sab S/o Hasan Sab Bannur is also one of the attesting witness to the said agreement. **The presumption shall be raised as to terms and recitals of the agreement since it is registered.** However the presumption can be rebutted by producing cogent evidence but defendant failed to rebut the presumption. Further, Ex.P.2 Form No.15 shows that, the suit property is standing in the name of defendant. To corroborate the case of the plaintiff two witnesses examined as PW.2 and 3 they are attesting witness and deed writer respectively and the fully supported the case of the plaintiff. The learned counsel for the defendant cross examined the PW.1 to PW.3 but, during the cross examination nothing has been elicited from the mouth of the PW.1 to PW.3 and PW1 to PW.3 denied all the bare suggestions put by the learned counsel for the defendant.

11. Joint family property/coparcenary property can be transferred by Kartha by way of either sale or agreement to sell.

AIR 2022 SC 65 B Reddy Dasharath Rami Reddy Vs Manjunath N another. wherein the lordship held at para NO. 6 "Right of the kartha to execute agreement to sell or sale deed of a joint Hindu family property is setteled and is beyond Cavil vide several judgments of this Court including Sri Narayan Bal and others Vs. Sridhar Sutar and others, wherein it has been held that, a joint Hindu family is capable of acting through its Kartha or adult member of the family in management of the Joint Hindu Family property. A coparcenar who has right to claim a share in the joint Hindu family estate can not seek injunction against the Kartha restraining him from dealing with or entering into transaction from sale of the joint Hindu family property. If the same is not for legal necessity or for betterment of estate. Where a Kartha has alienated a joint Hindu family property for value either for legal necessity or benefit of the estate it would bind the interest of all undivided members of the family even when they are minors or widows. There are no specific grounds that establish the existence of legal necessity and the existence of legal necessity depends upon the facts of the case. The Kartha enjoys wide discretion in his decision over existence of legal necessity and as to in what a such necessity can be fulfilled. The exercise of the powers given the rights of the Kartha on fulfilling the requirement of legal necessity or betterment of the estate is valid and binding on others coparceners".

Further, (2008) 7 SCC 46 Haradeva Rai Vs Shakuntala
Where in lord ship held at para No. 26 "Coparcenery interest can be transferred subject to the condition that the purchaser without the consent of other coparcenars can not

get possession. Purchaser has right to sue of partition". In the case on hand, defendant being the Khartha and owner of the suit property executed the agreement of the sale deed is perfectly valid in view of the above decision and same deed can be enforced.

12. On perusal of the Ex.C.4/ Hakku Patra shows that, the suit property was granted in favour of the husband of the defendant in the year 1982 and also in the same exhibit one of the condition was that, property should not be alienated for 25 years from the date of issued this Hakku Patra. But, defendant executed the agreement of sale in the year 2010, it means after laps of 25 years. Hence, agreement of sale is valid. The learned counsel for the cross examined the DW.2 who is GPA holder of PW.1. During the cross of DW.1 fully supported the case of the plaintiff and nothing deposed about the execution of the document and transaction as to suit property and DW.1 clearly deposed he did not know anything about the case. Hence, evidence of DW.1 did not support the case of the defendant. Moreover, DW.2 is not a party to the deed also. Previously the defendant examined as DW.1 and got marked but subsequently on dated:24.06.2019 DW.1 filed memo and prayed to discard her evidence and memo is accepted by this Court. Therefore, the DW.1 could not tender for her cross

examination. Hence, plaintiff proved that, the defendant executed the agreement of the sale with respect to suit property in favour of the plaintiff on dated:25.02.2010. Hence, **I answered issue No.1 in the 'Affirmative'.**

13. Issue No.2: Now, Court proceed to examine towards readiness and willingness of the contract. It

is settled law that the readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness of the other. One without the other is not sufficient. Even in the absence of the defence put forth, the plaintiff is required to prove his readiness and willingness. A perusal of recitals of Ex.P.1 agreement, the plaintiff has paid the major portion of the sale consideration and where it is stipulated at page No.1 that the sale deed has to be executed within 3 years from the date of execution, which is recapitulated for better appreciation

"ಸದರಿ ವ್ಯವಹಾರದ ಹಣದಲ್ಲಿ ಈ ಕೆಳಗೆ ಸಹಿ ಮಾಡಿದ ಸಾಕ್ಷಿದಾರರ ಸಮ್ಮುಖದಲ್ಲಿ ರೋಕ್ ರೂ.2,50,000/-ಗಳನ್ನು ಇಂದು ಸಂಚಿಕಾರವಾಗಿ ತೆಗೆದುಕೊಂಡಿರುತ್ತೇನೆ. ಇಂದಿನಿಂದ 3 ವರ್ಷಗಳ ಒಳಗಾಗಿ ಇನ್ನುಳಿದ ಹಣ ರೂ.50,000/-ಗಳನ್ನು ತೆಗೆದುಕೊಂಡು ಸದರಿ ಮನೆಯನ್ನು ನಿಮ್ಮ ಖರ್ಚಿನಲ್ಲಿ ನಿಮ್ಮ ಹೆಸರಿಗೆ ನೋಂದು ಮಾಡಿಸಿಕೊಡುತ್ತೇನೆ ಅಂದೇ ಕಬ್ಬಾಕ್ಕೆ ಕೊಡುತ್ತೇನೆ". A

perusal of Ex.P3/Office copy of legal notice dated 04.06.2012; Ex.P4/Postal acknowledgment shows that the plaintiff issued a legal notice to the defendant calling upon

him to execute sale deed and same has been duly served upon the defendant. Moreover, notice is not mandatory under the specific relief act and also service of notice is not in dispute. The plaintiff has performed his part of obligation within a reasonable time and approach of the plaintiff is justified. It is worth to refer decision of the Hon'ble Apex Court in the case of ***Chand Rani (Smt) (Dead) by LRs. -Vs- Kamal Rani (Smt) (Dead) by LRs., reported in (1993) SCC 519***, wherein their lordships held that, in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are evident (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the contract. In view of above sacred ratio, there is nothing to show that equity in favours of the defendant and relief of specific performance should be denied. Considering all the above, in my considered opinion, it is a fit case to grant decree for specific performance in favour of the plaintiff. Accordingly, **I answered Issue No.2 in the 'Affirmative'.**

14. Issue No.3:- Now, Court proceed towards pecuniary jurisdiction. This issues has been already discussed by the Court and answered in the negative on dated:09.09.2015. Hence, no need to discussion again. Hence, **I answered Issue No.3 in the '*Negative*'.**

15. Issue No.4:- In view of reasons and discussion arrived at Issue No.1 to 3, I proceed to pass the following:

ORDER

Suit of the plaintiff is hereby ***Decreed*** with costs.

Consequently, the defendant is directed to execute registered sale deed in favour of the plaintiff in respect of suit house property within sixty days from today by receiving balance sale consideration amount of Rs.50,000/-.

Failing which, the plaintiff is at liberty to get the sale deed execute through the process of the Court according to law.

If any IA's pending disposed of accordingly.

Draw decree accordingly.

(Typed to my dictation by the stenographer directly on the computer, corrected and signed by me and then pronounced in the open court on this the 01st day of August, 2026)

(Mahantesh Coulagi)

Ist Addl. Civil Judge & JMFC.,
Kushtagi.

ANNEXURE

List of witness examined by Plaintiff:-

PW.1	:	Yamanoorappa S/o Mareppa Elagera
PW.2	:	Shankrappa S/o Rajapap Elagera
PW.3	:	Channabasanagouda S/o Veerabhadragouda Patil

List of documents exhibited for Plaintiff:-

Exhibits	Documents
Ex.P.1	Agreement of sale deed dated:25.02.2010
Ex.P.2	Akarbandh
Ex.P.3	Legal notice dated:04.06.2012
Ex.P.4	Postal Acknowledgment

List of witness examined by Defendant:-

DW.1	:	Mahiboobee W/o Husensab Bannu
DW.2	:	Sammu S/o Hasansab Bannu

List of documents produced by Defendant:-

Exhibits	Documents
Ex.D.1	Form No.3
Ex.D.2	Letter issued by Tavaragera Gram Panchayath
Ex.D.3	Letter of Tavaragera CMC
Ex.D.4	General Power of Attorney
Ex.D.5	Legal notice dated:02-08-2019
Ex.D.6	Postal receipt
Ex.D.7	Postal acknowledgment

List of Court witness examined by the Court:-

CW.1	:	Mahesh S/o Shivarudrappa Angadi
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List of documents marked by on behalf of Court:-

Exhibits	Documents
Ex.C.1	Akarabndh year of 2012-13
Ex.C.2	Form No.3

Ex.C.3	Attested letter of the Chief officer of Pattana Panchayath Tavaragera
Ex.C.4	Hakku Pathra
Ex.C.5	Details of families without house sites and housing
Ex.C.6	Letter issued by Karnataka Electricity Board

01.08.2026

(Mahantesh Choulagi)

Ist Addl. Civil Judge & JMFC.,
Kushtagi.