

KAMD200013282023



Presented on : 27-10-2023
Registered on : 30-10-2023
Decided on : 02-09-2024
Duration : 0 years, 10 months, 6 days

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

: PRESENT:

SRI. DEVARAJU H.R, BA., LLB.,

ADDL. SENIOR CIVIL JUDGE AND JMFC,
K.R.PETE.

DATED THIS THE 2nd DAY OF SEPTEMBER-2024

O.S.No.84/2023

Plaintiff/s : Smt. Lalitha W/o Kumara,
aged about 45 years,
R/at Ragimuddanahalli
village, Chinakuruli hobli,
Pandavapura taluk,
Mandya district.

(By Sri.Y.G.,Adv.)

V/s

Defendant/s : Sri.Ramegowda @
Javaregowda, S/o
Late Mollechannegowda,

aged about 70 years,
R/at Thenginaghatta
village, Kikkeri hobli,
K.R.Pete taluk, Mandya
district.

(Exparte)

Date of institution of the suit	27.10.2023		
Nature of the suit	Specific Performance of agreement of sale		
Date of the commencement of recording of the evidence	22.02.2024		
Date on which the Judgment was Pronounced	02.09.2024		
Total Duration	Year/s	Month/s	Day/s
	00	10	05

(Devarju H.R.)

Addl., Senior Civil Judge & J.M.F.C.
K.R.Pete.

:J U D G M E N T:

The present suit is filed by the plaintiff seeking the relief of specific performance of contract and prays for issuance of direction to the defendant to execute the sale deed in favour

of her as per the agreement of sale deed dated 02.11.2020. In default, A court Commissioner may be appointed at the cost of the defendant to execute the same and handed over actual possession of suit schedule property to her and costs of the suit and such other relief court deems fit to grant.

2. The sum & substance of the plaintiff suit in brief is as under;-

It is submitting that, the plaintiff and defendant are the relatives. The defendant for the purpose of repayment of hand loan and household expenses, he has been executed the sale agreement for valid sale consideration amount of Rs.15,00,000/- by receiving advance sale consideration amount of Rs.14,00,000/-on the same day in presence of witnesses and agreed to receive remaining sale consideration amount of Rs.1,00,000/- at the time of registration of sale deed. The defendant promised that, whenever the plaintiff called with balance sale consideration and along with required documents and he will ready to

execute the sale deed as per the agreement. This being a fact even the request made by the plaintiff in many occasions the defendant postponing the execution of same for one and another reason. Finally, the plaintiff has been issued legal notice on 13.10.2023, calling upon the defendant to come and execute the sale deed, said legal notice served on the defendant. Even though the defendant failed to execute the sale deed as per the agreement. Further submitting that, the plaintiff is always ready and willing to perform her part of contract as per the agreement of sale and she is ready with the balance consideration amount of Rs.1,00,000/- and now also ready to deposit the same in the court. Even provide sufficient opportunity, the defendant is failed to do so. Hence the plaintiff having left no alternative way has filed this suit for specific performance of contract against the defendant.

3. After registration of the suit, suit summons was issued against the defendant. In spite of receiving the summons he

fails to appear before this court, hence he placed exparte on 15.12.2023. Thereafter case is posted for plaintiff's evidence.

4. The plaintiff in order to prove her case, she herself examined as PW-1 and got marked 11 documents as per Ex.P1 to Ex.P11 and closed her side evidence.

5. Heard arguments, and perused the materials placed on record.

6. On the basis of the above said pleading, the following points would arise for my consideration:-

POINTS

1. Whether the plaintiff proves that, the defendant has executed the agreement of sale on 02.11.2020 by agreeing to sell the suit schedule properties for valid consideration amount of Rs.15,00,000/- thereby he has received Rs.14,00,000/- as advance amount?

2. Whether the plaintiff proves that, she is always ready and willing to perform her part of contract?

3. Whether the plaintiff is entitled for the reliefs as sought for?

4. What order or decree ?

7. My findings on the above said points are as under;

Point No.1 to 3 : In the **Affirmative**;

Point No.4 : As per final order for the
following;

REASONS

8. Point No.1 to 3:- These points are inter linked with each other hence they are taken up together for common discussion in order to avoid the repetition of facts and the evidence of the suit:-

9. It is the case of the plaintiff that, the defendant is the owner of the suit schedule properties bearing Sy. No. 7/9 measuring 1 acre 07 gunta and Sy.No. 59/2 measuring 1 acre 13 guntas of Thenginagatta village,

Kikkeri hobli, K.R.Pete taluk, Mandya district. The defendant in order to repayment of hand loan and household expenses he offered to sell the suit schedule properties. The plaintiff has accepted the offer of the defendant and defendant has agreed to sell the suit schedule properties for valid consideration amount of Rs.15,00,000/- and he has executed the agreement of sale on 02.11.2020 by receiving Rs.14,00,000/- as advance amount and further agreed to receive balance consideration amount of Rs. 1,00,000/- at the time of registration of regular sale deed. The plaintiff has approached the defendant in numerous time and requested him to execute the sale deed but, the defendant is not ready to perform his part of contract. The plaintiff is always ready to get register the sale deed in her favour by paying remaining balance consideration amount, she has issued legal notice to the defendant but defendant not ready to execute the sale deed. Hence she has filed present suit.

10. The plaintiff in order to prove her claim, she herself examined before this court as PW.1. The PW-1 has filed an affidavit in lieu of her examination in chief, wherein she has reiterated the entire averments of the plaint. It is main contention of the plaintiff that, the defendant is owner and possession of the property bearing Sy. No.7/9 measuring 1 acre 07 gunta and property bearing Sy. No. 59/2 measuring 1 acre 13 guntas of Thenginagatta village, Kikkeri hobli, K.R.Pete taluk. The plaintiff has furnished RTC extracts of the suit schedule properties as per Ex.P2 and Ex.P3, wherein it appears that katha of the suit schedule properties stands in the name of defendant herein. Further plaintiff has furnished mutation register extracts as per Ex.P4 and Ex.P5, wherein it appears that the defendant has purchased the suit schedule properties through registered sale deeds. It is the main contention of the plaintiff that, the defendant has executed agreement of sale by agreeing sell the suit schedule properties for valid

consideration amount of Rs.15,00,000/-. The PW-1 has furnished registered agreement of sale dated 02.11.2020 as per Ex.P1. On perusal of the Ex.P1 it appears that, defendant has executed the agreement of sale by agreeing to sell the suit schedule property for valid sale consideration amount of Rs.15,00,000/- by receiving advance amount of Rs.14,00,000/-. Further plaintiff has furnished encumbrance certificates as per Ex.P6 and Ex.7. Ex.P8 is the copy of legal notice dated 13.10.2023, Ex.P9 is the Postal receipt, Ex.P10 is the Postal acknowledgment, Ex.P11 is the postal tracking. On perusal of the aforementioned documents it appears that, defendant is the owner of the suit schedule properties and he has executed the registered agreement of sale by agreeing to sell the suit schedule properties in favour of plaintiff for valid consideration amount of Rs.15,00,000/- and he has received Rs.14,00,000/- as advance amount.

11. The plaintiff has issued legal notice to the defendant as per Ex.P8 and it is duly served on the defendant as per Ex.P11. In spite of it defendant fails to perform his part of contract. On perusal of the entire record it appears that the plaintiff has successfully proved the execution of the agreement of sale by the defendant. In view of the oral and documentary evidence which adduced by the plaintiff there is no rebuttal evidence or any reason to disbelieve the same. The defendant placed exparte, there is no rival evidence available on record to disbelieve the version of the plaintiff. Hence, I am of the opinion that, the plaintiff has proved the fact that, defendant has executed the agreement of sale and her ready and willingness to perform her part of contract and also proved that the defendant has failed to perform his part of contract. Hence I am of the opinion that the plaintiff is entitled to get the relief as sought in the plaint. **Accordingly I answer point No.1 to 3 in the Affirmative.**

12. POINT No.4:- In view the aforesaid reasons and findings on point No.1 to 3, I proceed to pass the following:-

ORDER

The suit filed by the plaintiff for specific performance of agreement of sale is hereby decreed with cost.

Consequently, defendant is hereby directed to execute the registered sale deed in favour of plaintiff by receiving balance sale consideration amount of Rs.1,00,000/- from the plaintiff as agreed by him and deliver the possession of the suit schedule properties to the plaintiff.

In default, plaintiff is at liberty to get registered sale deed through court process by depositing the balance sale consideration amount of Rs.1,00,000/-.

Draw decree accordingly.

(This judgment is dictated to the stenographer directly computerized by her, corrected and then pronounced by me in the open court on 2nd day of September -2024)

(Devaraju H.R.)

Addl., Senior Civil Judge & JMFC.,
K.R.Pete.

ANNEXURE

I. List of witnesses examined by plaintiff:

PW-1 : Smt.Lalitha

II. List of documents exhibited by plaintiff:

Ex.P1 : Sale agreement,
Ex.P2 & 3 : RTC extracts,
Ex.P4 & 5 : Mutation register extracts,
Ex.P6 & 7 : Encumbrance certificate ,
Ex.P8 : Legal notice,
Ex.P9 : Postal receipt,
Ex.P10 : Postal acknowledgment,
Ex.P11 : Postal Tracking.

III. List of witnesses examined by defendant:-NIL

IV. List of documents exhibited by defendant:-NIL

Addl., Senior Civil Judge & JMFC.,
K.R.Pete.

Judgment pronounced in the open Court.
(Vide separate judgment)

ORDER

The suit filed by the plaintiff for specific performance of agreement of sale is hereby decreed with cost.

Consequently, defendant is hereby directed to execute the registered sale deed in favour of plaintiff by receiving balance sale consideration amount of Rs.1,00,000/- from the plaintiff as agreed by him and deliver the possession of the suit schedule properties to the plaintiff.

In default, plaintiff is at liberty to get registered sale deed through court process by depositing the balance sale consideration amount of Rs.1,00,000/-.

Draw decree accordingly.

Addl., Senior Civil Judge & JMFC.,
K.R.Pete.