

KAMD410005242018



Presented on : 16-02-2018

Registered on : 17-02-2018

**IN THE COURT OF THE PRL CIVIL JUDGE & JMFC, AT
MALAVALLI.**

PRESENT : SMT. NAZIA KOUSER., B.E, LL.B.,
Prl Civil Judge & JMFC, Malavalli.

Dated this 18th the day of June 2026

O.S.NO.77/2018

PLAINTIFF/S:

Smt. Chikkathayamma
W/o Channegowda,
Aged about 58 years,
R/o Yathambadi Village,
Kasaba Hobli,
Malavalli Taluk, Mandya District.

(Rep. by Sri.H.N. Advocate)

// Vs., //

DEFENDANT/S:

1. Smt. Girijamma, since dead.
2. Sri. K. Kempegowda
S/o Kempegowda @ Karigowda
Aged about 40 years,
3. Sri. Sathisha
S/o Kempegowda @ Karigowda
Aged about 40 years,

All are R/o Yathambadi Village
Kasaba Hobli, Malavalli Taluk.

**(D2 Rep. by Sri.G.V.N Advocate)
(D1 & 3 placed exparte)**

Date of institution of the suit	16-02-2018
Nature of the suit	Specific Performance
Date of the commencement of recording evidence	12-06-2018
Date of pronouncement of Judgment	18-06-2026
Total duration	Year/s Month/s Day/s 08 04 02

**Pri Civil Judge & JMFC,
Malavalli.**

JUDGMENT

This suit is filed by the Plaintiff against the Defendants for seeking the relief of Specific Performance of the agreement dated 27.08.2013 and such other reliefs.

SCHEDULE

All that portion of property situated at Yathambadi Village, Kasaba Hobli, Malavalli Taluk, bearing Sy.No.80/6, measuring 00.19.00.00 (19 guntas) Assessment Rs.1.67 wet land, which is bounded on:-

East: By land of Kemparaju S/o Chikkahydegowda

West: By land of Puttaswamy S/o Malavalli Kempegowda

North: By land of Chikeeregowda S/o Devegowda

South: By land of Rachappa S/o Malavalli Kempegowda

2. The facts, in brief, as pleaded by the plaintiff are as under:

The plaintiff contends that defendant No.1 is the mother of defendant Nos.2 and 3 and that the suit schedule property is the ancestral property of the husband of defendant No.1. After his death, the property was mutated in the name of defendant No.2 under M.R.No.26/2007-08, and the khatha as well as the revenue records stand in the name of defendant No.2, though all the defendants are stated to be in joint possession and enjoyment of the suit schedule property.

3. It is further contended that, due to legal necessity such as discharge of hand loans and meeting domestic requirements, the defendants agreed to sell the suit schedule property in favour of the plaintiff for a total sale consideration of Rs.2,00,000/-. Accordingly, on 27.08.2013, the defendants executed a registered agreement of sale after receiving an advance amount of Rs.1,90,000/-. They agreed to receive the balance sale consideration of Rs.10,000/- at the time of execution of the regular sale deed and to execute the same within three years.

4. The plaintiff further contends that she has always been ready and willing to perform her part of the contract. However, despite repeated requests and demands, the defendants failed to execute the sale deed. Therefore, she got issued a legal notice dated 21.05.2016 through RPAD calling upon them to execute and register the regular sale deed in terms of the agreement dated 27.08.2013. Though the notice was duly served, the defendants failed to comply with its terms. Hence, the present suit.

5. Though summons were duly served on Defendant No.1 and Defendant No.3, they remained absent and were placed ex parte.
6. The Defendant No.2 entered appearance through their Counsel and filed the written statement wherein they have denied the averments of the plaint as false, frivolous and vexatious one except admitting the relationship. The defendants have contended that Rajanna, another son of defendant No.1, has not been impleaded as party to this suit. The suit schedule property is the ancestral property of the husband of defendant No.1 and that after his death, the property was mutated in the name of defendant No.2, while all the defendants and Rajanna are in joint possession and enjoyment of the same. The alleged agreement of sale is false and created by the plaintiff in collusion with defendant No.1 by taking advantage of the ignorance and disability of the family members. They have already issued a reply notice. The defendant No.2 is not aware of any business transactions, defendant No.3 is deaf and dumb and has no knowledge of such matters, and another family member is mentally challenged. Taking advantage of these circumstances, the plaintiff, in collusion with defendant No.1, is alleged to have created the false agreement of sale and filed the present suit. On all these grounds prayed to dismiss the suit.
7. During the pendency of the suit, Defendant No.1 passed away. The plaintiff submitted that the legal heirs of Defendant No.1 were already on record.
8. On the basis of above said pleadings; this Court has framed the following:

ISSUES

1. Whether the plaintiff proves that, the defendants have executed the sale agreement dated 27.08.2013 for Rs.2,00,000/- as consideration in respect of suit schedule property?
 2. Whether the plaintiff proves that she has always been ready and willing to perform her part of contract?
 3. Whether the passing of Specific Performance would cause unfair advantage to the plaintiff?
 4. Whether granting of Specific Performance of contract would cause hardship to the defendants?
 5. Whether the plaintiff is entitled for Specific Performance as prayed for?
 6. What order or decree?
9. In order to substantiate her case, the plaintiff initially examined herself as PW.1 and got marked documents at Exs.P1 to P10. However, the evidence of PW.1 came to be discarded pursuant to the memo filed by the learned counsel for the plaintiff on 29.09.2022. Thereafter, the GPA holder of the plaintiff was examined as PW.2, and witnesses namely Madhu Y.C. and Sadashiv Murthy N were examined as PW.3 and 4.
10. Ex.P1 is the Agreement of Sale dated 27.08.2013, Ex.P2 is the Encumbrance Certificate, Ex.P3 is the RTC extract, Ex.P4 is the legal notice, Exs.P5 to P7 are the postal receipts; Ex.P8 is the returned postal cover, Ex.P9 is the postal acknowledgment and Ex.P10 is the reply notice.

11. On the other hand, the General Power of Attorney holder of Defendant No.2 was examined as DW.1 and got marked Ex.D1, being the General Power of Attorney executed by Defendant No.2 in her favour.

12. Heard the arguments of the learned counsel for the plaintiff. Despite sufficient opportunity, no arguments were advanced on behalf of the defendants. Accordingly, this Court did not have the benefit of hearing the defendants' side. Perused the materials on record.

13. The findings of this Court on the above said 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 Partly Affirmative

ISSUE No.6: As per the final order for the following

REASONS

14. **Issue No.1:** It is the case of the plaintiff that the suit schedule property belonged to the husband of Defendant No.1 and, after his death, stood mutated in the name of Defendant No.2. Owing to financial necessity, the defendants allegedly agreed to sell the property for a total consideration of Rs.2,00,000/- and executed a registered agreement of sale on 27.08.2013 after receiving an

advance of Rs.1,90,000/-. The balance amount of Rs.10,000/- was agreed to be paid at the time of execution of the sale deed. The plaintiff contends that she has always been ready and willing to perform her part of the contract, but despite repeated demands and issuance of a legal notice dated 21.05.2016, the defendants failed to execute the sale deed.

15. The Defendant No.2 admitted that the property originally belonged to the husband of Defendant No.1, and contended that the property is jointly enjoyed by all legal heirs, including one Rajanna, who has not been impleaded as a party to the suit. The plaintiff, in collusion with Defendant No.1, created the agreement by taking advantage of the ignorance and disabilities of the family members.

16. In order to substantiate her case, the plaintiff initially examined herself as PW.1 and got marked documents at Exs.P1 to P10. However, the evidence of PW.1 came to be discarded pursuant to the memo filed by the learned counsel for the plaintiff on 29.09.2022.

17. Thereafter, the GPA holder of the plaintiff was examined as PW.2 by filing affidavit in lieu of examination in chief wherein he has reiterated the plaint averments and relied upon Ex.P1 to P10 which are marked through PW.1.

18. PW.3, Madhu Y.C, the attesting witness, and PW.4, Sadashiva Murthy N, the scribe of the document, have been examined by filing their affidavits in lieu of examination-in-chief.

They have deposed that they know the plaintiff and the defendants and that the suit schedule property belongs to the defendants. They have stated that, on 27.08.2013, the parties entered into an Agreement of Sale for a total consideration of Rs.2,00,000/-, out of which Rs.1,90,000/- was paid as advance sale consideration and the balance of Rs.10,000/- was agreed to be paid at the time of execution of the sale deed within 36 months from the date of the agreement. They have further deposed that the plaintiff and defendants signed Ex.P.1 in their presence and that PW.3 and another witness, D.Kempegowda, affixed their signatures as attesting witnesses. PW.4 has additionally stated that he scribed the document and affixed his signature and seal thereto. They identified their signature on Ex.P1, which was marked as Ex.P1(e) and Ex.P1(g).

19. In order to disprove the plaintiff's case, GPA holder of Defendant No.2 examined herself as DW.1 by filing her affidavit in lieu of examination-in-chief, reiterating the averments made in the written statement.

20. In support of the oral evidence by affidavit PW.1 and 2 produced Ex.P1, the registered Agreement of Sale dated 27.08.2013, executed by the defendants in favour of the plaintiff in respect of the suit schedule property. A perusal of Ex.P1 discloses that the defendants agreed to sell the suit schedule property to the plaintiff for a total sale consideration of Rs.2,00,000/-. The document further reveals that the agreement was executed in the presence of the attesting witnesses, namely Madhu Y.C. and D. Kempegowda.

21. During cross-examination, PW.2 admitted that Defendant No.1 has three children i.e., defendant No.2 and 3 and Rajanna. However, no specific defence was put forth by the defendants to rebut the plaintiff's case regarding the execution of Ex.P1.
22. Upon careful appreciation of the evidence of PWs.2 to 4, this Court finds their testimony to be natural, probable, and trustworthy. Though Defendant No.2 extensively cross-examined these witnesses, nothing material was elicited to discredit their evidence. PWs.3 and 4 were present at the time of execution of Ex.P1 and had direct knowledge of the transaction. Their evidence is fully corroborated by the contents of Ex.P1. Therefore, there is no reason to disbelieve their testimony.
23. On careful perusal of the oral and documentary evidence available on record, this Court is satisfied that the execution of Ex.P1, the registered Agreement of Sale, has been duly proved in accordance with law through the evidence of PWs.2 to 4. The evidence clearly establishes that the defendants agreed to sell the suit schedule property to the plaintiff and executed the registered Agreement of Sale dated 27.08.2013 for a total consideration of Rs.2,00,000/-. It is further established that the defendants received an advance amount of Rs.1,90,000/- and agreed to execute the sale deed upon receipt of the balance consideration of Rs.10,000/-.
24. It is also pertinent to note that the defendants failed to execute the sale deed despite repeated demands made by the plaintiff and her readiness to pay the balance sale consideration amount of Rs.10,000/-. The plaintiff has successfully proved her

case through the oral and documentary evidence. Accordingly, Issue No.1 is answered in the Affirmative.

Issue No.2:

25. The plaintiff has established that she paid an advance sale consideration of Rs.1,90,000/- out of the total agreed consideration of Rs.2,00,000/-. The plaintiff has consistently asserted her readiness and willingness to perform her part of the contract.
26. The plaintiff has further relied upon Exs.P5 to P11, namely the legal notice, postal receipts, postal acknowledgments, returned postal cover, and reply notice, in support of her contention. These documents, coupled with the oral evidence on record, clearly establish that the plaintiff issued a legal notice dated 21.06.2016 calling upon the defendants to execute the sale deed in her favour upon receipt of the balance consideration amount.
27. Despite receipt of the said notice and repeated requests and demands made by the plaintiff, the defendants failed to execute the sale deed as agreed under the contract. The conduct of the plaintiff in issuing the legal notice and continuously demanding performance of the contract demonstrates her bona fide intention and continuous readiness and willingness to fulfil her contractual obligations.
28. Having regard to the oral and documentary evidence available on record, this Court is of the considered opinion that the plaintiff has successfully proved that she was always ready

and willing, and continues to be ready and willing, to perform her part of the contract as required under Section 16(c) of the Specific Relief Act. Accordingly, Issue No.2 is answered in the Affirmative.

Issue Nos.3 to 5:

29. Since these issues are interconnected, they are taken up together for common consideration.

30. The principal question that arises for determination is whether the plaintiff is entitled to the equitable relief of specific performance.

31. On perusal of Ex.P3, the RTC extract, it appears that the revenue records pertaining to the suit schedule property stand in the name of Defendant No.1. However, the specific defence taken by Defendant No.2 is that the suit schedule property is ancestral in nature and that all the legal heirs of Defendant No.1 have a co-parcenary or co-ownership interest therein. The plaintiff has also stated that the suit property was the ancestral property of defendant No.1's husband. The defendants, alone were not competent to enter into an agreement for sale of the entire property without the consent and participation of the other co-sharers.

32. In support of the said defence, the GPA holder of plaintiff was examined as PW.2. Significantly, during the course of cross-examination, PW.2 has stated that Defendant No.1 had three sons, namely Kempegowda, Rajanna, and Sathish. The evidence on record clearly establishes that Rajanna is one of the

legal heirs and co-sharers in the suit schedule property. It is not in dispute that Rajanna is neither an executant to Ex.P1 nor a party to the present suit. Consequently, the defendants who executed Ex.P1 cannot be said to be the exclusive owners of the entire suit schedule property or competent to convey absolute title thereto.

33. It is well settled that the relief of specific performance is discretionary and equitable in nature. A decree for specific performance should not ordinarily be granted where such relief would adversely affect the rights and interests of persons who are not parties to the contract and who possess an independent right in the property. If specific performance of Ex.P1 were to be granted in respect of suit schedule property, it would directly prejudice the rights of Rajanna, who has neither executed the agreement nor consented to the proposed transaction.

34. In the circumstances, though the plaintiff has successfully proved the execution of Ex.P1 and has also established her continuous readiness and willingness to perform her part of the contract, this Court is of the considered opinion that she is not entitled to a decree for specific performance in respect of the entire suit schedule property.

35. At the same time, Ex.P1 unequivocally establishes that the defendants received a sum of Rs.1,90,000/- from the plaintiff towards advance sale consideration. Since specific performance of the contract cannot be granted for the reasons stated above, equity demands that the plaintiff be restituted by way of refund of the advance amount paid under the agreement. Accordingly, the

plaintiff is entitled to recover the advance sale consideration of Rs.1,90,000/- from the defendants, together with interest. Therefore, Issue Nos.3 and 4 are answered in the Affirmative, and Issue No.5 is answered Partly in the Affirmative.

36. **Issue No.6:** For the aforesaid discussion on Issue No.1 to 5, this Court proceeds to pass the following:

ORDER

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

The Relief of Specific performance of Contract as sought for is hereby rejected.

The Plaintiff is entitled for the refund of earnest money of Rs.1,90,000/- (Rupees One Lakh Ninety Thousand only) with interest at the rate of 6% p.a. from the date of suit till the date of realization.

Draw decree accordingly.

(Dictated to the stenographer and transcribed him, script revised, corrected and then pronounced by me in the open Court on this the 18th day of June 2026.)

(NAZIA KOUSER)
Prl Civil Judge & JMFC,
Malavalli.

:ANNEXURE:

List of witnesses examined on behalf of the plaintiff:-

PW1	:	Chikkathayamma
PW2	:	C. Basavaraju
PW3	:	Madhu Y.C.

List of documents exhibited on behalf of the plaintiff:-

- Ex.P.1 : Agreement of Sale dated 27.08.2013
Ex.P.1(a) to (g): Signatures
Ex.P.2 : Encumbrance Certificate
Ex.P.3 : RTC extract,
Ex.P.4 : Legal notice
Ex.P.5 to 7 : Postal receipts
Ex.P.8 : Returned postal covers
Ex.P.8(a) : Copy of the notice returned postal cover
Ex.P.9 : Postal acknowledgment
Ex.P.10 : Reply notice

List of Witnesses examined on behalf of the Defendants:-

- DW1 : Mangalamma

List of documents exhibited on behalf of the Defendants:-

- Ex.D.1 : General Power of Attorney.

(NAZIA KOUSER)
Prl Civil Judge &
JMFC, Malavalli.