

TITLE SHEET FOR JUDGMENTS IN SUIT

**IN THE COURT OF THE PRINCIPAL JUDGE, SMALL CAUSES
AND SENIOR CIVIL JUDGE, MYSORE.**

**Present: Sri. S.H.Hosagoudar, B.Sc., LL.B.,(Spl.)
Judge, Court of small causes, Mysore.**

Date of Judgment: 14th day of February 2013

O.S.NO.437/2006

Plaintiff :-

S. Suresh,
S/o Sri S. Shivaram Rao,
Aged about 41 years,
No.313, J.P. Nagar,
Mysore.

(By Sri B.M. Basavaraju, Advocate)

-Vs.-

Defendants:-

1. Sri Puttananjaiah
S/o Late Nanjundaiah
Aged about 70 years
2. Smt. Subbarathnamma
W/o Sri Puttananjaiah
Aged about 58 years
3. Sri P.Shivakumar
S/o Sri Puttananjaiah
Aged about 41 years
4. Smt. Sundaramma
W/o Sri P.Shivakumar
Aged about 33 years,
5. P. Manjunath
S/o Sri Puttananjaiah

Aged about 38 years

6. Smt. Umadevi
W/o Sri Manjunath
Aged about 28 years
7. Sri P.Vishwanath
S/o Sri Puttananjaiah
Aged about 29 years
8. Smt. Nandini K.K.
W/o Sri P.Vishwanath
Aged about 28 years,

All are residing at Chikkahalli
Village, Varuna Hobli,
Mysore Taluk.

(By Sri S.S., Advocate for D-3, 6,7 & 8)
(D-1, 2, 4, & 5 – Exparte)

Date of the institution of the suit	:	12-04-2006
Nature of the suit	:	For Specific performance of contract
Date of commencement of Recording of evidence	:	16-07-2009
Date of Pronouncement of Judgement	:	14-02-2013
Total Duration	:	Years Months Days 06 10 02

Judge,
Court of Small Causes, Mysore.

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

The plaintiff has filed this suit against the defendants for Specific performance of contract directing the defendants to execute sale deed in respect of suit schedule property in favour of plaintiff by receiving balance sale consideration amount and also directing the defendants to deliver possession of the suit schedule property also cost of the suit.

2. In brief, the facts of the plaintiff's case are as under:-

It is the case of the plaintiff that the defendants being the owners of the suit schedule property. Bearing No.69/1 situated at Chikkahalli Village, Varuna Hoblil, Mysore Taluk, measuring to an extent of 32 guntas have executed sale agreement in favour of the plaintiff on 1/7/2005, agreeing to sell the suit schedule property for total consideration amount of Rs.3,28,000/-. That on the same day, the defendants received a sum of Rs.1,00,000/- as advance amount from the plaintiff and agreed to execute registered sale deed within 4 months by receiving the

balance sale consideration amount. That the defendants inspite of ready and willingness of the plaintiff, have failed to perform the part of contract. That the plaintiff came to know that the defendants are attempting to sell the suit land to some other persons. Hence the plaintiff has filed the present suit for Specific performance.

3. After filing this suit summons were issued to the defendants, but inspite of service of summons defendants did not appeared before court and contest the case of the plaintiff. Hence they are placed exparte. It appears from the record that my predecessor in the office after trial and hearing has disposed of this suit by Judgement and decree dated:8/9/2011, directing the defendants to pay advance amount of Rs.1,00,000/- together with interest at the rate of 6% from the date of agreement till its realization. Further it appears from the records that being aggrieved by the said Judgement and decree, plaintiff preferred an appeal before 3rd Additional District & Sessions Judge, Mysore, in RA No.640/2011. The Hon'ble III Additional District & Sessions Judge, Mysore, after hearing, has allowed the appeal and set aside the Judgement and decree passed by this court and remitted the matter to this court for disposal and also allowed I.A. No.1 filed under order 41 Rule 27 of CPC by the plaintiff

and permit the plaintiff to lead further evidence with regard to the issue relating to readiness and willingness to perform the contract. The Hon'ble III Additional District & Sessions Judge, Mysore, in order to avoid further delay directed the plaintiff to appear before this court on 23/7/2012 without expecting further notice. However it appears that records were received by this court only on 8/8/2012. Hence this court after receipt of the records from the Hon'ble III Additional District and Sessions Court, Mysore, has directed to issue court notice to both the parties. In pursuance of the court notice plaintiff appeared through his counsel and taken notice. Further defendant No.3, 6, 7 and 8 appeared through their counsel and failed to file written statement and rest of the defendants namely defendant Nos.1, 2, 4 and 5 did not appeared and contest the case of the plaintiff and hence they are placed exparte. In this case eventhough defendant Nos.3, 6, 7 and 8 have appeared through their counsel, but failed to file written statement and also they did not take any participation in the proceedings.

4. It appears that earlier in this case plaintiff examined himself as PW1 and produced in all 7 documents which are marked as Ex.P1 to P.7 and closed his side of evidence. After remand of the matter, PW1 is further

examined and produced 2 documents which marked as Ex.P.8 and P.9 and closed his side of evidence. In this case eventhough defendant Nos.3, 6, 7 and 8 have appeared through their counsel, but they have not taken any participation in the proceedings.

5. I have heard the arguments for plaintiff. At the time of argument defendant No.3, 6, 7 and 8 and their counsel were absent and not addressed any argument. Hence taken as no arguments for above said defendants.

6. I have perused the entire records of the case.

7. On perusal of the records of the case following points are arises for my consideration.

1) Whether plaintiff was always ready and willing to perform his part of contract?

2) Whether plaintiff is entitled for Specific relief of contract as sought for?

3) What order/ decree?

8. My answer to the above points are as follows:-

Point No.1 & 2 :- In the Affirmative.

Point No.3 :- As per final order for the following:-

REASONS

9. Point No.1:- It is the case of the plaintiff that defendants have executed agreement of sale in respect of the suit schedule property on 1/7/2005 for sale consideration amount of Rs.3,28,000 and they have received a sum of RS.1,00,000/- as earnest money and also agreed to execute registered sale deed within 4 months from the date of agreement. Further it is the case of the plaintiff that inspite of his request and demand defendants did not come forward to execute the sale deed by receiving balance sale consideration amount. It is pertinent to note that my predecessor in the office while disposing of this suit by Judgment and decree dated:8/9/2011 has already held that defendants have executed agreement of sale in favour of plaintiff in respect of the suit schedule property as per Ex.P.1 on 1/7/2005. Further in the appeal also Hon'ble Appellate court has also held that Ex.P.1 agreement of sale is a genuine document and defendants have executed Ex.P.1 in favour of plaintiff in respect of the suit schedule property. The Hon'ble III Additional

District and Sessions Judge, while remanding the matter has directed this court to permit the plaintiff to lead further evidence with regard to issue relating to readiness and willingness to perform the contract. Hence as per direction of the Hon'ble appellate court this court has permitted the plaintiff to lead further evidence with regard to issue relating to readiness and willingness to perform the contract. PW1 after remand of the matter has produced 2 Bank Statements which are marked as Ex.P.8 and P.9. On perusal of the same it clearly shows that plaintiff is account holder of Syndicate Bank, Chamundipuram, Mysore and balance from 2/9/2005 to 5/12/2005 showed in the balance of accounts of more than Rs.2,20,000/. Hence from Ex.P.8 and P.9 it is much clear that plaintiff was having sufficient money to pay the balance sale consideration amount. PW1 in his evidence deposed that as per agreement of sale, he has arranged the balance sale consideration of Rs.2,28,000/- and contacted the defendants 1 to 8 in their house in the month of September and tendered the said sum and asked the defendant No.1 to 8 to execute and register the sale deed in respect of the suit schedule properties, but the defendants did not receive the said balance sale consideration amount and postponed the execution of the sale deed by saying untenable reasons. He further

deposed that he again approached the defendants on the subsequent month and tendered the balance amount of Rs.2,28,000/- and demanded them to execute the sale deed, but the defendants then also not performed their part of the agreement by receiving balance amount. It is pertinent to note that in this case defendants have not at all cross-examined PW1. Hence evidence of PW1 is remained unchallenged. Hence I do not find any reasons to disbelieve the evidence of PW1. Therefore from the documentary evidence it is much clear that plaintiff was always ready and willing to perform his part of contract. Further evidence on record clearly shows that eventhough plaintiff is was always ready and willing to perform his part of contact, but defendants themselves did not come forward to execute the sale deed by receiving balance sale consideration amount. Further evidence on record clearly shows that plaintiff himself personally approached the defendants in their house and tendered the balance sale consideration amount and demanded them to execute sale deed by receiving balance sale consideration amount, but defendants did not come forward to execute the sale deed by receiving balance sale consideration amount. Hence the evidence on record clearly shows that plaintiff was/is always ready and willing to perform his part of contract. It is pertinent

to note that section 16© of the Specific Relief Act 1963 deals regarding concept of readiness and willingness on the part of offeree. The cumulative reading of Section 16 (c) makes it clear that, if plaintiff is not ready and willing to perform his part of contract as per terms of contract, there is a specific bar for the decree of Specific Performance of Contract and it cannot be enforced. But in this case, evidence on record clearly shows that plaintiff was/is always ready and willing to perform his part of contract. Further Ex.P.8 & P.9 clearly shows that plaintiff is having sufficient money to pay the balance sale consideration amount. Under such circumstances, it cannot be said that plaintiff was not ready and willing to Performa his part of contract. It is also important to note that mode of proof of readiness and willingness is having no straight jacket formula. It must be determined from the entirety of facts and circumstances of the case relevant to the intention and conduct of the parties is concerned. In this case, evidence on record clearly corroborates the case of the plaintiff as to his readiness and willingness to perform his part of contract. Hence the cumulative reading of entire evidence on record makes it clear that the plaintiff was/is ready and willing to perform his part of contract. Further the evidence on record clearly shows that plaintiff was having intention to perform his

part of contract. But evidence on record clearly shows that defendants themselves are not ready and willing to perform their part of the obligation. Plaintiff proved his readiness and willingness. Accordingly I answer point No.1. in the affirmative.

10. Point No.2:- In this case plaintiff sought for the relief of Specific performance of contract directing the defendants to execute sale deed in accordance with agreement of sale dated:1/7/2005 after receiving balance sale consideration amount. In this case plaintiff proved that defendants have executed agreement of sale in respect of the suit schedule property for sale consideration amount of Rs.3,28,000/-. Further plaintiffs proved that defendants have received a sum of Rs.1,00,000/- as an advance amount. Further evidence on record clearly shows that defendants have agreed to execute the sale deed within 4 months from the date of execution of agreement of sale by receiving balance sale consideration amount. Further in this case evidence on record clearly shows that plaintiff was/is always ready and willing to perform his part of contract. While answering point No.1, it is held that plaintiff was/is always ready and willing to perform his part of contract. It is pertinent to note that Section 20 of the Specific

Relief Act, Section 20 of the Specific Relief Act 1963 deals that, granting or refusing of decree of Specific Performance of Contract is always discretionary but that discretion could be exercised by the court judiciously but not arbitrarily or capriciously. Keeping in mind the above provisions of law now I will consider whether plaintiff is entitled for decree of Specific Performance of Contract as claimed by him. It is also important to note that while granting or refusing of decree of specific performance of contract, court has to consider hardship causes to the parties. In this case defendants did not enter into the witness box and adduced any evidence to show that if decree of Specific performance of contract is granted they will be put to hardship. It is pertinent to note that the suit is filed in the year 2006. After filing of this suit, court has issued summons to the defendants. But inspite of service of summons defendants did not appear and contest the case of the plaintiff. Hence they are placed ex parte. As already stated my predecessor in the office after trial has disposed of this suit by Judgement dated:8/9/2011. Further it appears from the records that being aggrieved by the above said Judgment and decree passed by my predecessor plaintiff herein preferred an appeal before Hon'ble III Additional District and Sessions Court, Mysore in RA No.640/2011.

Further it appears from the evidence on record that after filing the said appeal the Hon'ble III Additional District and Sessions Court, Mysore, has issued notice to the defendants. Further it appears that inspite of service of notice, the defendants also did not appear before appellate court and contests the mater. The evidence on record clearly shows that defendants are not at all interested in the matter. Further the conduct of the defendants clearly shows that eventhough they have executed agreement of sale as per Ex.P.1 in respect of the suit schedule property in favour of plaintiff, but they failed to perform their part of obligation. Further in this case defendants have not adduce any evidence to show that if decree of Specific performance of contract is granted they will be put to hardship. Under such circumstances, it cannot be said that if decree of Specific performance of contract if granted defendants will be put to hardship. On the other hand, if decree of Specific performance of contract is not granted, the plaintiff who all along agitating this matter since 2006, will be put to greater hardship. Therefore, plaintiff is entitled for relief of Specific performance of contract as prayed for. Accordingly I answered Point No.2.

11. Point No.3:- The evidence on record clearly shows that defendants have executed agreement of sale as per Ex.P.1 in respect of the suit schedule property in favour of plaintiff. Further evidence on record clearly shows that plaintiff is always ready and willing to perform his part of contract. Therefore plaintiff is entitled for the relief of Specific performance of contract. In this case plaintiff also sought for possession directing the defendants to hand over possession of the suit schedule property. In this case plaintiff proved that he is entitled for the relief of Specific performance of contract. Therefore defendants are bound to hand over possession of the suit schedule property to the plaintiff. Hence suit of the plaintiff is deserves to be decreed. In the result I proceed to pass the following:-

ORDER

Suit of the plaintiff is hereby decreed with cost as under.

Defendants are hereby directed to execute sale deed duly conveying the suit schedule property in favour of plaintiff in terms of sale agreement dated:1/7/2005 after receiving

balance sale consideration amount within 3 months from the date of this judgment. If defendants fails to do so, plaintiff is at liberty to get it done through the agency of the court.

Further defendants are hereby directed to hand over possession of the suit schedule property to the plaintiff.

Draw decree accordingly.

(Typed to my dictation on computer by the Stenographer and after making necessary corrections, pronounced by me in the open court this the 14th day of February 2013)

(S.H.Hosagoudar)
Judge,
Court of Small causes & Sr. C.J.
Mysore.

ANNEXURES :-

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF :-

PW.1 : S.Suresh

LIST OF DOCUMENTS EXHIBITED FOR THE PLAINTIFF:-

Ex.P.1 : Agreement of sale

Ex.P.2 : Mutation copy
Ex.P.3 to 7 : RTC extracts
Ex.P.8 &9 : Bank statements

LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS:- NIL

LIST OF DOCUMENTS EXHIBITED FOR THE DEFENDANTS:-NIL

Date:14/02/2013
Place: Mysore.

Judge,
Court of Small causes & Sr. C.J.
Mysore.