

KAMS200002742022



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., H.D.KOTE**

Present: Sri.Mahesh B.T., B.Com., LL.M.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote.

O.S. NO.97/2022

Dated: On this the 24th April, 2026

Plaintiff/s : Smt. Sannadevamma
W/o. Late. Bairanayaka
Aged about 61 years
R/at. Hebbalaguppe Village
Kasaba Hobli,
H.D.Kote Taluk.

(By Sri.G.N.N., Advocate)

-V/s-

Defendant/s: 1. Javarayanayaka
S/. Late. Channanayaka
Aged about 74 years,

2. Chikkamanamma
W/o. Javarayanayaka
Aged about 70 years

3. Chandramma
S/o. Javaranyaka
Aged about 37 year.
4. Mahadevanayaka
S/o. Javaranyaka
Aged about 35 years
5. Smt. Kavya
W/o. Mahadavanayaka
Aged about 25 years.
6. Kenchamma
W/o. Sannanayaka
Aged about 75 years
7. Smt. Puttamma
W/o. Chikkanayaka
Aged about 71 years

Defendant Nos.1 to 7 are
resident at Hebbalaguppe Village
Kasaba Hobli, H.D.Kote Taluk
Mysuru District.

8. Smt. Chikkadevamma
W/o. Ramanayaka.N
Aged about 47 years
R/at. Etna Village
Kasaba Hobli, H.D.Kote Taluk.

(Defendant No.1 to 5 & 8 By Sri. N.S. Advocate)

(Defendant No.1 and 7 By Sri. D.C., Advocate)

Date of institution of the Suit	27.05.2022
Nature of the Suit	Specific Performance of contract
Date of commencement of recording of evidence	05.04.2023
Date on which the Judgment was pronounced	09.04.2026
Total duration	Years /s Month/s Day/s 04 01 07

Sd/-
(Mahesh.B.T)
Senior Civil Judge & J.M.F.C
H.D.Kote

J U D G M E N T

This is the suit filed by the plaintiff for the relief of specific performance of contract and for costs and other reliefs.

2. The case of the plaintiff in brief is as under:

The defendants are the owners and in possession of the suit schedule property. Suit schedule property is ancestral property of the defendants standing in the name of defendant No.1, 6, 7, 8 and Mahadevamma S/o Late. Channanayaka through MR.No.22/2013-14, the revenue records are in the name of the defendants and the property is in the possession

of the defendants. The defendants to construct house and also for family needs approached the plaintiff for sale and entered into agreement of sale dated 27.10.2016 for the total sale consideration amount of Rs.6,80,000/-. Further it is stated that, the advance amount of Rs.5,30,000/- was paid to the defendants at the time of the agreement of sale before the witnesses and agreed to pay the balance sale consideration of Rs.1,50,000/- at the time of the registration of the sale deed and also three years time of fixed for the execution of the sale deed with condition that, the defendants has to secure all the revenue documents and also to remove the name of the Mahadevamma D/o. Late. Channanayaka, who was said to be missing. Further it is stated that the plaintiff approached this defendants on many occasions along with the balance sale consideration and requested them to come and execute the registered sale deed. But, the defendants on one or other reasons kept postponing execution of the sale deed. Further it is stated that inspite of repeated request and demand the defendants to furnish all the revenue records with respect to the suit schedule property, but the defendants turned into the deaf-hear, thereafter on 10.10.2019 the plaintiff issued the legal notice to the defendants and said notice was duly served on the defendants No.1, 4 and 6 to 8. The defendant No.5 refused to receive the notice. In spite of service of notice they not replied nor comply the demand. Further it is stated

that, the plaintiff was always ready and willing to comply her part of contract, but the defendants willfully failed to execute the registered sale deed. Hence, the plaintiff has come before this court with the present suit.

3. After service of suit summons, the defendants have appeared before the court through their counsel and the defendant No.1 to 5 and 8 have filed their written statement. defendant No.6 and 7 filed separate written statement admitting the case of the plaintiff and contended that, the suit schedule property is the joint family property of the defendant Nos.1, 6, 7, 8 and the deceased Mahadevamma, the revenue records are in the name of the defendants and they are in possession and they are completely free and legally entitled to sell the suit schedule property as per their wish. Since the defendants needed the suit schedule property for their own expenses to build a house, to pay off debts and also for family needs, they agreed to sale the suit schedule property for total sale consideration of Rs.6,80,000/- dated 27.10.2016 and received an advance sale consideration of Rs.5,30,000/- before the witness to the deed and the remaining sale amount of Rs.1,50,000/- has been paid within three years from the date of registration of the agreement of sale. Further admitted that, the defendants has to provide the survey sketch and revenue records of the schedule property

by the land surveyor at their own expense and to delete the name of Mahadevamma, a member of the defendants' family, who is missing from the R.T.C.

4. Further it is contended that, the plaintiff has requested the defendants several times to register the sale deed and to provide the documents required for registration of the purchase deed. However, due to non production of the documents, the plaintiff has not been able to register the sale deed. The plaintiff has issued a notice to the defendants on 10.10.2019 requesting them to register the sale deed as per the agreement. The defendants No.6 and 7 have received the notice but the defendant No.6 and 7 have also met the plaintiff and asked for time to register the sale deed and they are ready to execute the sale deed in favour of the plaintiff.

5. The defendant Nos.1 to 5 and 8 have filed their separate written statement. In the written statement they have contended that, the defendants have received a hand loan of Rs.5,30,000/- from the plaintiff for a interest, and the defendants have also agreed to give the scheduled property as collateral security. The plaintiff, with a view to defrauding the defendants, has fraudulently got a registered agreement of sale by joining with witnesses and deed writer. Further it is contended that, it is also false that the defendants have

agreed to receive the remaining Rs.1,50,000/- as per the terms of the purchase agreement and register the purchase. It is contended that, after the plaintiff sent a notice to the defendants through her counsel, the defendants met the plaintiff and asked him to appear before the village panchayath. He said that he would not file any suit against the defendants through this notice. Therefore, the defendants have not given any reply notice. The defendants are ignorant and innocent. The defendants do not have any kind of legal knowledge. The value of the suit schedule property is very high. This false suit has been brought by defrauding the defendants. The plaintiff has not come to court with clean hands. Therefore, they have prayed for dismissal of the suit with costs.

6. The following issues were framed by my learned predecessor in the office.

ISSUES

1. Whether the plaintiff proves that the defendants have agreed to sell the property in her favour for a sum of Rs.6,80,000/- and executed an agreement of sale deed dated 27.10.2016 by receiving advance sale consideration of Rs.5,30,000/- on 27.10.2016?

2. Whether the defendants prove that they have executed the said agreement as a security to the loan borrowed from the plaintiff as alleged in the written statement?
3. Whether the plaintiff proves that he is and was ready and willing to perform his part of contract?
4. Whether the plaintiff is entitled for the relief as sought for?
5. What Order or Decree?

7. The plaintiff to substantiate her case examined her SPA holder who is her son as PW1 and also examined two supporting witnesses as PW2 and PW3 and got marked Ex.P1 to ExP19 documents. On the other hand, the defendants to prove their case defendant No.5 examined as DW1 and got marked ExD1 to Ex.D4.

8. Heard the arguments of the both the parties and perused materials on record.

9. My findings on the above Issues are as under:

- Issue No.1 : In the Affirmative;
- Issue No.2 : In the Negative;
- Issue No.3 : In the Affirmative;
- Issue No.4 : In the Affirmative;

Issue No.5 : As per final order

for the following:

REASONS

10. Issues No.1 & 2:- Since the reasoning for these issues overlap with each other to prevent repetition and for convenience sake, they are taken together for consideration.

11. Before going to roots of the matter let me discuss the concept of Specific Performance. It is the remedy developed by principle of equity. A party to a contract who is damaged because the contract is breached by another party has the option to file a suit for specific performance compelling to perform his part of contract. Specific performance is compelling a party to do precisely what he ought to have done without coerced by Court.

12. 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 monetary compensation is not an adequate relief as where the breach of contract pertains to movable property.

13. Keeping these basic principles in mind, let me analyse the instant case. The case of the plaintiff is that, she had entered into registered agreement of sale dated: 27.10.2016 with the defendants for total sale consideration of Rs.6,80,000/-. Further it is stated that she has paid advance sale consideration amount of Rs.5,30,000/- and 3 years time was kept for the registration of the sale deed and they had agreed to register the sale deed in favour of the plaintiff by receiving the balance sale consideration amount. But, they have failed to perform their part of obligations. The plaintiff was always ready and willing to perform her part of contract but they have failed to perform their part of contract. Hence, without other option, she has come before this court.

14. The defendants No.6 and 7 have admitted the case of the plaintiff and filed separate written statement. The defendant No.1 to 5 and 8 have filed separate written

statement denied the case of the plaintiff but they have contended that, the defendant's with intention to to construct the house to clear the loan and for the family necessity taken the hand loan and the plaintiff offered to lend money. Accordingly, the agreement of sale dated:27.10.2016 was entered into, and the defendants borrowed sum of Rs. 6,80,000/- from the plaintiff. However, the said document was executed for the security purpose only and not for sale of the suit schedule property. The defendants have agreed to pay interest to the plaintiff. Further contended that, the defendants have not agreed to sell the suit schedule property, on the other hand they wanted construct the house and hence they borrowed money. The agreement is not for the purpose of sale of the schedule property as allegedly claimed by the plaintiff. The present suit filed by the plaintiff is frivolous and misconceived. Hence, they denied the execution of the sale agreement.

15. The plaintiff to prove her case, the SPA holder of plaintiff i.e., her son examined as PW1 by filing an affidavit in lieu of her examination in chief and reiterated the plaint averments and relied upon the ExP-1 to ExP19 documents. Ex.P1 is the Special Power of Attorney dated 24.02.2023, on careful perusal of the same, it can be seen that, plaintiff has given the Special Power of Attorney in favour of her son. On

careful perusal of the recital it can be seen that, due to her ill-health power was given to the her son to look after the case. Exp2 is the registered agreement of sale dated:27.10.2016, on careful perusal of the same, it can be seen that the defendants have executed the registered agreement of sale in favour of the plaintiff before the witnesses and total sale consideration was fixed for Rs.6,80,000/- and on the same day defendants had received Rs.5,30,000/- by the plaintiff and also 3 years time was fixed from the date of the agreement to execute the regular sale deed in favour of the plaintiff. Ex.P3 is the legal notice dated 10.10.2019 wherein plaintiff has issued legal notice against the defendants through her counsel calling the defendants to come and execute the registered sale deed by receiving the balance sale consideration. Further plaintiff also produced Ex.P4 to 10 are the postal receipts for having issued notice to defendants and Ex.P12 to 18 are postal acknowledgments, on careful perusal of the said documents it can be seen that, the defendant No.1 to 4 and 6 to 8 have received the notice, Ex.P19 is the un-served postal cover return with shara intimation was served, but article was not taken delivery by addressing i.e., the defendant No.5, wherein the said notice was refused by the defendant No.5. Ex.P11 is the RTC in respect to the suit schedule property for the year 2021-22, on careful perusal of the same it can be seen that, suit property

standing in the name of defendant No.1, 6, 7, 8 and Mahadevamma D/o Channanayaka.

16. The defendants No.1 to 5 and 8 to prove their case, the defendant No.5 examined herself as DW1 and got marked ExD1 to ExD4. Ex.D1 is the RTC with respect to the suit schedule property for the year 2024-25, on careful perusal of the same it can be seen that, suit property joining in the name of defendant No.1, 6, 7, 8 and Mahadevamma D/o. Channanayaka. Ex.D2 is the Tax paid receipt, Ex.D3 is the MR.No.H25/16-17 and Ex.D4 is the copy of the FIR in Cr.No.93/2013 of Devaraja Police Station, Mysuru.

17. On careful perusal of the oral and documentary evidence, it can be seen that as per Exp2 registered agreement of sale dated:27.10.2016, the defendants have executed the agreement of sale in favour of the plaintiff. On careful perusal of the recitals it can be seen that, total sale consideration was fixed for Rs.6,80,000/- and out of the sale consideration on the day of the agreement of sale the plaintiff has paid Rs.5,30,000/- before the witnesses and for remaining Rs.1,60,000/- amount to pay at the time the registered sale deed. Further it is also agreed between the parties that 3 years time was fixed for the registration of the registered sale deed and also it is admitted that the

defendants have to procure the revenue documents and Sketch with respect to the suit schedule property and also to remove the name of the Mahadevamma D/o Channanayaka from the RTC. Further it is to be noted here that, the contesting defendants No.1 to 5 and 8 have not disputed their signatures in the agreement of sale.

18. Further it is to be noted here that, on 10.10.2019 the plaintiff has also issued legal notice through her counsel calling for defendants to come and execute the registered sale deed by collecting the balance sale consideration amount of Rs.1,50,000/- and same was served to the defendants No.1 to 4 and 6 to 8 and notice to the defendant No.5 return with shara intimation was served but article was not taken delivery by addressing i.e., the defendant No.5, wherein the said notice was refused by the defendant No.5.

19. Further it is to be noted here that, the main case of the plaintiff is that, she has entered into an agreement of sale with the defendants with respect to the suit schedule properties, thereafter these defendants started postponing one on the other reasons to produce essential documents for registration and come forward to execute the registered sale deed. Thereafter, she has issued legal notice to the defendants and filed instant suit against the defendants. But,

defendants have denied the case of the plaintiff and contended that, they have borrowed loan amount from the plaintiff to construct the house and for the family necessity, but they have not entered into any agreement of sale with the plaintiff. It is to be noted here that, during the examination-in-chief the plaintiff SPA holder filed his affidavit evidence and taken the contention as stated in the plaint. The counsel for the defendant Nos.1 to 5 and 8 cross-examined this witness in length, but nothing was elicited from the mouth of the PW1 to support their contention.

20. Further to prove the case of the plaintiff also examined 2 witnesses, who are the witnesses to the agreement of sale as PW2 and PW3 they supported the case of the plaintiff. PW2 has identified his signature at ExP2(e) and also identified the defendants signature at Ex.P2(a) to (d). the counsel for the defendant cross examined this witness but noting was elicited from his mouth to support their case. Further PW3 who is the witness to the agreement of sale and supported the case of the plaintiff. The counsel for the defendants No.1 to 5 and 8 cross examined this witness except minor contradiction nothing was elucidated from the mouth of this witnesses.

21. Further it is to be noted that, the defendant No.5 herein examined as DW1 and marked ExD1 to ExD4. The main contention taken by the defendants No.1 to 5 and 8 are that, they have not entered an agreement of sale and they borrowed the loan for interest from the plaintiff, now the plaintiff fraudulently got executed agreement of sale and filed the instant suit for the relief of specific performance. Further they also taken the contention that, the Mahadevamma D/o Channanayaka who is the daughter of the Channanayaka is having the right over the suit schedule property and she was shown missing in the sale agreement at Ex.P2, but her legal heirs were not arrayed as a parties. It is to be noted here that, during the course of the cross-examination it is elicited from the mouth of the DW1 that the daughter of the Channanayaka i.e., the Mahadevamma was missing for that she admitted the same. Further she also admitted that, one Somanayaka was the husband of the said Mahadevamma and the said Somanayaka had signed as Ex.2(e) in the Ex.P2, which clearly shows that the daughter of the one Channanayaka is missing and same was admitted by the defendants. Further it is to be noted here that, the DW1 admitted her signature and photo in the Ex.P2, but taken the contention that, plaintiff fraudulently got executed the sale agreement for the security of the loan borrowed by them. But defendants No.1 to 5 and 8 failed to prove the same,

Moreover, the defendant No.6 and 7 are admitted the case of the plaintiff and supported the plaintiff case.

22. Further it is to be noted here that, Exp2 is the registered agreement of sale executed by the defendants, which clearly shows that there is an agreement of sale between the plaintiff and the defendants. But, the defendant Nos.1 to 5 and 8 have taken the contention that they have taken the hand loan for the construction of the house and for the family necessity they have taken the amount from the plaintiff, but the plaintiff has created the agreement of sale. Hence, they are not liable to execute any sale deed in favour of the plaintiff, but these defendants have failed to prove the same. Further it is to be noted here that, defendant Nos.1, 6, 7 have not examined and no additional witnesses were examined by the defendants No.1 to 5 and 8 to support their contention.

23. On going through the evidence it clearly shows that the defendants have entered into an agreement of sale with the plaintiff. Now, due to the increasing in the rate of the suit schedule properties the defendants have taken the contention that they have taken the hand loan from the plaintiff. But, they have failed to prove that they have taken the hand loan with the plaintiff. Hence, for the above said reasons, I

answered **Issue No.1 in the Affirmative and Issue No.2 is answered in the Negative.**

24. Issue No.3: It is the case of the plaintiff is that, she has entered into an agreement of sale with the defendants, but the defendants have failed to execute the sale deed in her favour as per the terms and conditions of the agreement of sale. Thereafter she has issue legal notice to the defendants calling upon them to come and execute registered sale deed in her favour. But, defendant No.1 to 4 and 6 to 8 have received the legal notice, but not given the reply. The defendant No.5 refused to receive notice issued by the plaintiff, but taken the contention that, after receiving the notice they have approached the plaintiff and panchayath was held and in the panchayath plaintiff agreed not to go before the court, but plaintiff have approached the court to defraud them. Further they admit that, they have received the amount of Rs.5,30,000/- for the purpose of constructing the house and for the family necessity. But, the defendant Nos.1 to 5 and 8 have failed to prove the same before the court that they have not entered into an agreement of sale with the plaintiff. Moreover, the defendant No.6 and 7 have admitted the case of the plaintiff and also filed the written statement admitted the case of the plaintiff. Hence, this clearly shows that, the defendants have failed to perform

their part of obligation under the contract as per terms and condition of agreement of sale on 27.10.2016. Hence, the plaintiff proves that the defendants have failed to perform their part of obligations and she was always ready and willing to perform her part of contract. Hence, for the above said reasons, I answered **Issue No.3 in the Affirmative.**

25. Issue No.4: This is the suit filed by the plaintiff for the relief of specific performance of contract against the defendants stating that this plaintiff has entered into an agreement of sale dated:27.10.2016 with the defendants and also she has given advance sale consideration amount of Rs.5,30,000/- out of Rs.6,80,000/-. Further she also stated that, she was always ready and willing to perform her part of contract but these defendants failed to come forward to execute the registered sale deed in her favour. Further the plaintiff able to prove that the defendants have failed to perform their part of contract. Hence, the plaintiff has proved that, she had entered into an agreement of sale and out of total sale consideration amount of Rs.6,80,000/- major portion of the sale consideration was paid by her i.e., Rs.5,30,000/- and remaining Rs.1,50,000/- pending for payment of the balance sale consideration. Further it is to be noted here that, defendant No.6 and 7 have admitted the agreement entered by the plaintiff with the defendants and

also filed written statement admitting the case of the plaintiff. Hence, plaintiff is entitled for the specific performance of contract as prayed by her. Therefore, for the above said reasons, I answered **Issue No.4 in the Affirmative.**

26. Issue No.5: Based on findings in Issues No.1 to 4, I proceed to pass the following:-

ORDER

The suit of the plaintiff is decreed with costs.

The defendants are directed to execute sale deed in favour of the plaintiff after receiving the balance consideration within 2 months from the date of this order.

In case of failure of the defendants in executing the sale deed in favour of the plaintiff, the plaintiff is at liberty to get the sale deed executed through the Court.

Draw decree accordingly.

(Dictated to the Stenographer in part and dictated directly on the computer and computerized by her, corrected, signed and then pronounced by me in the Open Court on this the 24th day of April 2026).

sd/-

(Mahesh.B.T)
Senior Civil Judge & JMFC.,
H.D.Kote

ANNEXURE**1. List of witnesses examined by the Plaintiff:**

- PW1 : Sri.Mahadevanayaka;
PW2 : Sri.Somanayaka;
PW3 : Sri.Thammaiahnayaka;

2. List of documents exhibited by the Plaintiff:

- Exp1 : Special power of attorney
Exp2 : Sale agreement deed dated 27.10.2016
Exp3 : Legal notice dated 10.10.2019
Exp4 to 10 : Postal receipts
Exp.P11 : RTC Extract
Exp.P12 to 18: Postal acknowledgments
ExpP19 : Postal cover.

3. List of witnesses examined by the Defendants:

- DW1 : Smt. Kavya;

4. List of documents exhibited by the Defendants:

- ExD1 : RTC Extract
ExD2 : Tax paid receipt
ExD3 : Mutation register MRH.No.25/2025-26
ExD4 : FIR

Sd/-

(Mahesh.B.T)

**Senior Civil Judge & JMFC.,
H.D.Kote**

