

KAMS200008452016



**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.8/2018

Dated: On this the 29th June, 2026

Plaintiff/s : Sri. K.L.Nagaraju
S/o. Late. Shettara Lingappa
Aged about 65 years
R/at. # 1169,
Rajarashwarinagar Layout
BEML, 2nd Stage,
Bogadi, Mysuru

(By Sri.B.S.S., Advocate)

-V/s-

Defendant/s: 1. N.G.Subramanya
S/o. N.P.Gopal
Aged about 50 years
2. Smt. Kalpana
W/o. N.G.Subramanya
Aged about 40 years.
3. N.S.Kanchana
D/o. N.G.Subramanya
Aged about 18 years

4. N.S.Harish
S/o. N.G.Subramanya
Aged about 19 years

All are residing at # 9,
Nooralakuppe Village 'A'
Antharasanthe Post
H.D.Kote Taluk,
Mysuru District.

(Defendant No.1 By Sri. N.R. Advocate)

(Defendant No.2 to 4 Exparte)

Date of institution of the Suit	22.01.2018
Nature of the Suit	Specific Performance of contract
Date of commencement of recording of evidence	13.01.2021
Date on which the Judgment was pronounced	29.06.2026
Total duration	Years /s Month/s Day/s 08 05 28

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 brief case of the plaintiff is as under:

That, the defendant No.1 is the absolute owner of the properties. The defendant No.1 has succeeded to the suit schedule properties through partition deed dated 02-12-2010 effected between his family members. The defendant No.1 is the absolute owner of the suit schedule properties. The plaintiff has entered into agreement of sale with respect to the suit schedule properties with the defendants, on 06-08-2014 by entering into an agreement of sale wherein defendants have agreed to sell the suit schedule properties for a valuable sale consideration of Rs.10,00,000/- and received the advance amount of Rs.9,00,000/- under the agreement of sale dated 06.08.2014.

3. Further it is stated that, in the above said agreement of sale deed dated 06.08.2014, the defendants have agreed to furnish all the documents pertaining to the suit schedule property which are necessary for registration on or before 25.02.2015, but even after expiry of the said period, the defendants have never shown any interest to furnish the documents to the plaintiff. When such being the case, the plaintiff approached the defendants personally on several occasions by expressing his ready and willingness to get registered the sale deed pertaining to the suit schedule property by paying the remaining balance sale consideration, but the defendants started postponing to execute the sale deed on one or the other pretext.

4. Further it is stated that, the plaintiff fed up with the negligent attitude of the defendants, hence he has caused legal notice dated 19-12-2015 calling upon the defendants to execute the registered sale deed by receiving the balance sale consideration, but said legal notice was returned unserved with a shara, "refused". Thereafter the defendant No.1 met the plaintiff and requested him to grant some more time, believing the sugar coated words of the defendant No.1, the plaintiff has waited, but on 04-01-2018, the defendant No.1 came out with his real color of refusing to execute the sale deed. Hence with no option left with, the plaintiff has decided to knock the door of the law, seeking the relief of specific perform of the contract. Hence, the plaintiff has come before this court with the present suit.

5. After service of suit summons, the defendant No.1 has appeared before the court through his counsel and filed his written statement. Defendant No.2 to 4 are the placed exparte. Defendant No.1 has filed written statement and contended that, the plaintiff is a money lender. That, the brother-in-law of the defendant No.1 by name B.L.Girish has introduced the plaintiff in the year 2011. The defendant No.1 for the purpose of his legal necessities, has borrowed loan of Rs.5,00,000/- from the plaintiff and the plaintiff has charged interest at 3% P.M. At the time of borrowing the loan, the plaintiff has made an agreement with this defendant as a security for the above said loan. That, the defendant No.1 has paid the interest at the rate of 3% P.M. to the plaintiff upto

July 2014. Thereafter, the plaintiff has insisted the defendant No.1 to made fresh agreement and accordingly on 06.08.2014 an agreement was made as security for the old loan and for the further amount of loan of Rs.1,00,000/- by charging 6% P.M. interest accordingly the defendant No.1 was paying the interest of Rs.21,000/- P.M to the plaintiff and paid the interest up to January 2016. Thereafter, he was unable to pay interest to the plaintiff. However, the defendant No.1 has paid the principal amount of Rs. 6,00,000/- in the month of June 2017 to the plaintiff, and at the time of payment of principal amount, the plaintiff has taken the signature to the unfilled on Demand Pronote and also received two blank signed cheque bearing No.025449 and Cheque No.025450 of Federal bank, Hand Post Branch, H.D.Kote Taluk from the defendant No.1 for the unpaid interest from February 2016 to June 2017. Now, the plaintiff by creating the document has filed this frivolous suit to grab the valuable property of the defendants.

6. Further it is contended that, the defendant No.2 has never signed the alleged agreement or fresh agreement. But, the plaintiff by forging the signature of the defendant No.2 and by creating the agreement has filed this suit with oblique motive to knock of the property of the defendants. That, there was no intention of selling the suit schedule properties to anybody. The defendants never agreed to sell and never entered into any agreement to sell the suit schedule properties. But the plaintiff with a sole intention to grab the

properties of the defendants has created the agreement of sale and filed this suit.

7. Further it is contended that, the plaintiff is a money lender and collected the interest by charging exorbitant interest. The plaintiff is in the habit of charging illegal exorbitant interest and collecting the same from the borrower and filing the suit and harassing the poor people and agriculturist. Though the defendant No.1 returned the principal amount in the month of June 2017, the plaintiff did not return the agreement paper to the defendant No.1 by stating that the defendant No.1 has to pay Rs.5,00,000/- towards interest and additional interest (Chakrabaddi). In this regard panchayath were held 3-4 times before the villager's friends by name B.L.Girish and N.K.Kempegowda and they have advised the plaintiff to return the blank cheque, Pronote and agreement papers by stating that the defendant No.1 has paid abnormal interest of about 10,00,000/- to Rs.12,00,000/- and considering the conditions of the defendant No.1. But the plaintiff has refused to the advice of the Panchayathdar and now by making use of the helplessness of the defendant No.1, the plaintiff has filed this frivolous suit on created and concocted document.

8. Further it is contended that, the suit of the plaintiff is hopelessly barred by law of limitation to that affect preliminary issue has to be framed and suit of the plaintiff has to be dismissed at the first instance. The plaintiff who is

a doing money lending business, he is always having a habit of obtain the signature of the persons on a blank stamp paper, thereafter he created those documents as a sale agreement and having a habit of filing the suits against those persons to make wrongful gain for himself. The plaintiff is a court bird who is filing lot of cases against the poor peoples.

9. It is further contended that, there is no intention from the side of this defendants to sell the suit schedule properties in favour of plaintiff the market value of the suit schedule properties is more than Rs.80,00,000/- in the year 2014 such being the circumstances the question of executing the sale agreement in respect of plaint schedule properties for a Rs. 10,00,000/-does not arise at all. The plaintiff taking the advantage of weakness of these defendants obtain the signature of this defendants on the blank stamp paper the plaintiff created the document sale agreement the suit schedule properties is a ancestral and joint family properties of all the defendants when there is no legal necessity in the family the question of alienation does not arise at all. Therefore, he has prayed for dismissal of the suit with costs.

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

ISSUES

1. Whether the plaintiff proves that the defendants had agreed to sell the suit schedule properties in his favour for total consideration amount of Rs.10,00,000/- and after receiving the advance

amount of Rs.9,00,000/- they executed the agreement of sale dated 06.08.2014?

2. Whether the plaintiff proves that he is and was ready and willing to perform his part of contract?
3. Whether the plaintiff entitle for the relief of specific performance of contract has prayed in the plaint?
4. What Order or Decree?

Additional issues:

1. Whether the defendant No.1 proves that he borrowed a loan of Rs.5 lakh from the plaintiff and the plaintiff had taken his signature on unfilled on demand pronote and there after created the document as contended in his written statement?
 2. Whether the suit of the plaintiff is barred by the limitation?
11. The plaintiff to substantiate his case examined as PW1 and also examined one supporting witness as PW2 and got marked Ex.P1 to Ex.P10 documents. On the other hand, the defendants to prove their case defendant No.1 examined as DW1 and got marked Ex.D1 and Ex.D2.
12. The plaintiff counsel has also relied upon the following decisions:
1. Rajendra Prathapo Singh V/s Rameshwar Prasad on 28th October 1998 AIR 1999 SC 37.

2. Syed Dastagir V/s T.R.Gopalakrishnashetty on 11th August, 1999, 1999(3) SCC 337 SC.

3. Corporation Bank V/s Sushil Enterprises And Ors. On 16th May 2003, 2003 VIAD (DELHI)467.

4. Balasaheb Dayandeo naik (Dead) Through V/s Appasaheb Dattatraya Pawar on 24 January, 2008 SCC 464.

5. M/S Grasim Industries Ltd and Anr V/s M/S.Agarwal Steel on 20 October 2009. AIR 2010 SC (SUPP)291.

6. K.Prakash V/s B.R.Sampath Kumar on 22 September 2014 2015 (1) SCC 597.

7. S.Kashinath V/s Smt.Padmini Ramanath reported in AIR 2013 (NOC) (SUPP) 794 (KAR) RA.No.1304/2010 (ORAL).

13. Heard the arguments for the counsel for plaintiff and perused the written arguments and materials on record.

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

Issue No.1 : In the Partly Affirmative;

Issue No.2 : In the Negative;

Issue No.3 : In the Partly Affirmative;

Addl. Issue No.1 : In the Negative;

Addl. Issue No.2: In the Negative;

Issue No.4 : As per final order

for the following:

REASONS

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

16. 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.

17. 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 monitory compensation is not an ade-

quate relief as where the breach of contract pertains to movable property.

18. Keeping these basic principles in mind, let me analyses the instant case. The case of the plaintiff is that, he had entered into agreement of sale dated: 06-08-2014 with the defendants for total sale consideration of Rs.10,00,000/-. Further it is stated that he has paid advance sale consideration amount of Rs.9,00,000/- and 6 months time was kept for the registration of the sale deed and they had agreed to registered 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 his part of contract but they have failed to perform their part of contract. Hence, without other option, he has come before this court.

19. The defendant No.1 in his written statement contended that, the plaintiff is a money lender. that, the brother-in-law of the defendant No.1 by name B.L.Girish has introduced the plaintiff in the year 2011. That, the defendant No.1 for the purpose of his legal necessities, has borrowed loan of Rs.5,00,000/- from the plaintiff and the plaintiff has charged interest at 3% P.M. At the time of borrowing the loan, the plaintiff has made an agreement with this defendant as a security for the above said loan. That, the defendant No.1 has paid the interest at the rate of 3% P.M. to the plaintiff upto July 2014. Thereafter the plaintiff has insisted the defendant

No.1 to made fresh agreement and accordingly on 06.08.2014 an agreement was made as security for the old loan and for the further amount of loan of Rs.1,00,000/- by charging 6% P.M. accordingly the defendant No.1 was paying the interest of Rs. 21.000/-P.M to the plaintiff and paid the interest up to January 2016. Thereafter, he was unable to pay interest to the plaintiff. However, the defendant No.1 has paid the principal amount of Rs.6,00,000/- in the month of June 2017 to the plaintiff, and at the time of payment of principal amount, the plaintiff has taken the signature to the unfilled on Demand Pronote and also received two blank signed cheque bearing No.025449 and Cheque No.025450 of Federal bank, Handpost Branch, H.D.Kote Taluk from the defendant No.1 for the unpaid interest from February 2016 to June 2017. Now the plaintiff by creating the document has filed this frivolous suit to grab the valuable property of the defendants.

20. The plaintiff to prove his case, plaintiff examined as PW1 by filing an affidavit in lieu of his examination in chief and reiterated the plaint averments and relied upon the Ex.P1 to ExP10 documents. Ex.P1 is the copy of the sale agreement dated 06.08.2014, Ex.P2 to 5 are the RTC Extracts, Ex.P6 is the legal notice dated 19.02.2015, Ex.P7 and 8 are the postal receipts, Ex.P9 is the postal cover and Ex.P10 is the Vijaya Karnataka daily news paper and Ex.P10(a) is the part of the news paper.

21. The defendants No.1 to prove his case examined himself as DW1 and got marked Ex.D1 and Ex.D2. Ex.D1 is the photo and Ex.D2 is the sale agreement dated 01.10.2012.

22. On careful perusal of the oral and documentary evidence, it can be seen that Ex.P1 is the agreement of sale dated 06.08.2014, which is the not registered document and it was typed in the Rs.200/- e-stamp. Further on going through the said e-stamp paper it can be seen that on 06.08.2014 at 03.40 p.m. one N.G.Subramanya i.e., defendant No.1 had purchased e-stamp at Mysuru North for the purpose of agreement of sale. Further, on going through the recital it can be seen that, as stated by the plaintiff defendants have entered into an agreement of sale with the plaintiff for the total sale consideration of Rs.10,00,000/-. On the day of the agreement of sale, advance sale consideration of Rs.9,00,000/- was paid to the defendants. It was agreed that the balance sale consideration of Rs.1,00,000/- will be paid at the time of the registration of the sale deed. 6 months time was fixed and date was also mentioned as 25.02.2015.

23. It is to be noted here that, if we see the address of the defendants shown in cause title it is shown that they are residing at Door No.9, Noorul Kuppe Village, Antarsante Post, H.D.Kote Taluk. But, on going through the e-stamp paper which is said to be purchased by the defendant No.1 in suit clearly shows that e-paper was purchased at Mysore. Now

once again coming to the agreement of sale, the said agreement of sale was drafted by one N.S.Malayagowda, who is the deed writer. Defendant is the resident of H.D.Kote and again this was also admitted by PW1 in his evidence. Which creates doubt in the mind of the court. If agreement taken place at the H.D.Kote, then defendant No.1 would have purchased e- stamp from H.D.Kote and deed writer would obviously will be from H.D.Kote. Even though it is not seriously disputed, it creates doubt in the mind of the court whether said e-stamp was purchased by the defendant No.1. Since defendant No.1 taken the contention that he never executed the agreement of sale as stated by the plaintiff.

24. Further it is to be noted here that Major portion of the sale consideration is paid by the plaintiff. Further, it is to be noted here that as stated in the plaint, it was agreed between the parties that remaining balance sale consideration of Rs.1,00,000/- will be paid at the time of the registration of the sale deed and 6 month time was fixed. Now it is to be noted here that the question arises why there was a 6 months time was fixed? It is to be noted here that plaintiff in his cross examination has stated that to procure the documents which are necessary for the registration from the defendant, time was fixed. But as stated by the plaintiff, suit property was the belonged to defendant No.1 and he has got the said property through the family partition and it was in his name. Even as per Ex.P2 to 5 RTC, it can be seen that the property

bearing Sy No.1/65, measuring 3 acres standing in his name. As same all the suit schedule properties came to the share of the plaintiff. Now, question here is what are the documents where pending by the defendant No.1 to procure the documents for registration. If really, plaintiff shown the lethargic attitude in securing the documents which are necessary for the registration, then as a plaintiff being the purchaser, He would have taken the care and caution and he would have got the documents in time and he would have come for the registration on time.

25. Further, this plaintiff has taken the contention that after entering into agreement, In the year 2014, he has issued legal notice to the plaintiff on 19.02.2015, On going through the said notice, it can be seen that after issuance of the notice as per Ex.P6, suit was filed on 22.01.2018. That is 2 years 1 month delay in filing the suit. The plaintiff has stated that after issuance of the notice, defendant No.1 approached him and taken the time for the execution of the sale deed and listening to the sugary words of the defendant No.1, he kept quiet and thereafter he came to know the real color of the defendant No.1. Then he has come before the court. Hence there was a two years delay in filing the suit. But at the time of the arguments, the counsel for the plaintiff argued that there is no delay in filing the suit and before 3 years he has filed the suit. Hence it is in time. But on going through the Ex.P6 legal notice. The counsel for the Plaintiff in the notice,

he clearly mentioned that after receiving of the notice, within the one week by procuring all the documents which are necessary for the registration of the sale deed, he has to approach the plaintiff and he has to come forward for the registration of the sale deed. If not, they will go before the court. If really this plaintiff was interested and always ready and willing to perform as part of contract, he would have taken the caution when notice was issued to the defendant. All the notices returned with shara unclaimed. He would have come before the court. But taken the contention that by listening to the sugary words of defendant No.1, he waited for the execution of the sale deed. Thereafter he came to know the color of the defendant No.1 immediately he has filed the suit.

Under [Article 54 of the Limitation Act, 1963](#), the standard time limit to file a suit for specific performance is 3 years.

6-Months Fixed Period: The clock typically starts from the date specified in the agreement (or from the date of refusal). 2-Year Delay: Filing the suit 2 year after the legal notice is generally within the 3-year limitation window. The "Readiness and Willingness" Test merely filing within 3 years doesn't guarantee a win. *The Supreme Court has established that plaintiffs must not delay; a long, unexplained delay in taking action can lead courts to presume you were not continuously "ready and willing" to perform your part of the contract.*

If plaintiff was really serious enough, then he would have gone for the registered agreement of sale. That too, after paying the major amount of the sale consideration, he entered into an agreement of sale which is a non registered one, it is clear that agreement of sale is not a compulsory register able document. But being the purchaser he would have taken the caution enough. Further it is to be noted here that since defendant no. 1 taken the contention that he has not entered into an agreement of sale with the plaintiff, Hence, these points have to be considered. That is, agreement of sale is not a registered one, stamp paper was purchased at Mysore, the deed writer was from Mysore and defendant no. 1 is the resident of H.D.Kote, which supports the contention of the defendant No.1 and creates the doubt in the mind of the court.

26. Now, coming to the consideration part as per the agreement of sale on the day of the agreement of sale plaintiff has paid Rs.9,00,000/- and it was agreed that the balance sale consideration of Rs.1,00,000/- will be paid at the time of the registered sale deed. Here, it is to be noted here that plaintiff paid the major portion of advance sale consideration amount of Rs.9,00,000/- through the cash. If the plaintiff was a genuine purchaser and if he had any seriousness, then he would have paid through bank or cheque. During the course of cross-examination, the counsel for the defendant No.1 questioned this witness about the payment of advance sale consideration by cash. For that he has stated that since

defendants demanded to pay the advance sale consideration through cash, he has paid the cash as requested by the defendant No.1.

27. Further, it is to be noted here that, during the course of the cross-examination the counsel for the defendant also questioned this witness with respect to the capacity of paying that huge amount. For that PW1 stated that his sons are in abroad and he is doing the rice business and having the agricultural source. But, when counsel for the defendant No.1 question this witness that he has no issue to produce such document to show that he is doing the rice business and also he is having the agricultural income. For that he stated that he had no problem and he will produce the said documents. But, Plaintiff has not produced the document to show that he is doing the rice business and also he is having the agricultural income and from that source he has paid the advance sale consideration amount of Rs.9,00,000/- to the defendants, even plaintiff admits that he has not produced the documents for the reasons best known to him, which again supports the case of defendant No.1.

28. Now, again coming to the agreement of sale at Ex.P1, defendant no. 1 admits his signature in Ex.P1 and disputes the signature of the defendant No.2 who is the wife of the defendant No.1. It is to be noted here that the defendants all are residing in the same address. But this defendant No.1 alone participated in the case and other defendants remains

exparte. Now, again coming to the point with respect to the signature of the defendant No.2. The defendant No.1 herein disputes signature of the defendant No.2, but not taken the pain to prove the same by filing necessary application to the court to send the said document for forensic examination. Further, it is to be noted here that even plaintiff also kept quiet with respect to the contention taken by the defendant No.1 with respect to the forged signature of the defendant No.2 as per defendant No.1.

29. It is the main defense of defendant No.1 is that he has not entered into an agreement of sale with the plaintiff. But he admits that he had borrowed the hand loan from the plaintiff for 3% interest and also admits that he had also taken Rs.1,00,000/- additional loan from the plaintiff for 6% interest per annum. Thereafter, he has paid entire the principal amount of Rs.6,00,000/- in the month of June 2017. At that time Plaintiff has taken his signature to the unfilled on demand pro-note and also received two blank cheque signed by the defendant No.1. Thereafter, he has created the agreement of sale and filed the false suit before the court. But, it is the defendant has to take the care and caution especially at the time of borrowing the loan and it is the defendant to be cautious enough to enter into any type of agreement and to be vigilant. Since, defendant No.1 in need and urgency of the money, they cannot enter into an agreement without going through what they are signing. Defendant No.1 admits his signature, it is nothing but

admitting the agreement of sale. But, taken the contention that it was taken in the blank paper. But defendant has failed to prove the said contention before the court.

30. Further, it is to be noted here that as per the defendant No.1, he has borrowed loan from the plaintiff for Rs.5,00,000/-. Thereafter, he had borrowed another Rs.1,00,000/- from the plaintiff. Thereafter he cleared the principal amount. That is total Rs.6,00,000/- in the year 2017. But it is the defendant to prove the same before the court with cogent evidence. He has taken all the other contentions that the plaintiff is a money lender, he is having the habit of lending money and getting the agreement of sale from the villagers and he is a court bird. Whatever, may be the plaintiff, when coming to the instant case, court has to look into the agreement of sale i.e. Ex.P1 only and it is the duty of the parties to prove their case and in the instant suit plaintiff by producing Ex.P1 he has shown that there was contract between the plaintiff and defendant. But, defendant No.1 taken the contention that he has not entered into an agreement of sale with the plaintiff, but failed to prove the same. Even he has not examined additional witnesses to support his contention. Further, it is to be noted here that if really plaintiff has taken the blank on demand promissory note, 2 cheque and got created agreement of sale by taking the signature in the blank paper of the defendant, then this defendant would have lodged the complaint before the concerned police station once he came to the knowledge. But,

till today no complaint was lodged. No police complaint was seen in the evidence of defendant. If really defendant has paid entire amount to the plaintiff.

31. Further it is to be noted here that defendant No.1 also contented that Panchayat was held between them and in the Panchayat, Panchayathdar came to the conclusion that defendant No.1 had paid 10 to 12 lakhs for the amount he has borrowed and asked them to settle the issue. But plaintiff has not come before the Panchayathdar. But this defendant No.1 would have brought the Panchayathdar to the court to support his defense. But defendant No.1 not taken the pain to prove his defense. Further it is to be noted here that, the defendant No.2 who is the wife and other defendants who are the children's were placed exparte and he has not taken pain to bring the defendants and contested the case by producing the cogent evidence. But defendant No.1 failed to do so.

32. Further it is to be noted here that, DW1 also produced two documents which are marked at Ex.D1 and Ex.D2 through the confrontation of PW1 which are the photo and another agreement of sale dated 01.10.2012, which was entered by the plaintiff with one Shardamma and others. Now, on going through the photo, it can be seen that both plaintiff and defendant No.1 are present and the plaintiff has received some amount in the police station. Even in the cross-examination, it was suggested to the to PW1 that he also filed this private complaint before the Mangalore court

through his son-in-law for that he has stated that this defendant No.1 had availed the loan from his son-in-law and it is the separate transaction. Thereafter, he also admits that he has paid Rs.3,00,000/- with respect to that settlement. He admits the same and he has stated that he has received the 3 lakhs of his son-in-law from the defendant No.1 in the police station and same was handed over to his son-in-law. But no documents were produced and it is to be noted here that if really it was the separate cash transaction between the defendant No.1 and his son-in-law. Then his son-in-law would have collected the said amount from the defendant No.1. But as per the admission of PW1, the said amount was collected by him, which clearly shows that Rs.3,00,000/- was paid by the defendant No.1 to the plaintiff, which supports the contention taken by him. But plaintiff failed to disprove that Rs.3,00,000/- was received, which was the separate transaction. Further on going through Ex.D2, it is another agreement of sale entered by the plaintiff herein with one Smt.Sharadamma and others. On going through the said documents, it was also an unregistered agreement of sale entered by the plaintiff. If really plaintiff is serious enough to purchase the property, he would have taken the proper care and caution which again supports the contention raised by the defendant. As stated by him, the plaintiff is the court bird and he is doing the money lending business and for the security purpose is entering into an agreement of sale.

33. Further it is to be noted her that, defendant also taken contention that he had no intention to sell the suit schedule properties and in the year 2014 the worth the suit schedule properties were more than Rs.80,00,000/- and as per the plaintiff sale agreement was entered for the Rs.10,00,000/-. Further it is stated that, the plaintiff has not shown valuation all the properties separately and in total it is shown as Rs.10,00,000/-. But the defendant has not produce the valuation report from the concerned authority to show that at that point of time suit schedule properties were worth Rs.80,00,000/-. Moreover the plaintiff also not shown interest to produce the said document, even though it is the burden of the defendant to prove value of the properties, plaintiff would have brought the valuation report and he would proved that he entered into an agreement of sale genuinely. Hence, for the above said reason this court answered **Issue No.1 in the partly Affirmative, Issue No.2 in the Negative, Addl. Issue No.1 & 2 in the Negative.**

34. Issue No.3:- This is suit filed by the plaintiff against the defendants for the relief of specific performance of contract, it is the case of the plaintiff that the defendant No.1 is the absolute owner of the suit schedule properties. The plaintiff has entered into agreement of sale with respect to the suit schedule properties with the defendants, on 06.08.2014 by entering into an agreement of sale wherein defendants have agreed to sell the suit schedule properties for a valuable

consideration of Rs.10,00,000/- and received the advance sale consideration of Rs.9,00,000/- under the agreement of sale dated 06.08.2014.

35. Further it is stated that, in the above said agreement of sale deed dated 06.08.2014, the defendants have agreed to furnish all the documents pertaining to the suit schedule property which are necessary for registration on or before 25.02.2015, but even after expiry of the said period, the defendants have never shown any interest to furnish the documents to the plaintiff. When such being the case, the plaintiff approached the defendants personally on several occasions by expressing his ready and willingness to get registered the sale deed pertaining to the suit schedule property by paying the remaining the balance sale consideration, but the defendants started postponing to execute the sale deed on one or the other pretext. The plaintiff fed up with the negligent attitude of the defendants, hence he has caused legal notice dated 19.12.2015 calling upon the defendants to execute the registered sale deed by receiving the balance sale consideration, but said legal notice was returned unserved with a shara, "refused". Thereafter the defendant No.1 met the plaintiff and requested him to grant some more time, believing the sugar quoted words of the defendant No.1, the plaintiff has waited, but on 04.01.2018, the defendant came out with his real color of refusing to execute the sale deed.

36. Per contra, defendant No.1 filed the written statement and taken the defence that they have not entered into an agreement of sale with the plaintiff. But, they have taken the hand loan from the plaintiff and for the security purpose they have executed the agreement. Thereafter, they cleared the principal amount by paying 6,00,000/- at that time plaintiff has taken the signature in the blank on demand pro-note and also taken two cheque for unpaid interest, thereafter plaintiff had created the agreement of sale but failed to prove the same. Further it is to be noted here that, defendant No.1 in his evidence, he clearly admits that, he has borrowed the hand loan from the plaintiff and he has repaid the said amount. But the defendant No.1 has failed to prove the same as stated in the above issues. But, defendant No.1 able to show that he paid Rs.3,00,000/- before the police. Hence, plaintiff is entitle to get back his hard earned money of Rs.6,00,000/-after deducting the Rs.3,00,000/- from the advance sale consideration paid by the plaintiff. Therefore, for the above said reasons I answered this issue No.3 in the partly affirmative.

37. Issue No.4: Based on findings in Issues No.1 to 3 and Addl., Issues No.1 & 2, I proceed to pass the following:-

ORDER

The suit of the plaintiff is hereby partly
decreed with costs.

The plaintiff is entitled for the amount of **Rs.6,00,000/- (Six Lakhs only)** with interest at the rate of 6% per annum from the filing of the suit till realization.

Accordingly, the defendants No.1 to 4 are hereby directed to refund the said amount within 3 months from the date of this order failing which, the plaintiff is at liberty to approach the court in accordance with law for recovery of the said amount.

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 29th day of June 2026).

SD/-

(Mahesh.B.T)

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

ANNEXURE

1. List of witnesses examined by the Plaintiff:

PW1 : Sri.K.L.Nagaraju
PW2 : Sri.Santhosh Kumar

2. List of documents exhibited by the Plaintiff:

ExP1 : Copy of the sale agreement
Ex.P2 to 5 : RTC Extracts
Ex.P6 : Legal notice dated 19.02.2015
Ex.P7 & 8 : Postal receipts
Ex.P9 : Postal cover

Ex.P10 : Vijaya Karnataka daily news paper

Ex.P10(a) : Part of the news paper

3. List of witnesses examined by the Defendants:

DW1 : Sri. N.G.Subramanya

4. List of documents exhibited by the Defendants:

Ex.D1 : Photo

Ex.D2 : Sale agreement dated 01.10.2012

Sd/-

(Mahesh.B.T)

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