

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

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated, this the 19th day of August, 2021

O.S.NO. 66/2020

Plaintiff/s : A.S.Ravikumar
S/o Late.Shivanna,
Aged about 41 years,
R/at Alanahalli Village,
H.D.Kote Taluk, Mysuru District.

(By Sh. C.G.Krishnaiah., Advocate)

-V/S-

Defendant/s :	1.	Kariyanna S/o Late Shrikantappa, Aged about 55 years,
	2.	Gowramma W/o Kariyanna, Aged about 45 years,
	3.	Saritha.K D/o Kariyanna, W/o H.S.Lokesh, Aged about 30 years,
	4.	Reethu K. S/o Kariyanna, Aged about 25 years,
	5.	Vinitha.K S/o Kariyanna, Aged about 20 years,

All are R/at Alanahalli Village,
H.D.Kote Taluk, Mysuru District.

(D1 to 5 by Sh. J.Sathisha)

Date of institution of the Suit	:	15.10.2020
Nature of the Suit	:	Specific Performance
Date of commencement of recording of evidence	:	18.08.2021
Date on which the Judgment was pronounced	:	19.08.2021
Total duration	:	Years /s Month/s Day/s 00 10 04

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote

J U D G M E N T

This suit filed by the plaintiff against the defendants for specific performance of contract.

2. The case of the plaintiff in brief is as follows;

The defendants are the owner of suit property bearing schedule property bearing Sy.No.22 situated at Hanakanahalli Village, Hampapura Hobli, HD Kote Taluk measuring 1.36.08 acre. The defendants are the absolute owners and in possession and enjoyment of the suit schedule property and defendants have approached the plaintiff to sell the property for total consideration of Rs.2,12,000/-. In this regard, the defendants had executed a registered sale agreement in favour of plaintiff on 26.09.2017. In the office of sub-register, HD Kote received a sum of Rs.2,00,000/- as advance before the witnesses and further the defendants

agreed to receive the remaining balance amount of Rs.12,000/- from the plaintiff before the sub-Registrar at the time of executing of the absolute sale deed in favour of the plaintiff. The defendants to get the suit property demarcated and 11 E sketch which was required to get the sale deed registered received Rs.5,00,00/- from the plaintiff and executed the renewed sale agreement in favour of plaintiff on 07.06.2019. Though the plaintiff was ready and willing to perform his part of contract the defendants on one or the other reason postponing the execution of sale deed. Hence, the plaintiff got issued legal notice dt.08.09.2020 calling upon the defendants to execute registered sale deed in his favour by receiving balance consideration amount. Said legal notice duly served on the defendants. In spite of it, the defendants neither replied the legal notice nor performed their part of obligation. The cause of action for the suit arose on 26.09.2017, 07.06.2019 and 08.09.2020. Hence, plaintiff is constrained to file this suit for seeking specific performance of contract. Hence, this suit.

3. The defendants were served with the summons. Despite service, the defendant no.3 failed to appear and contest the suit. Accordingly, he was proceeded ex parte. The defendant no.1, 2, 4 and 5 appeared through their advocate. No written statement is filed despite opportunity and hence, their right to file the written statement was closed. The defendant no.1, 2, 4 and 5 also stopped appearing in the case and acquired status of ex parte.

4. In support of his case, plaintiff examined himself as PW1 and got marked documents as per Ex.P.1 to Ex.P.5.

5. Heard the arguments of learned counsel for plaintiff.

6. The following points arise for my determination:-

1) Whether Plaintiff is entitle for decree for specific performance of contract based on Agreements of Sale?

2) What order or decree?

7. My findings on the above points are as under:

Point No.1: In the Affirmative

Point No.2: As per final order for the following:-

REASONS

Point No. 1:-

8. I have carefully gone through the contents of plaint, evidence of PW1 and the contents of Ex.P.1 to 5. PW1 in his evidence has reiterated the averments of plaint. Ex.P1 is the record of rights of suit property, Ex.P.2 is the registered agreement of sale, Ex.P.3 is the renewed agreement of sale, Ex.P.4 are the postal receipts and Ex.P5 is the copy of legal notice.

9. A careful appreciation of all these facts indicates that the defendants being the owner of suit schedule property executed registered agreement of sale in favour of plaintiff by receiving Rs.2,00,000/- as advance sale consideration out of total sale consideration of Rs.2,10,000 on 26.09.2017 and agreed to execute registered sale deed by receiving balance sale consideration of Rs.12,000/-. Though the plaintiff was ready and willing to perform his part of contract, the defendants on one or the other reason postponing the execution of sale deed. The plaintiff came to know that the defendants are trying to create charge over the suit property with malafide intention and thereby failed to discharge their part of obligation. Then the plaintiff got issued legal notice dt. 08.09.2020 calling upon the defendants to execute registered sale deed in

his favour by receiving balance consideration amount. Hence, he filed suit.

10. In order to substantiate his contention, the plaintiff led both oral and documentary evidence. The plaintiff entered into witness box and has deposed almost all material facts as averred in the plaint. Version of PW.1 is with consonance of averments of plaint and even supported by documentary evidence. Recitals of Ex.P.2 are very much clear that, in so far as total consideration amount as averred in plaint is with consonance of contents of Ex.P.2. Deed of Agreement of Sale bears signatures of defendants for having accepted terms and conditions of sale transaction. On perusal of the contents of Ex.P1, it is clear that, the suit property is fallen to the share of defendant no.1 in partition between his brother and the name of defendant No.1 is appearing as owner and possessor of suit property. Hence, it is clear that defendants are the owner of the suit property.

11. The very fact that defendants though appeared before the court but not filed written statement and stopped appearing in the case and acquired status of exparte would clearly indicates that, they has no defence to resist the claim of the plaintiff. Prior to institution of this suit, plaintiff called upon the defendants to perform their part of contract by receiving remaining consideration amount of Rs.12,000/-. But the, defendants did not comply with terms of Deed of Agreement for Sale, so as to complete sale transaction. Thus, cumulative effect of entire evidence on record would clearly suggests that, since the date of Agreement for Sale Ex.P2, plaintiff is ready and willing to perform his part of contract. He is ready to perform his part of obligation under

Ex.P.2. Entire evidence of PW.1 stands un-rebutted and remained unchallenged.

12. Recitals of Ex.P.2 are very much clear and there is no any ambiguity so for as identity of schedule property and terms and conditions of agreement for sale. Prior to institution of suit, plaintiff issued legal notice to the defendants calling upon them to perform their part of contract by receiving balance consideration. Therefore, plaintiff complied the mandatory requirement for initiation of suit for specific performance of contract. Contents of Ex.P1, the copy of Record of rights of suit property reflect that the suit property fallen to the share of the defendant no.1 in partition between his brother and name of the defendant No.1 is appearing in records by maintained by the revenue department. Hence, it is clear that, defendants acquired right, title interest in respect of suit property under Partition deed. Under these circumstances, I have no compelling reasons either to reject or to suspect the version of PW.1.

13. Even a step ahead, considering the date of Agreements for Sale, I am of the firm opinion that, present suit one filed by plaintiff is well within the period of limitation.

14. In view of above discussions and in the result, the only conclusion that could be arrived is that, plaintiff is entitled for decree for specific performance of contract as sought for. Accordingly, I answer point No.1 in affirmative.

POINT NO. 2:-

15. In view of my findings on above point No.1 suit is to be decreed with costs and I proceed to pass the following:-

ORDER

Suit filed by the plaintiff against the defendants is hereby decreed with costs.

The defendants are hereby directed to execute registered Sale Deed in respect of suit properties in favour of plaintiff by conveying all their right, title, possession and interest over the suit properties, after receiving remaining balance consideration amount of Rs.12,000/- from plaintiff within three months from this day.

In case, defendants failed to execute registered Sale Deed in favour of plaintiff, as ordered above, plaintiff is at liberty to get registered Sale Deed, by appointment of Court Commissioner, by initiating Execution Proceedings.

Decree Sheet shall be prepared accordingly.

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 19th day of August, 2021.)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote

ANNEXURE

List of witnesses examined by the plaintiff:

PW.1 : Sh.A.S.Ravikumar

List of witnesses examined by the defendant:

-Nil-

List of documents marked by the plaintiff:

Ex.P1 : R.T.C

Ex.P2 : Agreement to sell dt.26.09.2017

Ex.P3 : Agreement to sell dt.07.06.2019
Ex.P4 : Postal receipt
Ex.P5 : Legal Notice dt.01.09.2020

List of documents marked by the defendant:

-Nil-

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
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