

KAMS200016432020



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

Present: Sandesh Prabhu.B, B.A(Law),LL.B,PGDHRM.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote.

O.S. NO. 93/2020

Dated : On this the 03rd July, 2024

Plaintiff/s : S. Ranganatha
S/o H.K.Sundararaj Iyengar,
Aged about 50 years,
R/at No. 420 K11/1,
Devamba Agrahara,
Krishnaraja Mohalla,
Mysuru 570024.

(By Sri.H.G.Venakatesha., Advocate)

-V/s-

Defendant/s: 1. Huchhamma
W/o Siddegowda,
Aged about 55 years,
2. Rathnamma
D/o Siddegowda,
Aged about 35 years,
3. Jyothi
D/o Siddegowda,
Aged about 32 years,

D1 to 3 are R/at Sirmalli Village, Kasaba
Hobli, Heggadadevana Kote Taluk.

4. Maakamma
W/o Siddegowda,
Aged about 50 years,

5. Lakshmi
D/o Siddegowda,
Aged about 33 years,
6. Manjula
W/o Swamy @ Gavi
(Dead and Delete)
7. Yogesh
Aged about 12 years,
S/o Swamy @ Gavi,
8. Naagamma
Aged about 10 years,
D/o Swamy @ Gavi,

D7 and 8 are since minors represented by their natural guardian Mother i.e., 6th Defendant

D4 to 8 are R/at Shindenahalli Village, Hampapura Hobli, H.D.Kote Taluku.

**(D1 to 3 by Sri.Roopeshkumar.,
Advocate, D4, 5 and D7, 8 Exparte
D6 Dead and delete)**

Date of institution of the Suit	:	19.12.2020
Nature of the Suit	:	Specific Performance of contract
Date of commencement of recording of evidence	:	27.10.2021
Date on which the Judgment was pronounced	:	03.07.2024
Total Duration	:	Years /s Month/s Day/s 03 06 15

**(Sandesh Prabhu. B)
Senior Civil Judge & J.M.F.C
H.D.Kote**

J U D G M E N T

The suit is filed for the relief of specific performance of contract by directing the defendants to execute the Registered Sale Deed in respect of suit schedule property as per agreement of sale dated 06.01.2014 after receiving balance sale consideration amount and for consequential relief by directing the defendants to handover the possession of the suit schedule properties in favour of the plaintiff along with cost of the suit.

2. The defendant No.7 & 8 are minors and they are represented by their guardian who is defendant No.4. During pendency of the suit the defendant No.6 reported as dead and her legal heirs were already on record.

3. The case of the plaintiff in nutshell is as follows:

4. One Siddegowda S/o Hiregowda who is the resident of Sindengahalli, H.D.Kote Taluk got two wives who are defendant No.1 and 4. The defendant No.2 and 3 are his daughters through his first wife and defendant No.5 and one Swamy @ Gavi are his children through second wife. It is stated that the said Siddegowda along with defendant No.1 to 5 and said Swamy @ Gavi during month of January-2013, approached the plaintiff through villagers with an offer to sell the suit schedule properties belonged to them and represented that the said Siddegowda he is the absolute owner of agricultural land measuring 3 acres in Sy.No.5/14 situated at Kalkodu Village of H.D.Kote Taluk. Out of the said 3 acres of land, said Siddegowda had settled an extent of 1 acre 20 guntas of land in

favour of defendant No.1 to 3 and retained remaining 1 acre 20 guntas of land in his name.

5. It is stated that the defendant No.1 had come forward to sell her share of 1 acre 20 guntas to discharge debt borrowed by her and similarly the deceased Siddegowda had offered to sell the land measuring 30 guntas and in total the defendants offered to sell the property measuring 2 acre 10 guntas which is described in the plaint schedule. The plaintiff after negotiation had agreed to purchase the suit schedule property for a total consideration amount of Rs.10,91,250/-. Accordingly the said Siddegowda and his son by name Swamy @ Gavi and the defendant No.1 to 5 have executed the agreement of sale dated 06.01.2014 in favour of the plaintiff which was registered before Sub-Registrar, H.D.Kote. On the date of agreement of sale, the plaintiff paid an advance sale consideration amount of Rs.4,22,500/- out of the total sale consideration amount of Rs.7,27,500/- payable to defendant No.1 to 3 and he also paid a sum of Rs.2,50,000/- toward advance sale consideration amount out of total sale consideration amount of Rs.3,63,750/- payable to said Siddegowda and defendant No.4 to 6.

6. It is stated that as per the terms of the agreement of sale dated 06.01.2014, the defendants were duty bound to secure the survey sketch in respect of suit schedule properties within a reasonable time from the Department of Land Records. The defendants even after laps of nearly six months from the date of execution of the agreement of the sale, did not secure the required survey sketch and when the plaintiff inquired with said

Siddegowda and his son, they informed that the Sy.No.5 of Kalkodu Village is not plotted and as per the rules of Survey Department, no survey sketch will be issued on request of a single person unless the entire extent of land is completely surveyed. Thereafter the said Siddegowda postponed the execution of the Sale Deed by giving one or other reasons. Meanwhile the said Siddegowda was died on 08.09.2015 by leaving behind the defendant No.1 to 5 and his son by name Swamy @ Gavi as his legal heirs. Soon after his death , the defendant No.4 and said Swamy @ Gavi had demanded and received a sum of Rs.30,000/- as further sale consideration amount from the plaintiff which is payable to deceased Siddegowda as they required the same for his funeral expenses.

7. It is further stated that meanwhile the defendant No.1 in the month of January-2017 approached the plaintiff with request for payment of sale consideration amount of Rs.1,00,000/-by stating that she required the same to discharge her commitments. The plaintiff by considering her plea, paid a sum of Rs.1,05,000/- in the month of January-2017 to the defendant No.1. The said two advance payment was made by the plaintiff by without obtaining any endorsement and with complete confidence and faith on the defendants. It is also stated that the defendants and said Swamy @ Gavi went on delayed in the execution of Sale Deed by stating that the Survey Department has not taken up the survey of entire land. It is also stated that the said Swamy @ Gavi was died during first week of July-2020 by leaving behind the defendant No.6 to

8 as his legal heirs. Immediately the defendant No.4 to 6 approached the plaintiff with a request for payment of Rs.50,000/- towards the further sale consideration amount as they required the said money to perform the rituals of said deceased Swamy. The plaintiff paid the said money with condition that the defendants shall provide all the necessary documents and initiate the process for securing survey sketch. It is also stated that subsequently the defendants failed to comply to with the lawful demand of the plaintiff for execution of the Sale Deed, they gave evasive answers. Therefore the plaintiff without any alternative got issued a legal notice dated 07.10.2020 to the defendants by calling upon them to secure the survey sketch and other documents within 30 days and execute Sale Deed after receiving balance sale consideration amount. The counsel for plaintiff did not receive the status of said notice sent to the defendants but subsequently it is informed by the Postal Department that the said notices were delivered to the defendant on 10.10.2020. The defendant in spite of receipt of legal notice did not come forward to execute the Sale Deed. Therefore the plaintiff with no alternative constrained to file the suit against defendants. Hence prayed to decree the suit with cost.

8. In pursuance of the summons, the defendant No.1 to 3 appeared before the court through their counsel. The defendant No.4 to 8 initially absent and they have been placed exparte. Subsequently, the defendant No.6 appeared before the court through her counsel and filed her written statement.

9. Since the defendant No.7 and 8 are minors, the predecessor in office had appointed the defendant No.4 as their guardian by considering the I.A.No.II filed by the plaintiff.

10. The brief defence of the defendant No.1 to 3 as per their written statement is as follows:

11.This defendants have denied the entire plaint averments and further denied that the defendant No.1 to 5 and one Siddegowda consulted the plaintiff for sale of 2.10 acres of land for total consideration amount of Rs.10,91,250/-. It is also denied that the defendant No.1 to 5 and deceased Siddegowda and Swamy @ Gavi had executed agreement of sale dated 06.01.2013 in favour of the plaintiff. These defendants have also denied the receiving of advance sale consideration amount as stated by the plaintiff in the plaint. It is further denied that after six months of execution of said agreement of sale, since the defendants could not make durasth of the schedule property, they asked with the plaintiff to extend the time as pleaded by him. It is also denied that after the death of said Siddegowda, the husband of defendant No.6 by name Swamy @ Gavi had received an amount of Rs.30,000/- for the performance of the last recitals of Siddegowda. It is further that the defendant No.1 had received further advance sale consideration amount of Rs.1,05,000/- in the month of January-2017. It is also denied that when the plaintiff came know that the survey department had allowed for durasth of the agricultural land by filing application through single person and he requested the defendants to make durasth of the schedule

property. It is also denied that after the death of the husband of defendant No.6 by name Swamy @ Gavi, the defendant No.4 to 6 have received an amount of Rs.50,000/-.

12. It is pleaded that the defendant No.2 and 3 had filed a civil suit for partition before Civil Judge and JMFC, H.D.Kote in respect of property bearing Sy.No.5/14 measuring 3 acres and also the house property bearing janjar No.57 situated at Sindenhallia Village. The said suit was ended in compromise on 20.10.2012 and as per the compromise petition, the defendant No.2 and 3 have acquired 1.20 guntas of land in said survey number and also got half share in the said house property. It is stated that the plaintiff by colluding with the father of defendant No.2 and 3 namely Siddegowda by assuring to the defendant No. 2 and 3 that the katha will be changed in their name, in order to cheat them got created the said document. It is stated that even though the plaintiff is aware that there exist total extent of 543 acres 28 gutnas in Sy.No.5 of Kalkodu Village and the said property is not made durasth, since there exist Mango trees in the schedule property he by colluding with said Siddegowda took the defendant No.2 and 3 to Sub-Registrar office and obtained their signature on several documents. It is stated that the plaintiff never consulted the defendants either before the death of said Siddegowda on 08.09.2015 and subsequently also. It is denied that the defendant No.2 have received additional consideration amount as alleged by the plaintiff. Since there exist Mango trees in the schedule property and by making use of illiteracy of defendant

No.2 and 3, the plaintiff in order to knock off the schedule property created false document. It is also pleaded that the suit of the plaintiff is barred by limitation. Hence on all this grounds prayed to dismiss these suit filed by the plaintiff.

13. The defendant No.6 who subsequently appeared before the court has also filed similar written statement as filed by the defendant No.1 to 3. Since the defendant No.6 has filed her written statement which is the replica of the written statement filed by defendant No.1 to 3 the same is not reiterated. The defendant No.6 by filing her written statement prayed to dismiss the suit filed by the plaintiff.

14. Based on the rival pleadings of the parties the predecessor in office has framed the following issues;

I S S U E S

1. Whether the plaintiff proves that the defendant no.1 and deceased Siddegowda have agreed to sell 1.2 acres and 30 guntas of the suit property in his favour for a sum of Rs.7,27,550/- and 3,63,750/- respectively and executed an agreement of sale dated 06.01.2014 by receiving advance sale consideration of Rs.4,22,500/- and 2,50,000/-?
2. Whether the plaintiff prove that defendants received further balance sale consideration of Rs.30,000/, 1,05,000/ and 50,000/- as alleged in the para No.7,8 and 10 of the plaint?

3. Whether the plaintiff proves that he is and was ready and willing to perform her part of contract?
4. Whether the suit is barred by time?
5. Whether the plaintiff is entitled to the relief sought for?
6. What order or decree?

15. The plaintiff in order to prove his case, he himself got examined as PW-1 and produced documentary evidence as per the Ex.P1 to Ex.P10. The plaintiff has also got examined one more witness as PW-2. On the other hand the defendant No.2 got examined as DW-1 and produced documentary evidence as per the Ex.D1 to Ex.D18. The defendant No.1 to 3 have also got examined two other witnesses as DW-2 & DW-3.

16. Heard the arguments of counsel for both parties. The counsel for defendant No.1 to 3 has filed his written arguments in addition to his oral submission.

17. The findings of this court on aforesaid issues as under:

Issue No.1 :- In Affirmative

Issue No.2 :- In Negative

Issue No.3 :- In Negative

Issue No.4 :- In Negative

Issue No.5 :- In Negative

Issue No.6 :- As per final order for the following:

REASONS**ISSUE Nos.1 and 2:**

18. Both these issues are inter connected each other and in order to avoid the repetition of the facts and appreciation of evidence, both these issues are taken up together for common discussion.

19. It is the specific case of the plaintiff that the defendant No.1 to 3 being the owner of property measuring 1.20 guntas in suit schedule Sy.No.5/14 situated at Kankodu Village and the defendant No.4 to 6 along with deceased Siddegowda and one Swamy @ Gavi being the owner of 30 guntas of land agreed to sell for a total consideration amount of Rs.10,91,250/- and after receiving an advance consideration amount of Rs.4,22,500/- by defendant No.1 to 3 & like wise the defendant No.4 to 6 and deceased Siddegowda and Swamy @ Gavi by receiving an amount of Rs.2,50,000/- towards the advance sale consideration amount executed the Registered Agreement of Sale in favour of the plaintiff on 06.01.2014 before the presence of witnesses. The plaintiff in order to substantiate his aforesaid contention, he himself got examined as PW-1 and reiterated the averments made in the plaint. Along with the oral evidence, the plaintiff has produced and got marked 10 documents as per Ex.P1 to Ex.P10 and relevancy of said documents will be discussed at relevant point of discussion.

20. On the other hand the defendant No.1 to 3 have taken up the specific defence by denying all the averments made in the plaint and pleaded that since there exist Mango trees in the

suit schedule property, the plaintiff by colluding with father of defendant No.1 to 3 by name Siddegowda and his other family members by assuring to the defendant No.1 to 3 that the katha will be changed in their name relating to the suit schedule property, they obtained the signature of defendant No.1 to 3 and thereby cheated them. The defendant No. 1 to 3 to substantiate their said defence, the defendant No.2 got examined as DW-1 and reiterated the defence taken up by them. Along with the oral evidence, the defendant No.2 has produced documents as per Ex.D1 to D18. The contesting defendant No.1 to 3 have also got examined two other witnesses as DW-2 and DW-3. The defendant No.6 who filed her written statement died prior to recording her evidence.

21. On perusal of the defence taken up by the contesting defendants, it is their specific defence that the plaintiff by colluding with said Siddegowda who is the father of defendant No.1 to 3 by assuring that the katha will be changed in the name defendant No.1 to 3 as per the compromise decree passed in O.S.No.30/2010, obtained their signatures on some documents and thereby cheated them. By considering the said defence raised by defendant No.1 to 3 and 6 they have not disputed their signatures found on Ex.P1 which is the Registered Agreement of Sale dated 06.01.2014. Since the contesting defendants have admitted their signature found on said document which is marked as Ex.P1, then much discussion about the signature of the defendants found on said Ex.P1 is not necessary. No doubt the DW-1 who is defendant

No.2 during her cross-examination denied about the signature found in said Ex.P1 but she admitted the photographs of herself and mother found in said Ex.P1 which were obtained at the time of registration of said document. Since the contesting defendants have not specifically disputed their signature found on Ex.P1, this court confines its discussion only about the execution of said agreement of sale by the contesting defendants, deceased Siddegowda and Swamy @ Gavi.

22. As it is stated above the plaintiff has produced original Registered Agreement of Sale dated 06.01.2014 as per Ex.P1. It is the specific case of the plaintiff that the defendant No.1 to 6 along with deceased Siddegowda and one Swamy had agreed to sell the suit schedule property for total consideration amount of Rs.10,91,250/-. The PW-1 who is plaintiff in his oral evidence also reiterated the said fact. On perusal of the said Ex.P1, which is the Registered Agreement of Sale, the recitals reads, that the defendant No.1 to 3 have agreed to sell their portion of property measuring 1.20 acres for total consideration amount of Rs.7,27,500/-. Similarly the defendant No.4 to 6 along with deceased Siddegowda and Swamy @ Gavi had agreed to sell their portion of 30 gunts of land for total consideration amount of Rs.3,63,750/-. Further the recitals states that on the date of execution of said document, the defendant No.1 to 3 had received their part of Rs.4,22,500/- as advance sale consideration amount and similarly the defendant No.4 to 6, deceased Siddegowda and Swamy @ Gavi had received their part of Rs.2,50,000/- as earnest money.

23. Now the question to be considered is about the due execution of said agreement of sale by the defendant No.1 to 3 along with deceased Siddegowda and Swamy @ Gavi. The plaintiff to establish the execution of said Ex.P1, he got examined one of the attesting witnesses as PW-2. The said witnesses in his oral evidence deposed about execution of agreement of sale by the defendant No.1 to 6 along with deceased Siddegowda and Swamy @ Gavi for total consideration amount of Rs.10,91,250/-. Further the PW-2 in his examination in chief deposed about payment of advance sale consideration amount by the plaintiff and the execution of said agreement of sale by defendant No.1 to 6 along with deceased Siddegowda and Swamy @ Gavi. The counsel for contesting defendants have subjected the PW-2 for cross-examination. On careful perusal of the cross-examination of PW-2, the counsel for contesting defendants suggested that the father of defendant No.2 and 3 had received amount as loan from plaintiff but the PW-2 has denied the suggestion put by the counsel for contesting defendants and he categorically deposed that for the sale of the schedule property, the plaintiff had given earnest amount to the defendants. The relevant deposition of PW-2 reads likes this

"ವಾದಿಯಿಂದ 2 ಮತ್ತು 3 ನೇ ಪ್ರತಿವಾದಿ ತಂದೆಗೆ ಸಾಲವಾಗಿ ಹಣವನ್ನು ಕೊಡಿಸಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ, ಸಾಕ್ಷಿ ಮುಂದುವರಿದು ಜಮೀನು ವ್ಯಾಪಾರ ಸಂಬಂಧ ಹಣ ನೀಡಿರುತ್ತಾರೆ ಎನ್ನುವರು".

On perusal of the said suggestion put by the counsel for defendants at first time the contesting defendants have raised a plea that the plaintiff had given money to the said Siddegowda who is the father of defendant No.2 and 3 as loan. There is no

such pleadings by the contesting defendant No.1 to 3 in their written statement. Further on perusal of the cross-examination of PW-2, he categorically deposed that the plaintiff paid the advance sale consideration amount stated in the agreement of sale in cash. Further on perusal of cross-examination of PW-2, he deposed that one Siddamma and defendant No.4 had given instructions for preparation of said agreement of sale. Further the counsel for contesting defendants suggested that by assuring to the defendant No.1 to 3 that katha will be changed in their name as per compromise decree passed in civil suit, obtained signature of defendants and created the said document but the PW-2 has denied the suggestion put by the counsel for defendants. On careful perusal of the entire cross-examination of PW-2 the counsel for contesting defendants is not successful in eliciting any admission that the plaintiff by colluding with deceased Siddegowda and obtained the signatures of defendants by assuring that the katha will be changed in the their name as per the compromise decree passed in partition suit.

24. As it is discussed above, the contesting defendants have specifically pleaded and raised the defence that the defendant No.2 had filed a suit for partition against other defendants in O.S.No.30/2010 and said suit was ended in compromise. The plaintiff by colluding with said Siddegowda by assuring to the defendants that katha will be changed in their name as per said compromise decree, got obtained the signatures of defendants and thereby created Ex.P1. The burden lies upon the

defendants to establish their said defence raised by them. The contesting defendant No.2 got examined before the court as DW-1 and in her oral evidence she has reiterated the said defence raised by the defendants. Along with oral evidence the contesting defendant No.1 to 3 have produced some documents before the court. They have produced the order sheet relating to said O.S.No.30/2010, the certified copy of plaint and the compromise petition filed in said suit as per Ex.D1 to D3. On perusal of said documents it reveals that the present defendant No.2 and 3 had filed the said suit against their father by name Siddegowda and also against present defendant No.5 and one Swamy @ Gavi . Further the Ex.D3 reveals that the compromise petition was filed in said suit on 20.10.2012. It is defence of the defendants that as per the said compromise decree by assuring that the katha will be changed in the name of defendant No.1 to 3 in respect of the properties allotted to their share, the plaintiff by colluding with said Siddegowda and Swamy @ Gavi had obtained signatures of defendant No.1 to 3. The contesting defendants themselves produced the mutation extract as per Ex.D6 and also produced the RTC extract as on the date of 28.12.2013 in respect of property bearing Sy.No.5/14. On careful perusal of said Ex.D6 and D10 it reveals that the name of Siddegowda, defendant No.2 and 3, defendant No.5 and one Swamy @ Gavi has been jointly mutated in respect of 3 acres of land as per the order of the court. The Ex.P6 and Ex.P10 reveals that the said mutation order was passed on 27.12.2013 itself and there is specific mentioning about mutation as per the

order of the court. Hence on perusal of said Ex.D6 and Ex.D10 produced by the contesting defendants themselves, it is clear that as per decree passed in O.S.No.30/2010 the mutation was carried out on 27.12.2013 which is 10 days earlier to the execution of said Ex.P1 by the defendants. The Ex.D6 and Ex.D10 prima facie shows that before execution of said Ex.P1 by the defendants No.1 to 6 along with deceased Siddegowda and Swamy @ Gavi, the mutation was already carried out in the joint name of defendant No.2, 3, 5 and the name of deceased Siddegowda and Swamy @ Gavi. Therefore the said defence of the contesting defendants that the plaintiff by colluding with said Siddegowda and Swamy @ Gavi obtained the signatures of defendants by assuring that the katha will be changed in their name creates doubt about said defence.

25. Now it is necessary to peruse the cross-examination of PW-1 in order to conclude that whether really the defendant No.1 to 6 along with deceased Siddegowda and Swamy @ Gavi had agreed to sell the suit schedule property in favour the plaintiff and after receiving the advance sale consideration amount stated in the said Ex.P1, executed the said agreement of sale. On perusal of the cross-examination of PW-1, the counsel for contesting defendants suggested that as per the compromise decree passed in civil suit, the said Ex.P1 was got created without the knowledge of contesting defendants by assuring that the katha will be changed in their name but the PW-1 has denied the said suggestion put by the counsel for contesting defendants. Further during cross-examination of

PW-1 dated 14.07.2022, again the counsel for contesting defendants suggested the same suggestion but the PW-1 has specifically denied the said suggestion put by the counsel for contesting defendants. On perusal of the entire cross-examination of PW-1, the counsel for contesting defendants is not successful in alienating any admission that the said Ex.P1 was created by assuring that the katha will be changed in the name of contesting defendants as per the compromise decree passed in partition suit.

26. If really the plaintiff by colluding with said Siddegowda and Swamy @ Gavi had obtained the signatures of defendants by assuring that the katha will be changed in their name, then the contesting defendants might have enquired with the plaintiff about the said assurance given by the plaintiff if really the said fact is true. The plaintiff got issued legal notice to the defendants on 07.10.2020 and the defendants have given reply to the said notice on 04.11.2020 and at first time they raised such defence in their said reply. If really the plaintiff had obtained the signatures of the contesting defendants for mutation of the katha as per compromise decree, then the defendants might have enquired with the plaintiff about the statues of alleged changing of katha and they might have not waited till the plaintiff issued legal notice to them dated 07.10.2020 to raise such defence.

27. As it is discussed above, the contesting defendants themselves produced the mutation extract as per Ex.D6 and also RTC extract as per Ex.D10 and the said documents clearly

falsify the defence of the defendants that the plaintiff had obtained the signatures of defendants for changing of katha and without their knowledge got created the Ex.P1. Moreover the said Ex.P1 is a registered document and when the defendant No.1 to 6 have appeared before the Sub-Registrar office and affixed their signature to the Ex.P1 and the same the registered by obtaining their photographs, then it cannot be easily believed that the plaintiff brought the defendant to the Sub-Registrar office by assuring that the katha will be changed as per the compromise decree and thereby created the said Ex.P1.

28. Hence on total appreciation of entire oral and documentary evidence produced by the plaintiff and defendants, the plaintiff by producing Ex.P1 and also by examining one of the attesting witnesses has initially established about the due execution of said document by the defendant No.1 to 6 along with deceased Siddegowda and Swamy @ Gavi. On the other hand the contesting defendants have miserably failed to establish their defence that the plaintiff by colluding with deceased Siddegowda and Swamy @ Gavi had obtained the signatures of defendants by assuring to change the katha and thereafter created the said Ex.P1.

29. It is the further case of the plaintiff that after execution of said agreement of sale dated 06.01.2014 and after expiry of three months, he demanded with the defendants and said deceased Siddegowda and Swamy @ Gavi for execution of Sale Deed but they informed that since the schedule property is not made durasth and there exist more than 500 acres of land in

Sy.No. 5 of Kalkodu Village, the measurement cannot be conducted as per the application given by single person and there is requirement of measurement of entire extended of property in Sy.No.5 and therefore the defendants pulled on the days to execute the Sale Deed. It is also the case of the plaintiff that meanwhile the said Siddegowda was died on 08.09.2015 by leaving behind the defendant No.1 to 5 and his son by name Swamy @ Gavi as his legal heirs and soon after his death, the defendant No.4 and her son who is Swamy @ Gavi had received Rs.30,000/- towards the further sale consideration amount and they required the said amount for the funeral expenses of said Siddegowda. Even after receiving the said amount and in spite of repeated request and reminders made by the plaintiff, the defendants did not submit any application for durasth of the schedule property. Meanwhile the defendant No.1 approached the plaintiff in the month of January-2017 and requested the plaintiff for further advance sale consideration amount of Rs.1,00,000/- by stating that she required the same to discharge her immediate commitments. By considering the said plea the plaintiff had paid a sum of Rs. 1,05,000/- to the defendant No.1 in the month of January-2017.

30. It is also the case of the plaintiff that the defendants and said Swamy @ Gavi went on protracting the matter under the pretext that survey department still not taken up the survey of entire lands in the Sy.No.5 of Kalkodu Village. Subsequently the said Swamy @ Gavi was died during first week of July-2020 leaving behind the defendant No.6 to 8 as his legal heirs.

Immediately after the death of said Swamy @ Gavi the defendant No.4 to 6 approached the plaintiff with a request for Rs.50,000/- towards the further advance sale consideration as they required the money to perform rituals of said Swamy @ Gavi. The burden lies upon the plaintiff to establish that after the death of said Siddegowda, the defendant No.4 and said Swamy @ Gavi had received advance sale consideration amount of Rs.30,000/-, and the defendant No.1 had received further sale advance consideration amount of Rs.1,05,000/- in the month of January-2017, to establish that the defendant No.4 to 6 had received advance sale consideration amount of Rs.50,000/- in the month of July-2020 after the death of said Swamy @ Gavi. On perusal of the pleadings of the plaintiff, he has pleaded that he paid all the said further advance sale consideration amount in cash and he did not get execute any endorsement or document for having paid further sale consideration amount. As it is stated above the burden lies upon the plaintiff to establish the payment of said further advance sale consideration amount. The plaintiff has not pleaded that the persons who present when he gave further advance sale consideration amount as pleaded by him. The plaintiff who is PW-1 in his oral evidence has merely stated about the payment of aforesaid advance sale consideration amount in favour of said Swamy @ Gavi, defendant No.1 and defendant No.4 to 6 as pleaded by him in the plaint. When the contesting the defendants have denied the receiving of said sale consideration amount itself, then initial burden lies upon the

plaintiff to establish the said fact. The plaintiff except his oral evidence, he has not pleaded or produced any other reliable evidence to establish the said fact. The plaintiff might have pleaded the exact date on which he paid the further sale consideration amount and the person who present when he gave said amount to the defendants.

31. Now it is necessary to peruse the oral evidence of DW-1 who is defendant No.2 to conclude that whether the plaintiff has established the further payment of advance sale consideration amount. On perusal of the cross-examination of DW-1, the counsel for plaintiff has suggested that after the death of said Siddegowda, his son by name Swamy @ Gavi had received further sale consideration amount of Rs.30,000/- but the DW-1 had deposed her innocence about the said fact. Further the DW-1 had denied that the defendant No.1 had received further sale consideration amount of Rs.1,05,000/- in the month of January-2017. The DW-1 deposed his ignorance that the defendant No.4 to 6 have received Rs.50,000/- after the death of said Swamy @ Gavi for the performance of his last recitals. Hence on careful perusal of the entire cross-examination of DW-1, the counsel for plaintiff is not successful in eliciting any admissions from her mouth about the payment of said further sale consideration amount.

32. On perusal of oral evidence of PW-1 he deposed that he did not make any document for payment of further sale consideration amount and he did not show the payment of said consideration amount to the defendants in his annual income

tax returns. Further the PW-1 during his cross-examination admitted that there is no documentary evidence to prove the payment of said further sale consideration amount. As it is discussed above, the plaintiff himself pleaded that since there was faith on the defendants he paid the further sale consideration amount without obtaining any documents from them. When the plaintiff has paid further sale consideration amount which is more than 1,80,000/- as alleged by the plaintiff, then he might have gave the said amount before the presence of any witnesses or he might have got executed some documents from the defendants. When the plaintiff has established the execution of agreement of sale by the defendants, then after payment of said further sale consideration amount, the plaintiff might have endorsed the same on the said agreement of sale which is marked as Ex.P1 by giving addendum and might have obtained the signatures of the defendants for receiving the further sale consideration amount.

33. Further on perusal of cross-examination of DW-1, the counsel for plaintiff himself suggested that if the defendant No.1 deny payment of said further sale consideration amount of Rs.1,05,000/-, then the plaintiff is again ready to pay the said sale consideration amount. The relevant suggestion put by the plaintiff to DW-1 reads like this "1,05,000/- ಹಣವನ್ನು ಕೊಟ್ಟಿರುವುದನ್ನು ನಾವು ನಿರಾಕರಿಸಿದ ಪಕ್ಷದಲ್ಲಿ ವಾದಿಯು ಸದರಿ ಹಣವನ್ನು ಸಹ ಕೊಡಲು ಬದ್ಧನಾಗಿರುತ್ತೇನೆ ಎಂದು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಒಪ್ಪಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ." When the counsel for plaintiff

himself suggested that if the defendants deny the receiving of said further sale consideration amount of Rs.1,05,000/-, then the plaintiff is ready to pay again the said amount, itself creates doubt about payment of said further sale consideration amount. The said amount of Rs.1,05,000/- is not a meager amount and when the plaintiff himself stated that he is ready to pay again the said amount and if he really paid said amount, he might have not intend to pay the same again. The said fact creates a doubt about the payment of said further sale consideration amount of Rs.1,05,000/- as alleged by the plaintiff in the plaint. Unless the plaintiff produced some cogent material evidence before the court, merely on the basis of oral evidence of PW-1, the court cannot accept the said plea of payment of further sale consideration amount paid by the plaintiff.

34. The counsel for plaintiff has argued that since the defendant No.1, 4 to 6 did not step into the witness box, their conduct should taken into consideration and thereby conclude that they received the further sale consideration amount as pleaded by the plaintiff. No doubt the defendant No.1, 4 and 5 did not step into the witness box but the plaintiff has to prove his case independently and he cannot take benefit of weakness of defendants. Therefore this court comes to the conclusion that the plaintiff has not produced sufficient material evidence to establish the issue No.2. Therefore the plaintiff failed to establish about the payment of further sale consideration amount of Rs.30,000/-, Rs,1,05,000/- and Rs.50,000/- as pleaded by him in his pleadings.

35. As it is discussed above the plaintiff by way of oral and documentary evidence he has established the due execution of agreement of sale in respect of suit schedule property by the defendants No.1 to 6 along with deceased Siddegowda and Swamy @ Gavi. Further the plaintiff has established about the payment of advance sale consideration amount as stated in the agreement of sale which is marked as Ex.P1 but the plaintiff has failed to establish the payment of further sale consideration amount as pleaded by him in paragraph No.7,8 and 10 of the plaint. Hence for the said reasons, this court answers Issue No.1 in Affirmative and Issue No.2 in Negative.

ISSUE No.3:

36. It is the case of the plaintiff that after laps of six months from the execution of agreement of sale, the defendants, said Siddegowda and Swamy @ Gavi did not secure the survey sketch by stating that the property bearing Sy.No.5 of Kalkodu Village comprises more than 500 acres and as per the rules of survey department, no survey will be conducted on the request of a single person unless the entire extent of property is completely surveyed. The plaintiff has also pleaded that subsequently the said Siddegowda and Swamy @ Gavi were dead and he paid further sale consideration amount as discussed above. When the plaintiff paid the further sale consideration amount, he paid the said amount with condition that the defendants should provide all the necessary documents for mutation of the name of the defendants and also they should obtain the survey sketch but unfortunately the

defendants instead of complying the said demand made by the plaintiff they gave evasive answers and therefore the plaintiff got issued legal notice to the defendants dated 07.10.2020 by calling upon them to secure survey sketch and other documents within 30 days and execute the sale deed by receiving the balance sale consideration amount. It is also the case of the plaintiff that he is ready and willing to perform his part of contract but the defendants after receiving the said legal notice have given evasive reply for the same. The burden lies upon the plaintiff to establish that he has always been ready and willing to perform his part of contract.

37. The Hon'ble Supreme Court in **2022 AIR (SC) 1275 – Shenbagam and others Vs K.K.Rathinavel**, laid down the principle of readiness and willingness as required U/sec 16 of Specific Relief Act. The Hon'ble Supreme Court in **2022 SCCR 891 – U.N.Krishnamurthy and others Vs A.M.Krishnamurthy**, held the distinction between the readiness and willingness to perform the contract. Further the Hon'ble Supreme Court in **1999(3) SCC 337 – Syed Dastagir Vs T.R.Gopalakrishna Shetty**, it has been held that the language in Section 16(c) does not require any specific pharseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of contract – The compliance of the term “Readiness and Willingness” has to be in spirit and substance and not in letter and form.

38. By keeping in mind the principles laid down in the aforesaid rulings, now it is necessary to conclude that whether

the plaintiff has proved the present issue which casted burden upon him. As per Sec 16(3) of Specific Relief Act, the specific performance of contract cannot be enforced in favour of a person who fails to prove that he has always been ready and willing to perform his part of contract. There must be specific pleading that he has always been ready and willing to perform his part contract from the date of contract up to the date of filing of the suit and the said fact should be proved by the plaintiff. The word readiness refers to the capacity of the plaintiff to enforce a contract and willingness refers to the conduct of the plaintiff towards performance of contract. The specific performance of contract can be enforced if readiness is backed by willingness. By taking into consideration of said mandatory principle, now it is necessary to conclude whether the plaintiff has pleaded and proved that he has always been ready and willing to perform his part of contract up to the date of filing of present suit.

39. As it is discussed above, the said agreement of sale was entered into between the plaintiff and defendants on 06.01.2014 as per Ex.P1. On perusal of the said Ex.P1 its recitals states that the defendants after obtaining all the revenue records relating to schedule properties, within three months they should execute the sale deed. Further on perusal of the recitals of said document, the burden casted upon the plaintiff is only to pay the balance sale consideration amount and to get register the Sale Deeds from the defendants. As it is discussed above, the plaintiff himself pleaded that he demanded

with the defendants to execute the Sale Deed orally and at last on 07.10.2020 he issued legal notice to the defendants as per Ex.P3. On perusal of the pleadings of the plaintiffs he stated that after six months of the execution of the said agreement of sale, he continuously demanded with the defendants, said Siddegowda and Swamy @ Gavi to execute the Sale Deed and meanwhile the said Siddegowda and Swamy @ Gavi were deceased and the defendants have received further sale consideration amount by assuring to the plaintiff that they will obtain the sketch of the suit schedule property which is required for execution of the Sale Deed. This court has already come to the conclusion that the plaintiff has failed to establish the payment of further sale consideration amount as pleaded by him. The plaintiff in order to show his readiness and willingness he should explain the events took place after execution of the said agreement of sale till he issued legal notice to the defendants as per Ex.D3. The plaintiff got issued legal notice after laps of more than six years and the only reason offered by the plaintiff for such delay is that since there was bar by the survey department for measurement of the property by giving single person application, there is delay in execution of the Sale Deed but he was continually demanding with the defendants to execute the Sale Deed. The plaintiff to show that there was legal bar for measurement of the property, he produced Ex.P10 which is circular issued by a Government of Karnataka for measurement of property by submitting the application by single person. On perusal of said Ex.P10 it is shows that on

18.07.2016 the Government had issued circular for measurement of the property submitted by single person and prepare the sketch. As it is stated above, the plaintiff issued legal notice to the defendants on 07.10.2020 which is 4 years after issuance of said circular by the Government of Karnataka. If really the plaintiff was demanding with defendants for execution of the Sale Deed by obtaining the said survey sketch, then the plaintiff might have drawn the attention of the defendants about the said circular passed by the Government and get measure the schedule property.

40. Now it is necessary to peruse the cross-examination of PW-1 in order to conclude about his readiness and willingness to perform his part of contract. The PW-1 during his cross-examination dated 13.10.2023, he admitted that he came to know about the said circular in the year 2018 but he has not offered explanation that even though he came to know about the said circular why he kept quit till October-2020 when he issued legal notice to the defendants to execute the Sale Deed. There is no explanation by the plaintiff to that effect. Moreover the PW-1 himself during his cross-examination admitted that he did not produce any document before the court to show that he was ready with balance sale consideration amount. The relevant deposition of PW-1 reads like this "ನಾನು ಕ್ರಯಪತ್ರ ತಯಾರು ಮಾಡಿಸಿರುವುದಿಲ್ಲ ಮತ್ತು ಉಳಿದ ಹಣದ ಬಾಬು ಡಿ.ಡಿ ಯನ್ನು ಪಡೆದುಕೊಂಡಿರುವುದಿಲ್ಲ, ಏಕೆಂದರೆ ಪ್ರತಿವಾದಿಗಳು ನನಗೆ ಜವಾಬು ನೀಡಿರುವುದಿಲ್ಲ. ನನ್ನ ಬಳಿ ಉಳಿದ ಹಣವು ತಯಾರಿತ್ತು ಎಂದು ತೋರಿಸಲು ನ್ಯಾಯಾಲಯಕ್ಕೆ ದಾಖಲೆಯನ್ನು ಹಾಜರುಪಡಿಸಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ". By

considering the said admission made by PW-1 himself if he was ready to perform his part of contract, he might have produced some documents to show that he was ready with balance sale consideration amount. No doubt it is settled principle of law that the plaintiff need not produce the bank account statement to establish his financial capacity but he should prima facie establish that he was ready and willing to perform his part of contract by keeping ready with the balance sale consideration amount. On careful perusal of the entire oral and documentary evidence produced by the plaintiff there are no sufficient explanation explained by the plaintiff which lead him to wait for six years after execution of the said agreement of sale and till issuance of legal notice to the defendants. The defendants have admitted that they have issued reply to the said notice and the plaintiff himself produced the said reply given by the defendants before the court. The plaintiff even after issuance of legal notice he filed the present suit two and half months after issuance of said legal notice and the said fact should also to be taken into consideration in order to conclude about the readiness and willingness of plaintiff to perform his part of contract. No doubt the plaintiff in his oral evidence has deposed that he demanded with the defendants for execution of the Sale Deed several times but to establish the said, fact there are no material evidence produced by the plaintiff before the court. Therefore this court comes to the conclusion that the plaintiff has not offered sufficient explanation for delay of six years for issuance of legal notice when he himself admitted about the issuance of circular

by the Government for permission to measurement of the property by submitting application through single person and he was aware about the said circular. If really the plaintiff was ready and willing to perform his part of contract, then the plaintiff might have insisted the defendants by issuing notice that the Government has issued notification for measurement of the property by giving application by single person. The plaintiff has not chosen to issue such notice when he came to know about such circular in the year 2018 itself. Therefore this court comes to the conclusion that the plaintiff has failed to establish his readiness and willingness to perform his part of contract as pleaded by him. Hence for the said reasons, this court answers Issue No.3 in Negative.

ISSUE No.4:

41. The contesting defendants have taken up the specific plea that the plaintiff has filed the present suit after laps of six years from the date of execution of agreement of sale and therefore the suit of the plaintiff is barred by limitation. Based on the said pleadings, the present issue has been framed. Admittedly the plaintiff and defendants entered into the agreement of sale as per Ex.P1 on 06.01.2014 and the plaintiff has filed the present suit before this court on 18.12.2020 which is after laps of six years. On perusal of the recitals of said agreement of sale the time fixed for execution of agreement of sale is three months after obtaining all the revenue records by the defendants. It is the case of the plaintiff that since the schedule property was not made durasth and there was bar for

measurement of the property by submitting application by single person, there was delay in execution of the Sale Deed. As per the recitals of said Ex.P1, the time fixed is three months after getting all the revenue records by the defendants. The recitals stated in the said agreement of sale is clear that after obtaining the revenue records and within three months from said date, the defendants should execute the sale deed. The plaintiff has pleaded that the defendants have not obtained revenue records till he issued legal notice. Even though the defendants have pleaded that the schedule property was already made durasth but the said fact is not established by the contesting defendants.

42. The Hon'ble Supreme Court in **AIR 1993 Supreme Court 1742 – Smt.Chand Rani Vs Smt. Kamal Rani**, held that in case of sale of immovable property time is never regarded as the essence of the contract. Further the Hon'ble Supreme Court in **2008(4) SCC 464 – Balasaheb Dayandeo Naik and others Vs Appasaheb Dattatraya Pawar**, held that even though six months time fixed for execution of sale deed but in respect of sale of immovable property such a stipulation will not make the time is essence of contract. As per the principles laid down in the aforesaid rulings even though the time is fixed in the agreement of sale but in respect of immovable property such stipulation will not make the time is essence of contract.

43. As per Limitation Act, the time fixed for performance of contract is three years from the date when the other side has

refused to perform the contract. In the present case as per the pleadings of the plaintiff, he issued legal notice to the defendants on 07.10.2020 and thereafter on 08.11.2020 the defendants have issued reply to the said legal notice and thereby denied the execution of said agreement of sale itself. Therefore the period of limitation for filing of suit starts when the defendants have denied the execution of agreement of itself by issuing reply notice dated 04.11.2020. After issuance of said reply notice withing three years the plaintiff has filed the present suit and therefore the suit of the plaintiff is filed well within the period of limitation. Hence for the said reasons, this court answers Issue No.4 in Negative.

ISSUE No.5:

44. The plaintiff has claimed the relief of specific performance of contract by directing defendants to execute the Sale Deed after receiving balance sale consideration amount of Rs.2,83,750/- as per the terms of the agreement of sale dated 06.01.2014. This court has already concluded above that the plaintiff is successful in establishing the due execution of the agreement of sale dated 06.01.2014 and also established about the payment of advance sale consideration amount of Rs.4,22,500/- in favour of defendant No.1 to 3 and like wise payment of paid Rs.2,50,000/- as advance sale consideration amount in favour of said Siddegowda, Swamy @ Gavi and defendant No.4 to 6. Even though the plaintiff has established the due execution of agreement of sale but this court has already concluded in issue No.3 that the plaintiff is miserably

failed to establish that he was ready and willing to perform his part of contract and also miserably failed to establish the payment of further sale consideration amount as pleaded by him. When the plaintiff has failed to establish his readiness and willingness to perform his part of contract, at any cost the plaintiff is not entitle for the main relief of specific performance of contract claimed by him.

45. Now the question is about repayment of earnest amount paid by the plaintiff to the defendants. As it is discussed above the plaintiff has established about the due execution of agreement of sale dated 06.01.2014 and also established the payment of advance sale consideration amount on said date. On perusal of the relief claimed by the plaintiff he claimed only the relief of specific performance of contract and not claimed the alternative relief for return of advance sale consideration amount paid to the defendants. The question to be determined is whether this court can direct the defendants to return the advance sale consideration amount when there is no such relief claimed by the plaintiff for return of the same. The Division Bench of Hon'ble Supreme Court in **(2023) SCC 714 - Desh Raj and others Vs. Rohtash Singh**, it has been categorically held that when there is no specific relief claimed by the plaintiff for refund of earnest money, then no such relief could be granted by the court. By considering the principles laid down in the aforesaid ruling since there is absence of the relief of refund of earnest amount claimed by plaintiff, he is not entitle for the relief by directing defendants to refund the earnest money.

Therefore the plaintiff is not entitle for any relief claimed by him. Hence for the said reasons, this court answer issue No.5 in Negative.

Issue No.6:

46. For the reasons discussed above this court proceeds to pass the following:

ORDER

The suit of the plaintiff for the relief of specific performance of contract is hereby dismissed.

The parties should bear their own cost.

Office to Draw Decree Accordingly.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 03rd day of July, 2024)

**(Sandesh Prabhu. B)
Senior Civil Judge & J.M.F.C
H.D.Kote**

ANNEXURE

List of witnesses examined by the plaintiff/s:

PW.1 : Ranganatha
PW.2 : Kunnegowda

List of witnesses examined by the defendant/s:

DW.1 : Ranthamma
DW.2 : Manju
DW.3 : Jagadeesha

List of documents marked by the plaintiff/s:

- Ex.P1 : Original sale deed
Ex.P2 : Computerized RTC
Ex.P3 : Legal notice dated:07.10.2020
Exs.P4 to P6: Postal acknowledgments
Exs.P7 to P9: letters
Ex.P10 : Government circular

List of documents marked by the defendant/s:

- Ex.D1 : Certified copy of order sheet
Ex.D2 : Certified copy of written statement
Ex.D3 : Certified copy of compromise application
Ex.D4 & 5 : Certified copies of death certificates
Ex.D6 : Certified copy of mutation register
Ex.D7 to 10 : Computerized RTCs
Ex.D11 : Reply
Ex.D12 : Postal receipt
Ex.P13 : Postal acknowledgment
Ex.D14 & 15: Aadar cards
Exs.P16 to 18: Certified copies of plaint, interim application
and order sheet

(Sandesh Prabhu. B)
Senior Civil Judge & J.M.F.C
H.D.Kote