

**IN THE COURT OF THE ADDITIONAL SENIOR
CIVIL JUDGE AND JMFC, HUNSUR**

Present: K.M.SHANKAR, B.A.L., LL.B.,
Addl., Senior Civil Judge & JMFC
Hunsur

Dated, this the 1st day of March, 2021

OS No.111/2019

Plaintiff: Sakamma W/o Swamygowda,
Aged about 55 years,
R/at Hale Varanchi Village,
Hanagodu Hobli, Hunsur Taluk.

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

V/s

Defendants: 1. Ameer Rahamathulla Khan,
S/o Late Ibrahim Khan,
Aged about 64 years,
R/at Ramenahalli Village,
Hanagud Hobli, Hunsur Taluk.

2. Bilkish Shabana,
D/o Ameer Rahamathulla Khan,
Aged about 30 years,

Both are R/at No.14, First Block,
Madeena Mohalla, Anglo Indian block,
Hostel Town, Near Nanda Ground,
Bengaluru-560047.

(By Sri.S.N.P., Advocate)

Date of institution of the Suit	:	07.11.2019
Nature of the Suit	:	Specific performance of contract
Date of commencement of recording of evidence	:	09.02.2021
Date on which the Judgment was pronounced	:	01.03.2021
Total duration	:	Year/s Month/s Day/s 01 03 22

(K.M.SHANKAR)

Addl. Senior Civil Judge & JMFC
Hunsur

J U D G M E N T

The plaintiff has filed the suit for the reliefs of specific performance of contract as per the terms and conditions of the agreement of sale dated 21.12.2017, costs and such other reliefs as this court deems fit to grant in the facts and circumstances of the case.

2. The case of the plaintiff is that the 1st defendant being the owner of the suit schedule property and as he required money, he offered the suit property for sale. Accordingly, on 21.12.2017 the 1st defendant entered into an agreement of sale in respect of the suit schedule property with the plaintiff and agreed to sell the same for sale consideration of Rs.8,00,000/- in favour of the plaintiff and

received an advance sale consideration of Rs.5,50,000/- from her and agreed to execute a sale deed in her favour by making durarsth of the suit property and securing sketch and other documents of the suit property. The plaintiff requested the 1st defendant on several occasions to get execute a sale deed by receiving balance sale consideration. But, he was telling that still durasth is not conducted and after completion of the same he will get execute the sale deed, and handed over the possession of the suit property on in April 2018.

3. Inspite of repeated requests the 1st defendant has not come forward to execute a registered sale deed in terms of the sale agreement. Hence, a legal notice was issued him calling upon him to come and execute a sale deed in favour of the plaintiff. But, the notice was returned unexecuted. It was not received by the 1st defendant after came to know the contents of the notice. The plaintiff has always been ready and willing to perform her part of contract as per the alleged agreement of sale. But, the 1st defendant is not ready to perform his part of contract. Such being the case, the plaintiff came to know recently that on 26.06.2019 the 1st defendant, his wife and son executed a release deed in favour of the 2nd defendant, who is the daughter of the 1st defendant and when it was questioned with the 1st defendant he responded vaguely. Accordingly, the suit is filed.

4. Inspite of putting appearance through a counsel the defendants have not chosen to contest the suit by filing written statement.

5. In order to prove the case of the plaintiff, she has examined herself as PW1 and got marked sale agreement, copy of legal notice, postal receipt, postal acknowledgment, RTC and certified copy of release deed as Ex.P1 to 6.

6. I have heard the arguments of learned counsel appearing for the plaintiff and perused the materials on record. The defendants remained absent and have not submitted their arguments.

7. Points that arise for consideration of this court are as under:

1. Whether the plaintiff proves the fact of due execution of the alleged agreement of sale dated 21.12.2017 by the 1st defendant in favour of the plaintiff and passing of advance sale consideration of Rs.5,50,000/- to the 1st defendant as alleged in the plaint?
2. Whether the plaintiff proves that she has always been ready and willing to perform her part of contract in terms of the said sale agreement?
3. Whether the 2nd defendant is liable to execute sale deed in favour of the plaintiff?

4. Whether the plaintiff is entitled for the relief of specific performance of contract?

5. What order or decree?

8. Findings of the court on the above points are as under:

Point No.1: in affirmative

Point No.2: in affirmative

Point No.3: in affirmative

Point No.4: in affirmative and

Point No.5: as per final order for the following:

R E A S O N S

9. Point No.1 to 4: these points are taken up together for common discussion in order to avoid repetition in discussion.

10. As could be seen from the material on record, the plaintiff has knocked the doors of this court seeking a decree of specific performance of contract as per the terms and conditions of the sale agreement dated 21.12.2017 alleged to have been executed by the 1st defendant on the grounds that though the plaintiff has always been ready and willing to perform her part of contract in terms of the said sale agreement, the 1st defendant did not come forward and perform his part of contract as per the terms and conditions of the sale agreement and during pendency of the suit the 1st

defendant, his wife and son executed a released deed in respect of the suit property in favour of the 2nd defendant and the 1st defendant has failed to perform his contractual obligations as contemplated under the said agreement of sale. The PW1 has deposed the said facts in her examination-in-chief and in support of her oral evidence she has placed reliance upon the Ex.P1 to 6, which fortify her case.

11. The defendants entered appearance. But, have not chosen to contest the suit of the plaintiff. Hence, this court has no hesitation to hold that the case of the plaintiff is admitted by the defendants. However, the law mandates the person, who knocks the doors of the court of law to establish his claim independently with cogent and sufficient evidence without taking the weakness of the defendant as a trump card to the case of the plaintiff. In view of this principle the initial burden is casted upon the plaintiff to substantiate her claim with reasonable, cogent and convincing evidence.

12. As noted supra, the plaintiff has narrated in her oral evidence about the material facts of proposal of the 1st defendant to sell the suit schedule property in favour of the plaintiff for sale consideration of Rs.8,00,000/-, receipt of advance sale consideration of Rs.5,50,000/- from the plaintiff, execution of an

agreement of sale on 21.12.2017 in favour of the plaintiff, agreement to receive balance sale consideration of Rs.2,50,000/- at the time of execution of sale deed and its execution by providing sketch and necessary documents for registration, ready and willingness of the plaintiff to perform her part of contract and failure of the 1st defendant to perform his part of contract as per the terms and conditions of the said sale agreement. The oral evidence of the plaintiff is supported by the documents Ex.P1 to 6, which clearly and undoubtedly corroborate her oral testimony and there is no reason to disbelieve or discard the oral and documentary evidence of the plaintiff, by which she has established the due execution of the alleged agreement of sale by the 1st defendant in her favour and passing of advance sale consideration to the 1st defendant by the plaintiff and ready and willingness of the plaintiff to perform her part of contract as per the terms and conditions of the said sale agreement as required under law and failure on the part of the 1st defendant to perform his part of contract.

13. Further, it is asserted by the plaintiff in her pleadings as well as evidence that during pendency of the suit on 26.06.2020, the 1st defendant, his wife and son executed a release deed in favour of the 2nd defendant by relinquishing right over the suit schedule property illegally and this fact is corroborated by the Ex.P6-release deed, which reveals that the 1st defendant, his wife

and son executed the same in favour of the 2nd defendant and relinquished their rights over the suit schedule property and it was executed during pendency of the suit as the date of its execution was 26.06.2020. Whereas, the date of institution of the suit was 07.11.2019. Therefore, the said deed of relinquishment was executed during pendency of the suit and the 2nd defendant has not established that the right of the suit property was transferred to her legally in view of existence of the alleged agreement of sale at the time of execution of the said relinquishment deed. Accordingly, as per the provisions of Sec.19 of the Specific Relief Act, the 2nd defendant is bound to execute a sale deed along with the 1st defendant in favour of the plaintiff as per the terms and conditions of the alleged agreement of sale. Accordingly, the point No.1 to 4 are answered in affirmative.

14. Point No.5: in view of the findings arrived on the point No.1 to 4, I proceed to pass the following:

O R D E R

The suit of the plaintiff is hereby decreed with costs.

The defendants are directed to execute a regular sale deed in favour of the plaintiff before the office of the concerned Sub-

registrar as per the terms and conditions of the above referred sale agreement. If the defendants fail to do so, the plaintiff is at liberty to get it done through the agency of the court.

Office to draw Decree accordingly and consign record to the CRR as per the Rules.

(Dictated to the Stenographer on the computer, typed by her, revised, corrected and then pronounced by me in the open Court on this day, the 1st March 2021)

(K.M.SHANKAR)
Addl. Senior Civil Judge & JMFC
Hunsur

ANNEXURE

List of witnesses examined for the plaintiff:

PW1 : Sakamma

List of witnesses examined for the defendants:

- NIL -

List of documents marked for the plaintiff:

Ex.P1 : Agreement of sale
Ex.P1(a) to (e) : Signatures of plaintiff, defendants,
witnesses and biklum
Ex.P2 : Copy of legal notice
Ex.P3 : Postal receipt

Ex.P4 and 4(a) : Returned RPAD cover and notice
Ex.P5 : RTC extract
Ex.P6 : Release deed

List of documents marked for the defendants:

- NIL -

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