

KAMS300018962024



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE  
AND J.M.F.C AT HUNSUR**

**Present:** Smt.Anitha, B.A. (Law) L.L.B.,  
Addl. Senior Civil Judge & JMFC.,  
Hunsur.

**Dated this the 17<sup>th</sup> day of April, 2025.**

**OS No.237/2024**

Plaintiff: Sri.Raghupathi,  
S/o Late Karichikkegowda,  
Aged about 70 years,  
R/at Kudineerumuddhanahalli village,  
Bilikere Hobli, Hunsur Taluk,  
Mysuru District.

**-Vs-**

Defendants: 1. Jamrad @ Jamrud D/o Late Wajeer Sab,  
W/o Arif, Aged about 60 years,  
R/at Kudineeru Muddanahalli village,  
Bilikere Hobli, Hunsur Taluk,  
Mysore District.  
Now residing at C/o Sharadha Madam,  
Studio Street, Rathnapuri village,  
Kasaba Hobli, Hunsur Taluk,  
Mysuru District.

2. Hayat Sab, S/o Wajeer sab,  
Aged about 55 years,

3. Samsad, W/o Hayat Sab,  
Aged about 22 years,

4. Umera, D/o Hayat Sab, W/o Rahim,  
Aged about 22 years,

5. Sahera, D/o Hayat Sab,  
Aged about 20 years,
6. Jaffer Sadiq, S/o Hayat sab,  
Aged about 18 years,

All are residing at Kudineeru Muddanahalli village, Bilikere Hobli, Hunsur Taluk, Mysore District.

Now residing at No.25, 1<sup>st</sup> Main,  
4<sup>th</sup> cross, Vijayanagar,  
Bangalore – 560040.

1.	Provision under which the application is filed	:	Under Order 9 Rule 7 of CPC
2.	Relief sought for	:	To set aside the order of placing defendants No.3 to 6 exparte
3.	The date on which the application is filed	:	19.03.2025
4.	Number of the application	:	---
5.	The date on which the objection is filed by different opponents	:	24.03.2025
6.	The date on which the orders passed on the said application	:	17.04.2025

### **ORDERS PASSED ON IA No.V**

The learned counsel for defendants No.3 to 6 filed IA No.V under Order 9 Rule 7 of CPC seeking for setting aside the order of placing defendants No.3 to 6 exparte dated 17.12.2024 and permit them to file written-statement.

2. The application is supported with the affidavit of the 3<sup>rd</sup> defendant wherein it is stated that, the plaintiff filed the suit against themselves for the relief of specific performance of contract. The plaintiff has not taken proper steps against them and after verifying the same in CIS they came to know that, the plaintiff has taken affixture and it has not been served upon the proper address of defendants No.3 to 6 and the plaintiff had gloves hand with the process server and managed to show that, the affixture has been properly served. Presently they are residing at Bangalore and the summons has not been served upon Bangalore address. About two days back they came to the village and came to know about affixture. It is also stated that, the order placing them *exparte* is to be set aside in order to allow them to participate in the suit. If the application is allowed no hardship is going to be caused to the other-side. On the other-hand if the same is not allowed defendants No.3 to 6 will be put to great hardship. Hence, prayed to allow the application.

3. After filing of the application the learned counsel for plaintiff filed the objection contending that, the application is not maintainable under law or on facts. Affidavit filed in support of the application is false and there is no reason to set aside *exparte* order. The suit is filed for the relief of specific performance of contract and for more than six months

defendants No.3 to 6 have dragged the proceedings. There is no locus-standi for defendants No.3 to 6 file the present application. Already defendants No.1 and 2 have executed the sale deed and defendants No.3 to 6 intentionally avoided the service of summons. It is also contended that, defendants No.3 to 6 are formal parties to the suit. They have not made out any prima-facie reason to set aside the order of placing them exparte. If the application is allowed the plaintiff will be put to great hardship. On the other-hand no hardship is going to be caused to the other-side. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for defendants No.3 to 6 and plaintiff and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

#### **POINTS**

1. Whether defendants No.3 to 6 have made out sufficient grounds to set aside the order of placing them exparte?
2. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the affirmative

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

**REASONS**

6. **Point No.1:** The plaintiff has filed the suit for the relief of specific performance and sale agreement executed by the defendants. It is the specific case of the plaintiff that, the defendants entered into a registered sale agreement with the plaintiff in respect of the suit schedule property on 26.04.2022 for total consideration of Rs.30,00,000/-. The defendants have received advance sale consideration of Rs.15,00,000/- and remaining balance sale consideration of Rs.15,00,000/- was agreed to be paid at the time of registration. Since from the date of sale agreement the plaintiff is ever ready to perform his part of contract. On the other-hand the defendants postponed the execution of the sale deed and have not provided proper documents to the plaintiff. At last on 14.08.2024 the plaintiff issued legal notice and the same has been served upon the defendants and inspite of it they have not chosen to execute the sale deed. It is to be noted that, the suit was instituted on 19.09.2024 and registered on 23.09.2024. Thereafter, this court issued summons to the defendants. On 19.10.2024 defendant No.2 appeared through his counsel. Thereafter, defendant No.2 filed application to extend time to file the written-statement and inspite of it 2<sup>nd</sup> defendant not chosen to file the written-statement. On 17.12.2024 defendants No.3 to 6 have been placed exparte.

7. On 28.01.2025 this court framed the issues and posted the case for evidence. On 24.02.2025 the plaintiff stepped into the witness box and examined himself as PW1 and got marked 50 documents as per Ex.P1 to Ex.P50. Further, on the same date the plaintiff examined two witnesses as PW2 and PW3. Thereafter, on 01.03.2025 the case has been posted for defendants evidence. On the same date since defendants No.1, 3 to 6 have placed exparte and inspite of filing written-statement defendant No.2 not chosen to lead evidence and as such the case has been posted for arguments. On 10.03.2025 this court heard arguments and posted the case for judgment by 24.03.2019. In the meantime on 19.03.2025 the case was advanced and learned counsel for defendants No.3 to 6 filed vakalath along with this IA and written-statement in two sides. In the affidavit filed in support of the application defendants No.3 to 6 have contended that, the summons through affixture has not been served upon them. It is pertinent to note that, on 19.11.2024 this court issued summons to defendants No.3 to 6 through affixture. The same was duly executed on 16.02.2024 and a report to that effect has been filed before the court by the process server. On the basis of said report defendants No.3 to 6 have been placed exparte on 17.12.2024. In the affidavit filed in support of the present application

defendants No.3 to 6 have contended that, the summons has not been properly served upon them.

8. It is their specific case that, they are not residing in the address mentioned in the cause title of the plaint but they are now residing at Bengaluru. It is very important to note that, the plaintiff has mentioned that, the address of the defendants No.3 to 6 as shown in Ex.P1 registered sale agreement. As such the affixture has been duly served. Defendants No.3 to 6 have not produced any documents to show that, process served of this court is colluded with the plaintiff and filed false report. However, defendants No.3 to 6 in the affidavit stated that, on going through CIS they know about the suit. If they had no knowledge about the suit, then what made them to search in the CIS is a big question before the court which remained unanswered. However, it is very much necessary to not that as per the principles of natural justice in a litigation before the court, all the parties shall be given proper opportunity to appear before the court. The present suit is for the relief of specific performance of sale agreement and defendants No.3 to 6 are also parties in Ex.P1 sale agreement. It is necessary to provide them an opportunity to defend the suit which will enable this court to come to a just conclusion. Further the delay caused could be compensated by imposing costs. On the basis of the above discussions this court comes

to the conclusion that, defendants No.3 to 6 have made out sufficient grounds to set aside the order of placing them exparte. Accordingly, Point No.1 is answered in the affirmative.

9. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

**ORDER**

The application filed by defendants No.3 to 6 under Order 9 Rule 7 of CPC is hereby allowed with costs of Rs.750/-.

Accordingly, the order of placing defendants No.3 to 6 exparte is hereby set aside and written-statement and memo of adoption filed by them is received.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 17<sup>th</sup> day of April, 2025)

**(Anitha)**

Addl. Senior Civil Judge and JMFC.,  
Hunsur.