

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC: AT
KRISHNARAJANAGARA.**

PRESENT

**Sri. K.M. BASAVARAJAPPA, B.Com., LL.B.
Senior Civil Judge & JMFC, K.R.Nagar**

Dated this the 23rd day of April 2021

O.S.No.4/2019

PLAINTIFF:

Smt. Chaya S.N,
W/o Sannaswamy Naiaka,
Aged about years,
R/at Channamgere Grama,
Chunchankatte Hobli,
Krishnarajanagar Taluk,
Mysuru District.

(By Sri. P.L.K.-Adv.)

V/s

DEFENDANTS:

1. Smt. H.S.Saraswathi,
W/o M.T. Venkatesh,
Aged about 42 years,
2. Sri. M.T.Venkatesh,
S/o late Thimmaiah,
Aged about 48 years,
3. Smt.M.V. Jeevitha
D/o M.T.Venkatesh,
Aged about 19 years,

D.1 to 3 are R/at Group 4,
HIG-46, KHB Colony,
Hootagalli, Mysuru.

(By Sri. N.R.K. Advocate)

Date of institution of the suit	30.01.2019
Nature of the suit	Specific Performance of Contract
Date of the commencement of recording of the evidence	20.09.2019
Date on which the Judgment was Pronounced	23.04.2021
Total duration	Years Months Days 02 02 23

J U D G E M E N T

The plaintiff has filed this suit against the defendants for the relief of specific performance of contract, directing the defendants to execute the registered sale deed in her favor with respect of the suit schedule property by receiving the balance sale consideration amount in terms of the registered agreement of sale dated 05.08.2016. If the defendants failed to perform their part of contract, this court is pleased to execute the registered sale deed in her favor through the agency of the court at the cost of the plaintiff.

2. The brief facts of the case of the plaintiff is as under:-

The defendants are the owners of the suit schedule property. They have agreed to sell the suit schedule property in favor of the plaintiff for valuable consideration of

Rs.12,00,000/- for their legal necessities and they have executed a registered agreement of sale dated 05.08.2016 in favor of the plaintiff and on the same day the defendants have received an advance sale consideration of Rs.7,40,000/- and they have agreed to receive the remaining sale consideration amount of Rs.4,60,000/- at the time of execution of registered sale deed in favor of plaintiff within 03 years from the date of agreement of sale i.e. 05.08.2016 in favor of plaintiff. Thereafter the defendants have not come and execute the sale deed, but they have issued a legal notice to the plaintiff on 15.11.2018 by making false allegation against her. Hence, the plaintiff has sent reply notice to the defendants and also issued a legal notice on 19.12.2018 calling upon the defendants to discharge their part of contract. To the said notice, the defendants have sent untenable reply. It is further submitted that, the plaintiff is always ready and willing to perform her part of contract but the defendants have failed to perform their part of contractual obligation. Hence, the plaintiff has filed this suit for the relief of specific performance of contract.

3. In response to the suit summons, the defendants No.1 to 3 appeared through their counsels and filed their written

statement by denying the entire plaint averments in Toto. They have further contended that, during the year 2016 the defendant No.1 was facing financial crises and she needed money for her children's education. At that time the plaintiff has lent a loan of Rs.4,00,000/- to the defendant No.1. Thereafter the plaintiff has informed the defendants No.1 ad 2 on 4.8.2016 about the registration of the loan agreement scheduled on 5.8.2016. During the process of registration, the plaintiff never allowed the defendants No.1 and 2 to read the agreement and in the last moment, the plaintiff forced the defendants No.1 to sign the agreement without allowing her to read the same. Thereafter the defendant No.1 came to know that the plaintiff had taken her signature on agreement to sell her property at K.R.Nagar, as the plaintiff took advantage of the fact that the defendant No.1 is not educated and cannot understand the legal terms. After a few months the plaintiff gave a photocopy of the registered sale agreement to the defendants. The defendants were found that there was no cancellation and forfeiture clause in the said agreement and the plaintiff had prepared a unilateral agreement and also the terms of the sale agreement was mentioned as 03 years, which is enormously long. The plaintiff has also made a

mention in the said sale agreement that the defendant No.1 has to register the said property in favor of any person appointed by plaintiff, which creates doubts about the plaintiff's intentions behind making this sale agreement. When the defendants have been continuously asking plaintiff to cancel the said sale agreement, the plaintiff has been giving evasive reply and postponing the cancellation. It is further submitted that, the defendants are ready to pay the loan amount of Rs.4,00,000/- borrowed from the plaintiff. But, the plaintiff refused to accept the same. Thereafter the plaintiff has been continuously pressurizing the defendants to register the schedule property in the name of plaintiff's father. The said behavior of plaintiff has caused mental agony, inconvenience and pecuniary loss to the defendants. It is further submitted that the suit schedule property is a self acquired property of defendant No.1. The defendant No.3 is the daughter of defendants No.1 and 2. Hence, she has no any right over the suit schedule property and she is an unnecessary party to the present suit. The whole agreement was only made and executed by misleading by the plaintiff only to defraud the defendants and obtained the ownership of the property for a very less price. Hence, the defendants have

prayed to dismiss the suit with cost.

4. On the basis of the above pleadings, the following issues were framed.

1. Whether plaintiff proves that, the defendants being the absolute owners of the suit schedule property have agreed to sell the same in her favor for a total sale consideration amount of Rs.12,00,000/- by entering into the agreement of sale on 05.08.2016 receiving advance sale consideration of Rs.7,40,000/-?

2. Whether the defendants prove that the plaintiff has created the alleged agreement of sale dated 05.08.2016 by taking the advantage of the signature of the defendants No.1 and 2 by obtaining their signatures when they borrowed a loan of Rs.4,00,000/- from the plaintiff?

3. Whether the plaintiff proves that she was and is ready and willing to perform her part of contract?

4. Whether the plaintiff is entitled for the relief as sought for?

5. What order or decree?

5. In order to prove her case, the plaintiff examined herself as PW.1 and two attesting witnesses have been examined as PW.2 and PW.3 and got marked 13 documents at Ex.P1 to P.13. On the other hand, the defendants neither cross-examined the PW.2 and 3 nor stepped into witness in

order to substantiate their contentions.

6. Heard the arguments of learned counsels for the both the parties.

7. My findings on the above Issues are as under:-

Issue No.1 : In the Affirmative

Issue No.2 : In the Negative

Issue No.3 : In the Affirmative

Issue No.4 : In the Affirmative

Issue No.5 : As per final order,

for the following

REASONS

8. **ISSUE No.1 to 3:-** Since these issues are interconnected with each other, they are taken up together for common discussion to avoid repetition of facts.

It is the specific case of the plaintiff that, the defendants are the owners of the suit schedule property and they have agreed to sell the suit schedule property in favor of the plaintiff for valuable consideration of Rs.12,00,000/- and they have executed an agreement of sale dated 05.08.2016 in favor of the plaintiff. On the same day the defendants have received an advance sale consideration of Rs.7,40,000/- and the defendants have agreed to receive the balance sale consideration amount of Rs.4,60,000/- at the time of

execution of registered sale deed in favor of plaintiff within three years from the date of agreement. Thereafter the defendants have not come forward to execute the registered sale deed. Hence, the plaintiff has issued a legal notice on 19.12.2018 calling upon them to discharge their part of contract. To the said notice, the defendants have sent untenable reply. The plaintiff is always ready and willing to perform her part of contract but the defendants have failed to perform their part of contractual obligation. Per contra, the defendants contended that, during the year 2016 the defendants have borrowed a loan of Rs.4,00,000/- from the plaintiff for their children education. At that time, the defendant No.1 instated of making a loan agreement with interest clause to avoid the further problems, the plaintiff has created the alleged agreement of sale dated 05.08.2016 by obtaining the signature of the defendants. Thereafter, though the defendants are ready to repay the said amount of Rs.4,00,000/-, the plaintiff has refused to accept the same. It is further submitted that, the said agreement does not have a cancellation or forfeiture clause. It is a unilateral agreement, which is against to the law. The whole agreement was only made and executed by misleading the defendants in order to

defraud the defendants and obtained the ownership of the suit property.

9. In order to substantiate her case, the plaintiff has been examined herself as PW.1 and filed affidavit in lieu of her examination in chief and got marked 13 documents at Ex.P.1 to Ex.P.13. I carefully perused the documents. Ex.P1 is the registered agreement of sale dated 05.08.2016, which reveals that the defendants have agreed to sell the suit property for a total consideration of Rs.12,00,000/- and by receiving an advance amount of Rs.7,40,000/- from the plaintiff have executed the said registered agreement of sale in favor of the plaintiff.. Ex.P2 is the copy of legal notice dated 19.12.2018, which disclosed that the plaintiff has caused said notice on the defendants calling them to execute the registered sale deed in her favor by receiving balance sale consideration amount of Rs.4,60,000/-. Ex.P.3 is the four postal receipts. Ex.P.4 to 7 are the four postal acknowledgements for having received the said notice by the defendants. Ex.P.8 is also the copy of legal notice dated 19.12.2018. Ex.P.9 is the three postal receipts. Ex.P.10 to P.12 are the three postal acknowledgements for having served the said notice on the defendants. Ex.P.13 is the reply notice issued by the

defendants to the plaintiff. The above documents produced by the plaintiff are clearly disclosed that the defendants are the owners of the suit property and they have agreed to sell the same in favor of plaintiff for Rs.12,00,000/- and executed an agreement of sale dated 05.08.2016 in favor of the plaintiff by receiving an advance amount of Rs.7,40,000/- and they have also agreed to execute the registered sale deed within three year by receiving the balance consideration amount of Rs.4,60,000/- from the plaintiff.

10. In other words, during the cross-examination of PW 1, the learned counsel for the defendants has specifically suggested that the defendants have received Rs.4,00,000/- from the plaintiff prior to execution of the alleged agreement of sale and he further suggested that, as on the date of said agreement of sale, the defendants have received only Rs.4,00,000/- from the plaintiff. But, the plaintiff has specifically denied the said suggestion and he has deposed that he has lent Rs.7,40,000/- to the defendants as advance sale consideration amount. In the entire cross-examination of the PW.1 the defendants counsel was not elicited any material admissions from the mouth of PW.1 in order to disprove the case of the plaintiff or to substantiate any of their

contentions. The above said suggestions put forth by the defendants counsel to the PW.1 are very much relevant for the better appreciation of the case on hand, which reads as follows:

“ನಾನು ಸದರಿ ಕರಾರು ಪತ್ರ ಆಗುವ ಮೊದಲು ಪ್ರತಿವಾದಿಯರಿಗೆ ನಾಲ್ಕು ಲಕ್ಷ ರೂ ಗಳನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

ಸದರಿ ಕರಾರು ಪತ್ರ ಆಗುವ ದಿವಸ ನಾನು ಪ್ರತಿವಾದಿಯರಿಗೆ ನಾಲ್ಕು ಲಕ್ಷ ರೂ ಗಳನ್ನು ಮಾತ್ರ ಕೊಟ್ಟಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ ಸಾಕ್ಷಿ 7,40,000 ರೂ ಗಳನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ ಎಂದುದ ನುಡಿದಿರುತ್ತಾರೆ”.

The above suggestions put forth by the defendants' counsel are clearly established that the defendants have executed the alleged agreement of sale in favor of the plaintiff. But, it is the specific contention of the defendants that, during the year 2016 the defendant No.1 was facing financial crises and she needed money for her children's education. At that time the plaintiff has lent a loan of Rs.4,00,000/- to the defendant No.1. During the process of registration, the plaintiff had prepared a unilateral agreement. But, in order to substantiate the said contentions the defendants have not produced any iota of evidence and even during the cross examination of PW.1, the defendants have not elicited any material admissions. Further, the plaintiff examined the attesting witnesses of the alleged agreement of sale as PW.2 and 3, who

have clearly supports the case of the plaintiff and they have specifically deposed that, the defendants being the absolute owners of the suit schedule property have agreed to sell the same in favor of the plaintiff for a sale consideration amount of Rs.12,00,000/- by entering into the agreement of sale on 05.08.2016 and they have received an advance sale consideration of Rs.7,40,000/- by agreeing to execute the registered sale deed in favor of the plaintiff by receiving the balance consideration amount. On the other hand, even sufficient opportunity has been granted the defendants have fails to cross-examine the PW.2 and 3, who are the attesting witnesses of the alleged agreement of sale.

11. As discussed above, the defendants neither cross-examined the PW.2 and 3 nor stepped into witness box in order to disprove the case of the plaintiff or to substantiate any of their contentions. Therefore, a valid presumption would arise that the case set up by the defendants is not correct. At this point of time, I would like to placed my reliance on the decision of Hon'ble Supreme court of India, reported in **AIR 1999 S.C.1441 between Vidhyadhar V/s Mankikrao and another**, wherein it is held that: *"when a party to the suit does not appear into the witness box and states his own case on*

oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct". As such, an adverse inference can be safely drawn against the defendants and court can safely accept the evidence of plaintiff's witnesses and his documents. Therefore, the oral and documentary evidence produced by the plaintiff and the clear admissions of the defendants in their pleadings and also during the cross-examination of PW.1 are clearly established that the defendants have agreed to sell the suit schedule property to the plaintiff for Rs.12,00,000/- and have executed the agreement of sale dated 05.08.2016 in favor of the plaintiff by receiving an advance amount of Rs.7,40,000/- and agreed to receive the balance consideration amount of Rs.4,60,000/- at the time of execution of the registered sale deed. Apart from this, the alleged agreement of sale/Ex.P.1 is a registered document; therefore, in view of the decision reported in 2000 (3) KLJ S.N. Item No.39 (A.V.Rangacharya and another V/s. Pillanjinappa and another), **"a registered document itself is a proof. It is for party denying its execution to prove his assertion-Unless registered instrument is set aside in accordance with law, validity of registered instrument and purport for which it is executed must be upheld by Court."**

12. Further, the legal notice issued by the plaintiff to the defendants and acknowledgements as per Ex.P. 2 to 12 are clearly proved that the plaintiff has demanded the defendants and calling upon them to come and execute the registered sale deed in her favor in terms of the agreement of sale. But, the defendants have fails to perform their part of contract in terms of agreement. As such, the available oral and documentary evidence are also clearly established that the plaintiff was/is also always ready and willing to perform her part of contract. In view of the above discussions, the defendants have failed to prove that the plaintiff has created the alleged agreement of sale dated 05.08.2016 by taking the advantage of the signature of the defendants No.1 and 2. Under such circumstances, there is no occasion to disbelieve the oral and documentary evidence of PW.1 to 3. Accordingly, I have no hesitation to answer **Issue No.1 and 3 in the Affirmative and Issue No.2 in the Negative.**

13. **ISSUES No.4 & 5:-** For the reasons stated in Issue No.1 to 3, I have no hesitation to conclude that the plaintiff is entitled for the relief as he claimed in the plaint. Hence, I answer Issue No.4 in the **Affirmative.** Accordingly, I proceed to pass the following:-

ORDER

The suit of the plaintiff is hereby decreed with costs.

The defendants are hereby directed to execute the registered sale deed in favor of the plaintiff with respect of the suit schedule property by receiving balance consideration of Rs.4,60,000/- at the cost of the plaintiff within three months from the date of decree, failing which, the plaintiff is at liberty to get the registered sale deed through the agency of the court.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by her, corrected & pronounced in the open court on 23rd April 2021)

**(K.M. BASAVARAJAPPA)
Senior Civil Judge & JMFC,
K. R. Nagar.**

ANNEXURE**List of witnesses examined on behalf of the plaintiff:**

PW.1	Smt.Chaya S.N.
PW.2	Sri. Nagaraju
PW.3	Sri. Ravi Nayaka

List of documents relied on behalf of the plaintiff:

Ex.P1	Reg. Agreement of Sale dtd 05.08.2016
Ex.P.1(a,b)	Signature of the defendants.
Ex.P.1(c)	Signature of PW 2
Ex.P.1(d)	Signature of PW 3
Ex.P2	Copy of Legal notice

Ex.P3 Four Postal receipts
Ex.P4 to 7 Four postal acknowledgements
Ex.P.8 Copy of Legal Notice dtd.19.12.2018
Ex.P.9 Three Postal receipts
Ex.P.10 to12 Three Postal acknowledgements.
Ex.P.13 Reply notice

List of witnesses examined on behalf of the defendants:-

Nil

List of documents marked on behalf of the defendants:-

Nil

(K.M. BASAVARAJAPPA)
Senior Civil Judge & JMFC,
K R Nagar.

