

KAMS410001102020



Form No. 9
(Civil) Title Sheet
for Judgment in
suits (R P 91)

GOVERNMENT OF KARNATAKA
TITLE SHEET FOR JUDGMENT IN SUITS

**IN THE COURT OF THE PRL. CIVIL JUDGE AND
JMFC., AT K.R.NAGARA**

Dated this the 10th day of November 2021

PRESENT :- SMT. PAVITHRA R., B.A., L.L.B.,
Prl. Civil Judge and JMFC.,
K.R.Nagara

O.S./17/2020

PLAINTIFF : C.Ashoka,
S/o. Chandregowda,
aged about 40 years,
R/at Guluvina Attiguppe Village,
Hosa aghara Hobli,
Krishnarajanagara Taluk,
Mysuru District.

(Rep. by Sri. K.N.S., Advocate)

-VS-

DEFENDANT : Ramakrishnegowda,
S/o. Late. Sannegowda,

Aged about 60 years,
R/at Guluvina Attiguppe Village,
Hosa agrahara Hobli,
Krishnarajanagara Taluk,
Mysuru District.

(Placed Exparte)

Date of institution of the suit : 17.01.2020
Nature of the suit : Specific performance
of contract
Date of the commencement of
Recording of the evidence : 04.08.2021
Date of which the judgment
pronounced : 10.11.2021
Total Duration :Year/s Month/s Day/s
01 09 24

(PAVITHRA. R)

Prl. Civil Judge & JMFC,
K.R.Nagara.

J U D G M E N T

This is a suit filed by the plaintiff against the defendant for the relief of specific performance of the contract with a prayer to direct the defendant to

execute the sale deed upon receipt of balance sale consideration of Rs. 10,000/- or to grant alternate relief of recovery of earnest money along with interest as per prayer.

2. The brief facts of the plaint are as follows:-

That the plaintiff submits that defendant has agreed to sell the suit schedule property in favour of the plaintiff for sale consideration of Rs.94,000/- and accordingly he executed registered sale agreement of sale on 20.07.2017 in favour of the plaintiff by receiving advance amount of Rs.84,000/- and further agreed to receive the balance amount of Rs.10,000/- after collecting necessary documents of the suit schedule property at the time of execution of sale deed. Thereafter, the plaintiff approached the defendant many times to receive balance amount and execute sale deed. In this regard the plaintiff sent legal notice to defendant on 26.03.2019 demanding the execution

of sale deed. In spite of receipt of the said notice the defendant has failed to perform his part of the contract. That the plaintiff is ready to make the balance payment of sale consideration. Hence, this suit.

3. In spite of service of suit summons, the defendant has not appeared before the Court. Hence, he has been placed exparte as per order dated 04.10.2021.

4. The plaintiff in order to prove his case got examined himself as PW1 and produced 03 documents marked as Ex.P1 to P3.

5. Heard the arguments of plaintiff's counsel and perused the documents available on record.

6. The points that arises for consideration are as follows:

1. Whether the plaintiff proves that, the defendant has entered into sale

agreement on 20.07.2017 agreeing to sell the suit schedule property for sale consideration of Rs.94,000/- in favour of the plaintiff by receiving advance sale consideration amount of Rs. 84,000/- and agreed to execute the sale deed by receiving balance sale consideration amount of Rs.10,000/-?

2. Whether the plaintiff proves that he is ever ready and willing to perform his part of contract?
3. Whether the plaintiff is entitled to the relief of specific performance of the contract?
4. What order or decree?
7. Findings to the above points are as under:

Point No.1	:	In the affirmative
Point No.2	:	In the affirmative
Point No.3	:	In the affirmative
Point No.4	:	As per the final order for the following:

REASONS

8. **Point No.1 to 3:-** Since these points are interlinked to each other, they are taken up together for common discussion in order to avoid repetition of facts.

9. It is the specific case of the plaintiff that defendant entered into sale agreement with the plaintiff with an offer to sell the suit schedule property to him and plaintiff agreed to the same and both of them fixed the sale consideration of Rs.94,000/- and defendant had received advance sale consideration of Rs.84,000/- and executed registered agreement of sale in favour of the plaintiff agreeing to receive the balance amount of Rs.10,000/- at the time of execution of the sale deed. The plaintiff is and was ever ready and willing to perform his part of contract and get the document registered. In spite of several requests and demands the defendant has not come forward to execute the registered sale deed and the defendant has violated the said agreement. Since the defendant has not shown any readiness and willingness to perform his part of contract as per the sale agreement, this suit is filed.

10. In order to prove the plaintiff's case, he has

examined himself as PW1 by filing his chief-examination affidavit and he has reiterated entire averments of the plaint and produced following documents:

- (i) Ex.P1 is the registered sale agreement dated 20.07.2017 executed by defendant in favour of the plaintiff with respect to suit schedule property for sale consideration of Rs.94,000/- having received an advance of Rs.84,000/-.
- (ii) Ex.P2 is the legal notice issued to the defendant.
- (iii) Ex.P3 is the postal acknowledgment.

11. On perusal of Ex.P1 it makes clear that the defendant has executed the sale agreement by receiving advance amount of Rs.84,000/- and agreed to execute the sale deed after getting the required revenue documents by the defendant.

12. As per Ex.P3 defendant has received the legal notice Ex.P2 sent by plaintiff's advocate, but still the defendant has not come forward to receive the balance amount and execute the sale deed. The legal notice-

Ex.P2 makes it clear that the plaintiff is and was ever ready and willing to perform his part of the contract. Thus, there are no grounds to disbelieve the case of the plaintiff and no reasons to discard the evidence of the plaintiff since defendant has not contested the matter. Hence, it is to be believed that, there is execution of registered sale deed by receiving advance sale consideration with respect to suit schedule property by the defendant in favour of the plaintiff and plaintiff has shown his readiness and willingness to get registered the document in his favour by paying the balance sale consideration. Thus, he has issued legal notice and also filed suit against the defendants.

13. In this suit though in spite of giving sufficient opportunity to the defendant, he had failed to appear before the court, which clearly discloses that, defendant has not challenged the contention of the plaintiff and contents of the documents by adducing any contra evidence or by producing any documents

on his behalf. There is no contra evidence or documents to disbelieve the contention taken by the plaintiff. Therefore, it clearly shows that, plaintiff has established preponderance of probability. Since the defendant has not contested the suit, there is no ground to disbelieve the contention of the plaintiff. Hence, plaintiff has rightly filed this suit for specific performance of contract and he is entitled to the relief sought. In the above facts and circumstances of the case, the court is of the opinion that, plaintiff has proved the point No.1 to 3 to the satisfaction of this court. Hence, the court answers the **point No. 1 to 3 in the Affirmative.**

14. Point No. 4:- In the light of the discussions made above and having regard to the facts and circumstances of this case, the court proceeds to pass the following:

ORDER

The suit of the plaintiff is hereby decreed with costs.

Accordingly, the defendant is directed to execute a registered sale deed in favour of the plaintiff with respect to suit schedule property as per sale agreement dated 20.07.2017 within 30 days from the date of this order by receiving balance sale consideration of Rs.10,000/-, failing which the plaintiff is at liberty to initiate execution proceedings.

Draw decree accordingly.

(Dictated to Stenographer directly on computer, computerized by her revised, corrected, signed and then pronounced by me in the open court on this the 10th day of November 2021)

(PAVITHRA R)

Prl. Civil Judge & JMFC,
K.R.Nagara.

A N N E X U R E

1. List of witnesses examined for the plaintiff:

PW1 : Ashoka C

2. List of witnesses examined for the defendant

-NIL-

3. List of documents exhibited for the plaintiff:-

Ex.P1 : Registered agreement of sale
dated 20.07.2017

Ex.P2 : Copy of legal notice

Ex.P3 : Postal acknowledgment

4. List of documents exhibited for the defendant:-

-NIL-

(PAVITHRA R)

Prl. Civil Judge & JMFC,
K.R.Nagara.