

KAMS600001082022



O.S./11/2022

**IN THE COURT OF THE SENIOR CIVIL JUDGE AT
PERIYAPATNA**

Present

Sri.A.SAMIULLA.

B.Sc, LL.B.,

Senior Civil Judge,

Periyapatna

Dated: 7th Day of January 2023

OS.No.11 of 2022

* * *

Plaintiff;

Sri.K.R.Suman s/o M.D.Ravi,
Aged 30 years, Occ: Agriculture,
R/o Neharu Layout, Khushalanagara
Hobli, Somavarapete Taluk,
Kodagu District.

(By Sri.JNK)

V/s

Defendants;

- 1.** Sri.Shivannegowda
s/o Late Basavalingegowda,
Occ: Agriculture,
- 2.** Sri.Shekhara
s/o Late Basavalingegowda,
Age: 35 years, Occ: Agriculture,

3. Smt.Poornima s/o Late Basvalingegowda
Age: 35 years, Occ: Agriculture,

4. Sri.Murthygowda
s/o Late Basavalingegowda,
Age: 35 years, Occ: Agriculture,

5. Sri.Swamygowda,
s/o Late Basavalingegowda,
Age: 35 years, Occ: Agriculture,

All are r/of Bilagunda village,
Haranahalli Hobli, Periyapatna Taluk,
Mysore District.

**(D1 by Sri.SSG
D2 to 5 absent)**

Date of Institution	28.01.2022		
Nature of the Suit	Specific performance		
Date of recording of evidence	14.10.2022		
Pronouncement of judgment	07.01.2023		
Total duration	YY 00	MM 11	DD 09

**Senior Civil Judge,
Periyapatna.**

J U D G M E N T

Suit is for specific performance of contract to direct the defendants to execute sale deed in respect of suit

property by receiving balance sale consideration of Rs.25,000/-.

2. Suit property is a land bearing Sy.No.70 measuring 3As 36Gs out of which 2As situated at Bilagunda village, Haranahalli Hobli, Periyapatna Taluk.

3. Plaintiff asserted that; defendants being the owners of suit property, which is in the name of defendant-1 have agreed to sell the same for a consideration of Rs.9.5 lakhs in favour of plaintiff and thereby by receiving advance sale consideration of Rs.9.25 lakhs they have executed a registered sale agreement dated 07.12.17 agreeing to execute the sale deed after 14 months by receiving balance sale consideration of Rs.25,000/-. He was/is always ready and willing to perform his part of contract with ready balance sale consideration of Rs.25,000/-. But they failed to perform their part of

contract. In spite of request they failed to execute sale deed as agreed upon. Hence, legal notice dated 18.10.21 was issued, which is duly served on them. Neither they complied the notice nor replied the same. Inaction of defendants on notice forced him to file this suit.

4. After registration of suit; summons were issued to the defendants. Defendant-1 appeared through learned counsel but failed to file written statement. Though learned counsel Sri.SSG undertakes to appear for defendants-2 to 5 but failed to file vakalath; hence, it is taken as defendants-2 to 5 are absent.

5. Following points arise for consideration;

POINTS

1. *Whether plaintiff proves that the defendants have agreed to sell the suit property for a consideration of Rs.9.5 lakhs and executed agreement of sale dated 07.12.17 by receiving advance sale consideration of Rs.9.25 lakhs?*

2. *Whether plaintiff proves that he was/is always ready and willing to perform his part of contract?*
3. *Whether plaintiff is entitled for specific performance of contract?*
4. *What order or decree?*

6. To prove the case; plaintiff examined himself as Pw.1 and documents Ex.P1 to P6 were marked.

7. Heard arguments.

8. Answer to the above points is as follows;

Point-1: Affirmative.

Point-2: Affirmative.

Point-3: Affirmative.

***Point-4: As per final order
for the following;***

REASONS

9. Points-1 to 3: These points are taken together for common discussion to avoid repetition of facts.

10. Plaintiff stated that; defendants have executed sale agreement agreeing to execute the sale deed after 14 months but they failed to do so.

11. In the case at hand the initial burden of proof is on the plaintiff to demonstrate the due execution of sale agreement. To dispel burden; he filed evidence affidavit reiterating plaint averments. He specifically stated that; the defendants being the owners of suit property agreed to sell the same for a valuable consideration of Rs.9.5 lakhs and by receiving advance sale consideration of Rs.9.25 lakhs they have executed sale agreement dated 07.12.17 agreeing to execute the sale deed after 14 months. Thereafter, they failed to execute the sale deed. Since they failed to perform their part of contract as agreed upon, legal notice dated 18.10.21 is issued calling upon them to execute the sale deed within seven days of receipt of notice, which is duly served on them. Neither they complied the notice nor replied it.

12. To justify verbal evidence; plaintiff placed reliance on the documents' viz., Ex.P1 is original registered sale agreement dated 07.12.17, wherein it is indicated that the defendants being the owners of suit property have executed sale agreement for a consideration of Rs.9.50 lakhs by receiving advance sale consideration of Rs.9.25 lakhs and further agreed to execute the sale deed after 14 months. Plaintiff schedule and the schedule shown in the agreement tallies. Ex.P2 is RTC extract of suit land pertaining to the year 2021-22, wherein the name of defendant-1 finds a place at column No.9 & 12(2), which shows that he is the owner of suit land. Ex.P3 is encumbrance certificate. Ex.P4 is copy of legal notice dated 18.10.22 issued by the plaintiff to the defendants calling upon them to perform their part of contract. Ex.P5 & 6 are postal receipts and postal acknowledgements.

13. Discussion of verbal and documentary evidence *supra* manifest that; the ocular version of plaintiff corroborates the documentary evidence produced by him. It is worth to note that the proof displayed by him is left unchallenged as the defendants failed to contest the suit. In spite of service of suit summons defendants-2 to 5 failed to appear before Court to contest the claim put forth by the plaintiff, which shows that they have no defense to the claim of plaintiff. Though defendant-1 appeared through learned counsel but failed to file written statement. Thus, the factual matrix put forth by him remained intact. Absolutely there is no impediment to accept his case in the absence of contrary.

14. As per Section 16(c) of the Specific Relief Act the plaintiff must prove that; he is always ready & willing to perform his obligation under the contract. In the instant

suit, plaintiff asserted that; he is always ready and willing to perform his part of contract.

15. Recitals of sale agreement depict that; sale consideration is Rs.9.5 lakhs and advance sale consideration of Rs.9.25 lakhs was paid and sale deed is to be executed as agreed upon. Recitals of Ex.P2 manifest that no obligation is casted upon the plaintiff to perform except paying of balance sale consideration. He stated that with ready balance sale consideration, he requested the defendants on number of occasions to execute sale deed as agreed upon but his request fell on deaf ears, as such he issued legal notice calling upon them to execute the sale deed as agreed upon but to no avail. Inaction of defendants on notice forced him to knock the door of Court of law.

16. Date of sale agreement is 07.12.17. Legal notice was

issued on 18.10.21 and suit was filed on 28.01.22. Period fixed for execution of sale deed is after 14 months of execution of agreement.

17. On oath the plaintiff stated that; he requested the defendants on many occasions to perform their part of contract but they evaded the same on one or other pretext. This evidence is left unchallenged. If the material on record in entirety is taken note of; it can be said that the plaintiff has approached the defendants as well as Court within a reasonable time and also well within the period of limitation. In addition to this in the instant case the plaintiff has paid more than 97% of the sale consideration in advance and the defendants retained the possession of suit property. Further the sale agreement reveals that except payment of balance amount no other obligation is upon the plaintiff, as such there is nothing

for him to perform on his part. The only part performance of the defendants is left out. There are no latches on the part of plaintiff. Thus, the plaintiff proves his ready and willingness to perform his part of contract. This view is further buttressed from the conduct of defendants i.e., non contest of suit.

18. The settled principle of law is that; grant of decree for the specific performance of contract is discretionary and the Court has to consider as to, whether it will be fair, just & equitable to grant a decree for the specific performance of contract. This Court already opined that the plaintiff has proved the execution of sale agreement and also proved that he is ready & willing to perform his part of contract.

19. As per Section 20 of Specific Relief Act the Court may refuse to grant a decree for specific performance; if

the contract gives the plaintiff unfair advantage over the defendants, which they did not foresee or where the circumstances, under which contract was entered makes it inequitable to enforce specific performance. Here, plaintiff will not get unfair advantage if the decree for specific performance is granted, because he has paid adequate amount as earnest money and he has opted for the performance of contract within a reasonable time and there are no latches on his part, as such non performance of contract will cause hardship to the plaintiff. Whereas no such hardship will be caused to the defendants. In the case at hand there are no other attending circumstances, which makes the contract inequitable to enforce specific performance. In the backdrop of discussion *supra* coupled with the absence of contrary the points-1 to 3 are answered in affirmative.

20. Point-4: By virtue of above discussion Court proceeds to pass the following;

ORDER

Suit is decreed with costs.

Defendants are directed to execute the registered sale deed in favour of plaintiff within two months from the date of order.

Draw decree accordingly.

(Dictated to Stenographer directly on computer, typed by her, corrected by and then pronounced in the open Court by me on this the 07.01.23)

sd/-

(A.SAMIULLA)
Senior Civil Judge
Periyapatna.

ANNEXURE

List of witnesses examined on behalf of plaintiff:

Pw.1 : Sri.Suman

List of documents marked on behalf of plaintiff:

Ex.P1 : Original Registered Sale Deed
Ex.P1(a) to (g) : Signatures

Ex.P2 : RTC extract
Ex.P3 : Encumbrance Certificate
Ex.P4 : Legal Notice
Ex.P5 : Postal Receipt
Ex.P6 : Postal Acknowledgement

**List of witnesses examined and list of documents
marked for defendants: Nil.**

sd/-
**Senior Civil Judge
Periyapatna.**