

KAMS610003642021



IN THE COURT OF THE PRL.CIVIL JUDGE AND JMFC.,
AT PERIYAPATNA.

-: P R E S E N T :-

Sri.YOGESHA M.R.,^{BA.LLB.},
PRL.CIVIL JUDGE AND JMFC.,
PERIYAPATNA.

*Dated this the **01st day of APRIL, 2026.***

OS.No.51/2021

PLAINTIFF/S : **1.** Girija, 36 yrs,
W/o late S.K.Harishappa,
2. S.H.Amulya, 13 yrs,
D/o late S.K.Harishappa,
3. S.H.Amoga, 13 yrs,
S/o late S.K.Harishappa,

The petitioner No.2 and 3 are
minors, hence represented by
their mother i.e., plaintiff No.1.

The petitioners are
R/at Shyanuboganahalli Village,
Haranahalli Hobli,
Periyapatna Taluk,
Mysuru District.

(Rep., by Sri.**KKK.**, Adv)

DEFENDANT/S **V/s** : K.P.Mahalingappa, 58 yrs,
S/o late Puttappashetty,
R/at No.3365,
20E Main Road,
Hebbalu 2nd Stage,
Mysuru.
(Rep., by Sri.**SMP.**, Adv)

Date of Institution of the Suit : **06.02.2021**

Nature of Suit : **Specific Performance of
Contract**

Date of Commencement of Evidence : **20.09.2024**

Date on which the Judgment was pronounced : **01.04.2026**

Duration of Suit : **YEARS MONTHS DAYS**
05 01 27

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
PERIYAPATNA.

:- J U D G M E N T :-

The plaintiffs have filed this suit against the defendant for the relief of specific performance of contract in respect of the suit schedule property.

2. The brief facts of the plaintiffs case is as under;

(a). The defendant approached the husband of the plaintiff No.1 and father of the plaintiff No.2 and 3 by name S.K.Harishappa to sell the suit schedule property. The defendant for his legal necessities executed a Registered Agreement of Sale Dated 08.11.2010 for sale consideration of Rs.1,25,000/- in respect of the suit schedule property in favor of the S.K.Harishappa i.e., husband of the plaintiff No.1. The defendant received advance amount of Rs.50,000/- from the S.K.Harishappa and agreed to receive the balance amount of Rs.75,000/- at the time of execution of the Registered Sale Deed.

(b). Thereafter, on 03.02.2011, the defendant received a sum of Rs.20,000/- from the husband of the plaintiff No.1 and agreed to execute the Registered Agreement of Sale by receiving the balance sale consideration of Rs.55,000/- at the time of execution of the Registered Sale Deed. Thereafter, on several times the husband of the plaintiff No.1 has approached the defendant to execute the sale deed by receiving the balance sale consideration.

(c). The husband of the plaintiff No.1 has been ever ready and willing to perform his part of the contract and he is ready with the balance consideration amount. However, the defendant instead of executing the sale deed postponed the same. On 04.03.2020 the plaintiffs issued a legal notice to the defendant and the same was returned on 06.03.2020 with a shara that "Addressee Left". *Hence, this suit.*

3. After institution of the suit, the summons was issued to the defendant. The defendant appeared through his counsel and filed written statements by denying the averments of the plaint and prayed to dismiss the suit with exemplary cost.

4. The sum and substance of written statement of defendant is as under;

(a). The suit schedule property was granted to the defendant from the government as per the official memorandum bearing No.LND.31/77-78 Dated 08.06.1978. Thereafter, as per MR.No.29/34/97-98, the Katha of the suit schedule property was mutated in the name of the defendant. The defendant due to financial constraint obtained a loan from his friend by name S.K.Harishappa and executed Registered Agreement of Sale towards the security to the loan amount. Thereafter, the defendant has paid a sum of Rs.1,21,000/- to the S.K.Harishappa on

10.02.2011. The said S.K.Harishappa died on 08.12.2019. Therefore, the plaintiffs are not having any right over the suit schedule property and the suit is barred by law of limitation. *Hence, prayed to dismiss the suit with exemplary cost.*

5. On the basis of the above pleadings, this court has framed the following issues;

:- I S S U E S :-

- 1. Whether the plaintiffs prove that, the defendant executed Registered Agreement of Sale Dated 08.11.2010 agreeing to sell suit schedule property in favour of the S.K.Harishappa i.e., who is husband of plaintiff No.1 and father of the plaintiff No.2 and 3 for sale consideration of Rs.1,25,000/- on receipt of advance amount of Rs.70,000/- ?*
- 2. Whether the plaintiffs prove that, they have been ready and willing to perform their part of contract ?*

3. Whether the defendant proves that, the suit is barred by law of limitation as alleged in the written statement ?

4. Whether the defendant proves that, he has paid aforesaid sale consideration amount with 3% interest i.e., Rs.1,21,000/- to the said S.K.Harishappa on 10.02.2011 as alleged in the written statement ?

5. Whether the plaintiffs are entitled for the reliefs as claimed in the suit ?

6. What decree or order ?

6. To substantiate their case, the plaintiff No.1 examined herself as PW.1 and adduced as many as 14 documents as per Ex.P1 to Ex.P14 and also examined three more witnesses by name Lakshminarayana, Manjunatha and P.N.Vijayendra as PW.2 to PW.4. On the other hand, the defendant examined himself as DW.1 and adduced as many as 3 documents as per Ex.D1 to Ex.D3.

7. Heard the arguments and perused the materials available on record.

8. On the basis of oral and documentary evidence put forth by the parties to the suit and arguments advanced by both the counsels, this court findings to the above issues are as under;

ISSUE NO.1	:	AFFIRMATIVE
ISSUE NO.2	:	AFFIRMATIVE
ISSUE NO.3	:	NEGATIVE
ISSUE NO.4	:	NEGATIVE
ISSUE NO.5	:	AFFIRMATIVE
ISSUE NO.6	:	As per the final order for the following;

:- R E A S O N S :-

ISSUE No.1, 2 & 4:-

9. As these issues are interrelated to each other, they are taken up together in order to avoid the repetition of facts and for better appreciation of the evidence.

10. As per the plaintiffs case, the defendant for his legal necessities executed a Registered Agreement of Sale Dated 08.11.2010 for sale consideration of Rs.1,25,000/- in respect of the suit schedule property in favor of the

S.K.Harishappa i.e., husband of the plaintiff No.1. The defendant received advance amount of Rs.50,000/- from the S.K.Harishappa and agreed to receive the balance amount of Rs.75,000/- at the time of execution of the Registered Sale Deed. Thereafter, on 03.02.2011, the defendant received a sum of Rs.20,000/- from the husband of the plaintiff No.1 and agreed to execute the Registered Agreement of Sale by receiving the balance sale consideration of Rs.55,000/- at the time of execution of the Registered Sale Deed. Thereafter, on several times the husband of the plaintiff No.1 has approached the defendant to execute the sale deed by receiving the balance sale consideration. However, the defendant instead of executing the sale deed, postponed the same.

11. In order to prove the plaint averments, the plaintiffs adduced as many as 14 documents as per Ex.P1 to P14. Ex.P1 Registered Agreement of Sale Dated 08.11.2010;

Ex.P1(a) Signature of the S.K.Harishappa; Ex.P1(b) Signature of the Lakshminarayana; Ex.P1(c) Signature of the defendant; Ex.P1(d) Signature of the P.N.Vijayendra; Ex.P2 Legal Notice Dated 04.03.2020; Ex.P3 Postal Receipt; Ex.P4 Unserved RPAD cover; Ex.P5 Death certificate of S.K.Harishappa; Ex.P6 RTC Extract in respect of Sy.No.30/106; Ex.P7 RTC Extract in respect of Sy.No.30/106; Ex.P8 Surviving Family Certificate; Ex.P9 to 11 Notarized copy of Aadhar Cards of plaintiffs; Ex.P12 Notarized copy of Aadhar Card of S.K.Harishappa; Ex.P13 Consideration Receipt Dated 03.02.2011; Ex.P13(a) Signature of the Lakshminarayana; Ex.P13(b) Signature of the defendant; Ex.P13(c) Signature of the Manjunatha; Ex.P13(d) Signature of the P.N.Vijayendra; Ex.P14 Depositions of the defendant in OS.NO.183/2023.

12. On the other hand, the defendant contended that, the suit schedule property was granted to the

defendant from the government as per the official memorandum bearing No.LND.31/77-78 Dated 08.06.1978. Thereafter, as per MR.No.29/34/97-98, the Katha of the suit schedule property was mutated in the name of the defendant. The defendant due to financial constraint obtained a loan from his friend by name S.K.Harishappa and executed Registered Agreement of Sale towards the security to the loan amount. Thereafter, the defendant has paid a sum of Rs.1,21,000/- to the S.K.Harishappa on 10.02.2011. The said S.K.Harishappa died on 08.12.2019. Therefore, the plaintiffs are not having any right over the suit schedule property and the suit is barred by law of limitation.

13. The defendant in support of his contentions adduced as many as 3 documents as per Ex.D1 to D3. Ex.D1 Certified copy of plaint in OS.No.183/2023; Ex.D2 Certified copy of Grant certificate; Ex.D3 Certified copy of RTC Extract in respect of Sy.No.30.

14. The Ex.D2 is the Certified copy of the Grant certificate Dated 24.07.1978. As per the Ex.D2, the suit schedule property was granted to the defendant from the Government. In the said manner, the defendant is the absolute owner of the suit schedule property.

15. The plaintiffs have produced the Registered Agreement of Sale Dated 08.11.2010 i.e., Ex.P1. On perusal of the said Registered Agreement of Sale, the defendant had executed a Registered Agreement of Sale in favour of the S.K.Harishappa i.e., husband of the plaintiff No.1 for a sale consideration of Rs.1,25,000/-. The Ex.P1 was duly registered before the office of the Sub-Registrar, Periyapatna Taluk under Book No.1, Document No.PYP-1-06453-2010-11, CD.No.PYPD78, Dated 08.11.2010.

16. It is also evident from the Ex.P1 that, the defendant has received a sum of Rs.50,000/- from the

husband of the plaintiff No.1 towards advance sale consideration. In this regard, one of the witness to the Ex.P1 by name Lakshminarayana examined as PW.2 and he identified his signature as Ex.P1(b) and identified the signature of the said H.K.Harishappa as Ex.P1(a) and signature of defendant as Ex.P1(c).

17. At this point, it is relevant to extract some portion of the cross-examination of the DW1. The DW.1 in his cross examination deposed that;

"ನಿಪಿ-1 ಮತ್ತು 13 ಕ್ಕೆ ನೀವು ಸಹಿ ಮಾಡಿರುತ್ತೀರಾ
ಎಂದರೆ ಸರಿ"

"ನಿಪಿ-1 ನೀವು ಬರೆದುಕೊಡುವಾಗ ದಾವಾ
ಸ.ನಂ.30/106 ಎಂದು ಇತ್ತು ಎಂದರೆ ಸರಿ"

.....ಎಂದು ನುಡಿಯುತ್ತಾರೆ

18. The DW.1 admitted his signatures in the Ex.P1 and P13. The Ex.P13 is the Consideration receipt executed by the defendant in favour of the husband of the plaintiff No.1 thereby the defendant further received a sum of

Rs.20,000/- and agreed to receive the balance sale consideration at the time of execution of the Sale Deed. In this regard, one of the witness by name Manjunatha examined as PW.3 and supported the plaint averments. Further, the defendant himself admitted his signature on Ex.P13.

19. The contentions of the defendant is that, he borrowed loan from the said S.K.Harishappa and executed the Ex.P1 towards security to the loan amount and on 10.02.2011, he paid a sum of Rs.1,21,000/- to the S.K.Harishappa. In this regard, the defendant has not adduced any documents from his side to prove that, he has repaid a sum of Rs.1,21,000/- to the husband of the plaintiff No.1.

20. Further, the Deed writer by name P.N.Vijayendra examined himself as PW.4 and supported

the plaint averments and deposed that, the husband of the plaintiff No.1 and the defendant entered into agreement of sale in respect of the suit schedule property on 08.11.2010. Even though the learned counsel for the defendant cross examined the PW.1 to 4 at length, nothing worth has been elucidated in favour of the defendant.

21. Even though the defendant admitted his signature on the Ex.P1, he contended that, he has repaid the loan amount to the husband of the plaintiff No.1. The plaintiff has adduced the original Agreement of Sale as per Ex.P1. Ex.P1 is a registered instrument and executed before the Registering Authority. Ex.P1 is registered before the Sub- Registrar, who is a Public Officer. The Ex.P1 contains signatures, photos and also thumb impression of defendant. This Agreement of Sale is registered before the Sub-Registrar as per the provisions of Registration Act. Further, the DW.1 admitted his signatures on the Ex.P1 & 13, which

itself indicates that, he received a sum of Rs.70,000/- towards sale consideration amount.

22. This court has relied on decision of the Hon'ble Apex court in respect of presumption of registered document reported in AIR 2006 SC 3608 between Prem Singh and Ors., V/S Birbal and ors. The Hon'ble Apex court held that;

“There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.”

23. In view of provision of law laid down by the Hon'ble Apex court in the above decision, the Ex.P1 is prima-facie evidence for execution of the Registered Agreement of Sale. Further, Ex.P1 and 13 also discloses that, the defendant has received a sum of Rs.70,000/- from

the husband of the plaintiff No.1. When the plaintiffs have proved the photo and signature of the defendant on Ex.P1, it could be said that, the contents therein also stands proved. When the contents said to be proved, consideration fixed for the sale agreement is also proved.

24. As per the Ex.P2, the plaintiffs issued the Legal Notice Dated 04.03.2020 to the defendant to calling upon him to execute the Registered Sale Deed in respect of the suit schedule property. The Ex.P3 is the Postal receipt for having sent the same to the defendant and Ex.P4 is the Unserved RPAD Postal cover, which was returned with a shara that "Addressee Left".

25. As per Ex.P1 & 13, the husband of the plaintiff No.1 has paid the major portion of the sale consideration amount i.e.,Rs.70,000/- and undertaken to pay the remaining sale consideration amount of Rs.55,000/- at the

time of execution of the Registered Sale Deed. Therefore, the plaintiffs have proved their readiness and willingness to perform their part of obligations.

26. The Ex.P6 & 7 are the RTC Extract for the year 2009-10 and 2020-21, which is standing in the name of the defendant. Further, the plaintiffs adduced the Death certificate of the S.K.Harishappa as per Ex.P5. The Ex.P8 is the family surviving certificate and Ex.P9 to 11 are the Notarized copy of the Aadhar card of the plaintiffs, which shows that, the plaintiffs are the Class I Legal Heirs of the deceased S.K.Harishappa.

27. Therefore, the oral and documentary evidence adduced by the plaintiffs is more probable than the contentions of the defendant. Since, there is no material to believe the contentions of the defendant, this court inevitably come to conclusion that, the plaintiffs proved

their case in respect of Ex.P1 and also proved their readiness and willingness to perform their part of obligation. Hence, this court answered the Issue No.1 and 2 in the **Affirmative** and Issue No.4 in the **Negative**.

ISSUE NO.3 & 5:-

28. At this stage, it is relevant to find out that, whether the time is essence of contract or not. At this stage, it is relevant to extract some portion of page No.2 of the Ex.P1.

"ಉಳಿಕೆ ಮೊಬಲಗು ಎಪ್ಪತ್ತೈದು ಸಾವಿರ (75,000) ರೂಪಾಯಿಗಳನ್ನು ಈ ಲಾಗಾಯ್ತು ಆರು(6) ತಿಂಗಳ ಮೇಲ್ಪಟ್ಟು ಯಾವುದೇ ಕಾಲದಲ್ಲಿ ಆಗಲಿ 1ನೇ ಪಾರ್ಟಿಯ ಕರೆ ಅಥವಾ ಸೂಚನೆ ಕೊಟ್ಟಾಗ ಆ ಸೂಚನೆಗೆ ಮನ್ನಣೆ ಕೊಟ್ಟು ವಿಧಾಯಕವಾದ ಕಾಗದದಲ್ಲಿ ಕ್ರಯ ಪತ್ರವನ್ನು 1ನೇ ಪಾರ್ಟಿಯ ಹೆಸರಿಗಾಗಲೀ ಅಥವಾ ಅವರು ಆದೇಶ ಕೊಡುವ ಮತ್ಯಾರ ಹೆಸರಿಗಾಗಲೀ ಕ್ರಯ ಪತ್ರವನ್ನು ಬರೆಸಿ,
....."

29. On plain reading of the above portion of the Ex.P1, it is clear that the time is not the essence of the contract. A suit for specific performance of contract can only be founded on a contract. The Article 54 of the Limitation Act, 1963, prescribes the period of limitation for filing a suit for specific performance as three (3) years and said three (3) years time would begin to run as indicated in column No.3.

<u>Description of suit</u>	<u>Period of limitation</u>	<u>Time from which period begins to run</u>
54. For specific performance of a contract.	Three years	The date is fixed for performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

30. A plain reading of the above provision would indicate that a suit for specific performance has to be filed within three (3) years from the date fixed for the

performance and if no such date is fixed, when the plaintiff has notice that performance is refused. Where there is no date stipulated for performance and performance has been denied by the defendant, then question that would arise as to when limitation starts. It would commence from the date plaintiff had notice of the performance having been refused.

31. The limitation period to file a suit for specific performance of the contract commence immediately after service of Legal Notice Dated 04.03.2020 and the suit has to be filed within three years from 04.03.2020. The present suit was filed on 06.02.2021. Hence, the suit is within the period of limitation and the same is not barred by the law of the limitation.

32. The plaintiffs have clearly narrated and also got produced the notice demanding the defendant to execute the sale deed. Admittedly, it goes to show that, the plaintiffs

have been ready and willing to perform their part of obligation, but it was the defendant who is denying to execute the Sale Deed.

33. Therefore, taking into consideration, this court come the conclusion that, the plaintiffs have proved that, they have been ready and willing to perform their part of contract and they have filed the suit well within the stipulated period of limitation. Hence, the plaintiffs are entitle for the relief of specific performance of contract as sought for. *Hence, this court answered the Issue No.3 in the **Negative** and Issue No.5 in the **Affirmative**.*

ISSUE No.6 :-

34. For the reasons discussed above, this court proceed to pass the following;

ORDER

The suit of the plaintiffs is decreed with cost for the relief of specific performance of contract on the following terms;

1) The plaintiffs shall pay the balance sale consideration of Rs.55,000/- to defendant within two months.

2) The defendant shall execute the Sale Deed within two months from the date of receipt of the balance sale consideration.

Draw decree accordingly.

*(Dictated to the Stenographer directly on computer, typed and computerized by him, corrected and then pronounced by me, in the Open Court on this the **01st day of APRIL, 2026.**)*

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
PERIYAPATNA.

:- ANNEXURES :-**List Of Witnesses Examined For The Plaintiffs:**

PW.1	:	GIRIJA
PW.2	:	LAKSHMINARAYANA
PW.3	:	MANJUNATHA
PW.4	:	P.N.VIJAYENDRA

List Of Documents Marked For The Plaintiffs:

Ex.P1	:	Registered Agreement of Sale Dated 08.11.2010
Ex.P1(a)	:	Signature of the S.K.Harishappa
Ex.P1(b)	:	Signature of the Lakshminarayana
Ex.P1(c)	:	Signature of the defendant
Ex.P1(d)	:	Signature of the P.N.Vijayendra
Ex.P2	:	Legal Notice Dated 04.03.2020
Ex.P3	:	Postal Receipt
Ex.P4	:	Unserved RPAD cover
Ex.P5	:	Death certificate of S.K.Harishappa
Ex.P6	:	RTC Extract in respect of Sy.No.30/106
Ex.P7	:	RTC Extract in respect of Sy.No.30/106
Ex.P8	:	Surviving Family Member Certificate
Ex.P9to11	:	Notarized copy of Aadhar Cards of plaintiffs
Ex.P12	:	Notarized copy of Aadhar Card of

S.K.Harishappa

- Ex.P13 : Consideration Receipt Dated 03.02.2011
Ex.P13(a) : Signature of the Lakshminarayana
Ex.P13(b) : Signature of the defendant
Ex.P13(c) : Signature of the Manjunatha
Ex.P13(d) : Signature of the P.N.Vijayendra
Ex.P14 : Depositions of the defendant in
OS.NO.183/2023

List Of Witnesses Examined For The Defendant:

DW.1 : K.P.MAHALINGAPPA

List Of Documents Marked For The Defendant:

- Ex.D1 : Certified copy of plaint in OS.No.183/2023
Ex.D2 : Certified copy of Grant certificate
Ex.D3 : Certified copy of RTC Extract in respect of
Sy.No.30.

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
PERIYAPATNA.