

KAMS610012882018



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 **08th day of APRIL, 2026.***

OS.No.172/2018

PLAINTIFF/S : Thimmegowda,
S/o Kalegowda,
Major,
R/at Thirumalapura Village,
Periyapatna Taluk.
(Rep., by Sri.**NK.**, Adv)

V/s

DEFENDANT/S :**1.** Shivanna,
S/o Kariyappa,
Major,

2. Devamma,
W/o Shivanna,
Major,

3. Ganesha,
S/o Shivanna,
Major,

4. Jyothi,
D/o Shivanna,
Major,

The defendants are
R/at M.Hosahalli Village,
Haranahalli Hobli,
Periyapatna Taluk.
(Dft-1 to 4 Rep., by Sri.**DPL.**, Adv)

Date of Institution of the Suit : **13.06.2018**

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

Date of Commencement of
Evidence : **17.07.2023**

Date on which the Judgment
was pronounced : **08.04.2026**

Duration of Suit : **YEARS MONTHS DAYS**
07 09 27

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

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

The plaintiff has filed this suit against the defendants for the relief of specific performance of contract in respect of the suit schedule property.

2. The brief facts of the plaintiff's case is as under;

(a). The defendants approached the plaintiff to sell the suit schedule property. The defendants for their legal necessities executed a Registered Agreement of Sale Dated 24.04.2013 in respect of the suit schedule property for sale consideration of Rs.1,00,000/- in favor of the plaintiff. The defendants received advance amount of Rs.95,000/- from the plaintiff and agreed to receive the balance amount of the Rs.5,000/- in presence of Sub-Regisrar, at the time of execution of the Registered Sale Deed.

(b). After one year of the execution of the said registered sale agreement, on several times the plaintiff has approached the defendants to execute the sale deed by

receiving the balance sale consideration. The plaintiff has been ever ready and willing to perform his part of the contract and he is ready with the balance consideration amount. However, the defendants instead of executing the sale deed, postponed to execute the same. On 23.04.2018 the plaintiff issued a legal notice to the defendants and the same was served to the defendant No.1 to 3, however the notice issued to the defendant No.4 was returned with a shara that "Residing out of station". Even after the receipt of the legal notice, the defendants not executed the Sale Deed in favour of the plaintiff. *Hence, this suit.*

3. After institution of the suit, the summons were issued to the defendants. The defendant No.1 to 4 appeared through their counsel and defendant No.1 & 3 filed written statements by denying the plaint averments. The defendant No.2 and 4 filed adoption memo and adopted the written statement filed by the defendant No.1 & 3 from their side.

4. The sum and substance of written statement of defendant No.1 to 4 are as under ;

(a). The defendants due to financial constraint executed Registered Agreement of Sale Dated 27.04.2011 in favour of the plaintiff. Thereafter, the defendants by payment of the entire sale consideration amount to the plaintiff, executed Registered Cancellation of the Agreement on 24.04.2013 and the same was registered on 25.04.2013. In the said manner, except the aforesaid transaction, the defendants have not executed any Agreement of Sale in favour of the plaintiff and also not received any sale consideration amount. In this regard, on 05.03.2018 the defendants issued Legal Notice to the plaintiff. Therefore, the plaintiff is not having any right over the suit schedule property. *Hence, prayed for dismissal of the suit.*

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

:- I S S U E S :-

- 1. Whether the plaintiff proves that, the defendants have agreed to sell the suit schedule property for Rs.1,00,000/- as per the Registered Sale Agreement Dated 24.04.2013 ?*
- 2. Whether the plaintiff proves that, the defendants have received advance amount of Rs.95,000/- by executing the Registered Sale Agreement and agreed to execute the Registered Sale Deed by receiving balance consideration amount of Rs.5,000/- as contended in para No.2 of the plaint ?*
- 3. Whether the plaintiff has been ever ready and willing to perform his part of contract ?*
- 4. Whether the defendants prove that, they have executed the Registered Agreement of Sale dated 27.04.2011 in respect of the money transaction and accordingly the agreement is been canceled as per the agreement dated 25.04.2013 as contended in para No.11 of the written statement?*
- 5. Whether the defendants prove that, the plaintiff has created the agreement of sale dated 24.04.2013 ?*

6. Whether the plaintiff is entitle for the relief of a specific performance of contract as sought for ?

7. What order or decree ?

6. To substantiate their case, the plaintiff examined himself as PW.1 and adduced as many as 8 documents as per Ex.P1 to Ex.P8 and also examined two more witnesses by name Mahadevappa and P.N.Vijayendra as PW.2 & PW.3. On the other hand, the defendant No.3 examined himself as DW.1 and adduced as many as 14 documents as per Ex.D1 to Ex.D14.

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 : **AFFIRMATIVE**
ISSUE NO.4 : **AFFIRMATIVE**
ISSUE NO.5 : **NEGATIVE**
ISSUE NO.6 : **AFFIRMATIVE**
ISSUE NO.7 : As per the final order
for the following;

:- R E A S O N S :-

ISSUE No.1 TO 5 :-

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 plaintiff's case, the defendants approached the plaintiff to sell the suit schedule property. The defendants for their legal necessities executed a Registered Agreement of Sale Dated 24.04.2013 in respect of the suit schedule property for sale consideration of

Rs.1,00,000/- in favor of the plaintiff. The defendants received advance amount of Rs.95,000/- from the plaintiff and agreed to receive the balance amount of the Rs.5,000/- in presence of Sub-Registrar, at the time of execution of the Registered Sale Deed. After one year of the execution of the said registered sale agreement, on several times the plaintiff has approached the defendants to execute the sale deed by receiving the balance sale consideration. The plaintiff has been ever ready and willing to perform his part of the contract and he is ready with the balance consideration amount. However, the defendants instead of executing the sale deed, postponed to execute the same. On 23.04.2018 the plaintiff issued a legal notice to the defendants and the same was served to the defendant No.1 to 3, however the notice issued to the defendant No.4 was returned with a shara that "Residing out of station". Even after the receipt of

the legal notice, the defendants not executed the Sale Deed in favour of the plaintiff.

11. In order to prove the plaint averments, the plaintiff examined himself as PW.1 and adduced as many as 8 documents as per Ex.P1 to P8. Ex.P1 Registered Agreement of Sale Dated 24.04.2013; Ex.P1(a) Signature of Mahadevappa; Ex.P1(b) Signatures of plaintiff; Ex.P1(c) Signatures of defendant No.3; Ex.P1(d) Signature of defendant No.4; Ex.P1(e) Signature of P.N.Vijayendra; Ex.P1(f) to 1(i) Photos of defendant No.1 to 4; Ex.P2 Legal Notice Dated 23.04.2018; Ex.P3 to 5 Three Postal Acknowledgment Due Card; Ex.P6 Unserved RPAD cover; Ex.P7 RTC Extract in respect of Sy.No.66/P13; Ex.P8 Commissioner Report Dated 18.07.2023 in OS.No.337/2018.

12. On the other hand, the defendants contended that, the defendants due to financial constraint executed

Registered Agreement of Sale Dated 27.04.2011 in favour of the plaintiff. Thereafter, the defendants by payment of the entire sale consideration amount to the plaintiff, executed Registered Cancellation of the Agreement on 24.04.2013 and the same was registered on 25.04.2013. In the said manner, except the aforesaid transaction, the defendants have not executed any Agreement of Sale in favour of the plaintiff and also not received any sale consideration amount. In this regard, on 05.03.2018 the defendants issued Legal Notice to the plaintiff. Therefore, the plaintiff is not having any right over the suit schedule property.

13. The defendants in support of their contentions adduced as many as 14 documents as per Ex.D1 to D14. Ex.D1 Certified copy of Registered Cancellation of Agreement of Sale Dated 24.04.2013; Ex.D2 Certified copy of Mortgage Deed Dated 24.04.2013; Ex.D3 Certified copy of Registered Agreement of Sale Dated 27.04.2011; Ex.D4 Legal Notice

Dated 05.03.2018; Ex.D5 to 7 Three postal receipts; Ex.D8 Unserved RPAD Cover; Ex.D9 & 10 Two Postal Acknowledgment Due Card; Ex.D11 Legal Notice Dated 23.04.2018; Ex.D12 Reply Notice Dated 03.05.2018; Ex.D13 RTC Extract in respect of Sy.No.66; Ex.D14 MR.No.H11/2017-18.

14. The plaintiff has produced the Registered Agreement of Sale Dated 24.04.2013 i.e., Ex.P1. On perusal of the said Registered Agreement of Sale, the defendant No.1 to 4 have executed a Registered Agreement of Sale in favour of the plaintiff for a sale consideration of Rs.1,00,000/-. The Ex.P1 was duly registered before the office of the Sub-Registrar, Periyapatna Taluk under Book No.1, Document No.PYP-1-00633-2013-14, CD.No.PYPD113, Dated 25.04.2013.

15. It is also evident from the Ex.P1 that, the defendant No.1 to 4 have received a sum of Rs.95,000/- from the plaintiff towards advance sale consideration. In this regard, one of the witness to the Ex.P1 by name H.S.Mahadevappa examined as PW.2 and he identified his signature as Ex.P1(a) and also identified the signature of the plaintiff as Ex.P1(b) and signatures of defendant No.3 and 4 as Ex.P1(c) and P1(d).

16. 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;

7. ಸಾಕ್ಷಿಗೆ ಈ ದಿನ ನಿಪಿ.1 ರಲ್ಲಿ ಪೋಟೋಗಳನ್ನು ತೋರಿಸಲಾಗಿ, ಅವುಗಳನ್ನು ನನ್ನ ತಂದೆ, ತಾಯಿ ಮತ್ತು ಅಕ್ಕ ರವರು ಎಂದು ಗುರುತಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಪೋಟೋಗಳನ್ನು ನಿಪಿ.1(ಎಫ್) ರಿಂದ (ಐ) ವರೆಗೆ ಗುರುತಿಸಲಾಯಿತು .

.....ಎಂದು ನುಡಿಯುತ್ತಾರೆ

17. The DW.1 admitted the photos of the defendant No.1 to 4 in the Sale Agreement as per Ex.P1(f) to 1(i). The said photos were taken at the time of the registration of the Ex.P1. The DW.1 in his cross examination further deposed that "ನಿಜಿ.1 ಕರಾರು ಪತ್ರ ಂಪ್ಪು ವಿಸ್ತೀರ್ಣಕ್ಕೆ ಹಾಕಿದ್ಲಾರೆ ಂದು ನನಗೆ ಗೂತ್ತಿಲ್ಲ. ಀ ದಾವೆಯನ್ನು ಯಾವ ಕಾರಣಕ್ಕೆ ಹೂಡಿದ್ಲಾರೆ ಂದು ನನಗೆ ಗೂತ್ತಿಲ್ಲ." The DW.1 in his cross examination deposed that, the measurement mentioned in the Ex.P1 is not known to him and also the reasons for filing the suit by the plaintiff is not known to him.

18. The Ex.D3 is the Registered Agreement of Sale Dated 27.04.2011 in respect of the land bearing Sy.No.66/P13 measuring 2 acre 19 guntas executed by the defendant No.1 and 2 in favour of the plaintiff for a sale consideration of the Rs.3,50,000/-. The Ex.D1 is the Registered Cancellation of the Agreement of Sale Dated 24.04.2013 executed by the plaintiff in favour of the

defendant No.1 and 2 in respect of the land bearing Sy.No.66/P13 measuring 2 acre 19 guntas. The plaintiff also not disputed the Ex.D1 and D3.

19. The contentions of the defendants is that, they have canceled the Agreement of Sale on 24.04.2013, but the plaintiff by colluding with revenue officials got created the Ex.P1. It is worth to note that, in the Ex.D3 the agreement was entered in respect of the land bearing Sy.No.66/P13 to an extent of 2 acre 19 guntas. But, in the Ex.P1 the agreement was entered only in respect of the 1 acre. Further, the defendant No.3 and 4 were not parties to the Ex.D1 and D3. Subsequently, the defendant No.1 to 4 were made as parties to the Ex.P1. The parties and measurement of the property mentioned in the Ex.P1 is slightly different compared to the Ex.D1 and D3.

20. In this regard Deed writer by name P.N.Vijayendra examined himself as PW.3 and supported the plaint averments and deposed that, the plaintiff and the defendants have entered into agreement of sale in respect of the suit schedule property on 24.04.2013. Even though the learned counsel for the defendants cross examined the PW.1 to 3 at length, nothing worth has been elucidated in favour of the defendants.

21. Even though the defendants admitted their photos in the Ex.P1, denied the execution of the agreement of sale(Ex.P1), which was entered into between the plaintiff and defendants. It was apparent that the defendants were trying to get out of the situation, when confronted with their signatures on the Ex.P1 in order to defeat the claim of the plaintiff.

22. The defendants have taken a contention that, they have not received sale consideration of Rs.95,000/- from the plaintiff and also not executed Registered Sale Agreement in favour of the plaintiff. The plaintiff has adduced the original Agreement of Sale as per Ex.P1. The Ex.P1 is a registered instrument and executed before the Registering Authority. The Ex.P1 contained signatures, photo and also thumb impression of defendants. This Agreement of Sale is registered before the Sub-Registrar as per the provisions of Registration Act.

23. According to the defendants, they have executed the Cancellation of the Agreement of Sale and not executed Ex.P1. The contentions of defendants cannot be accepted in the case because, Ex.P1 was executed before the Public Officer/ Sub-Registrar and he had discharged his duty when it was tendered for registration.

24. It is relevant to note the section 114(e) of Indian Evidence Act. As per Section 114(e), the judicial and official acts have regularly been performed by the Public Officer. Presumption has to be drawn that Sub-Registrar has performed his official act of registering Ex.P1. This court has to presume that regular course of business have been performed by the Public Officer in discharge of his official duty.

25. The instrument is presumed to be validly executed, which means it is prima facie valid in law. This presumption is rebuttable, meaning that the party contesting the validity of the document must provide evidence to the contrary. There is also presumption that the person has read the document unless there is a proof of force or fraud. Furthermore, section 92 of Indian Evidence Act prohibits the admission of oral evidence to contradict, vary, add to, or subtract from the terms of a written

document, as long as the document has been duly executed and registered.

26. This court has relied on decision of the Hon'ble Supreme court of India 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.”

27. 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 also discloses that, the defendants have received a sum of Rs.95,000/- from the

plaintiff. When the plaintiff has proved the photo and signatures of the defendants 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.

28. As per the Ex.P2, the plaintiff issued the Legal Notice Dated 23.04.2018 to the defendants to calling upon them to execute the Registered Sale Deed in respect of the suit schedule property. The Ex.P3 to 5 are the Postal Acknowledgment Due Card for having served the same to the defendant No.1 to 3 and Ex.P6 is the Unserved RPAD Postal cover.

29. It is pertinent to note that, as per Ex.P1, the plaintiff has paid the major portion of the sale consideration amount i.e., Rs.95,000/- and undertaken to pay the

remaining sale consideration amount of Rs.5,000/- at the time of execution of the Registered Sale Deed.

30. Therefore, the plaintiff has proved his readiness and willingness to perform his part of obligations. The Ex.P7 is the RTC Extract for the year 2017-18, which is standing in the name of the defendant No.1 and 2 jointly. At present, the suit schedule property is standing in the name of the Devamma i.e., defendant No.2 as per Ex.D13.

31. For the reasons discussed above, it is clear that, at the first instance the defendant No.1 and 2 have executed a Registered Agreement of Sale Dated 27.04.2011(Ex.D3) in favour of the plaintiff in respect of the land bearing Sy.No.66/P13 measuring 2 acre 19 guntas. Thereafter, the plaintiff executed a Registered Cancellation of Agreement of Sale Dated 24.04.2013 in favour of the

defendant No.1 and 2 as per the Ex.D1 by canceling the Ex.D3.

32. On the same day itself, the defendant No.1 to 4 have executed a Registered Agreement of Sale Dated 24.04.2013 in favour of the plaintiff in respect of the suit schedule property (Sy.No.66/P13 measuring 1 acre) for a sale consideration of Rs.1,00,000/- and the defendant No.1 to 4 also received a sum of Rs.95,000/- towards advance sale consideration.

33. The defendant No.1 and 2 were being the parties to the Ex.D1 and Ex.D3, they have not lead any evidence from their side. Even though the defendant No.3 lead his evidence, but he is not a party to the Ex.D1 and D3. Moreover, the defendant No.1 to 4 alleged that, they have not executed Sale Agreement, but plaintiff created the

same. But, in this regard no material documents available on record to prove the contentions of the defendants.

34. Therefore, the oral and documentary evidence adduced by the plaintiff is more probable than the contentions of the defendants. Since, there is no material to believe the contentions of the defendants, this court inevitably come to conclusion that, the plaintiff proved his case in respect of Ex.P1 and also proved his readiness and willingness to perform his part of obligation. *Hence, this court answered the Issue No.1 to 4 in the **Affirmative** and Issue No.5 in the **Negative**.*

ISSUE NO.6:-

35. 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 ಐದು ಸಾವಿರ(5,000-00)
 ರೂಪಾಯಿಗಳನ್ನು ಈ ಲಾಗಾಯ್ತು
 ವ್ಯವಸಾಯೇತರ ನಿವೇಶನವಾಗಿ ಪರಿವರ್ತಿಸಿದ
 ನಂತರ ಪಂಚಾಯ್ತಿ ದಾಖಲೆ ಪಡೆದು ಒಂದು
 ವರ್ಷ(1) ಮೇಲ್ಪಟ್ಟು ದುರಸ್ತಿಯಾದ ನಂತರ
 ಆಸ್ತಿಯ ಸರ್ವೇ ನಂಬರ್ ನ ಯಾವ ಪೋಡು
 ಬರುತ್ತದೆ ಅದನ್ನು ಕ್ರಯ ಪತ್ರದಲ್ಲಿ ನಮೂದಿಸಿ
 ನೊಂದಣಿ ಮಾಡಿಸಿಕೊಳ್ಳುವುದು.

....."

36. 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.

37. 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.

38. The limitation period to file a suit for specific performance of the contract commence immediately after service of Legal Notice Dated 23.04.2018 and the suit has to be filed within three years from 23.04.2018. The present suit was filed on 13.06.2018. Hence, the suit is within the period of limitation and the same is not barred by the law of the limitation.

39. The plaintiff has clearly narrated and also got produced the notice demanding the defendants to execute the sale deed. Admittedly, it goes to show that, the plaintiff has been ready and willing to perform his part of obligation, but it was the defendants who were denying to execute the Sale Deed.

40. Therefore, taking into consideration, this court come the conclusion that, the plaintiff has proved that, he has been ready and willing to perform his part of contract and he has filed the suit well within the stipulated period of limitation. Hence, the plaintiff is entitle for the relief of specific performance of contract as sought for. *Hence, this court answered the Issue No.6 in the **Affirmative.***

ISSUE No.7 :-

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

ORDER

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

1) The Plaintiff shall pay the balance sale consideration of Rs.5,000/-(Rupees Five Thousand only) to defendants within two months.

2) The Defendants 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 **08th day of APRIL, 2026.**)*

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

-: A N N E X U R E S :-**List Of Witnesses Examined For The Plaintiff:**

PW.1 : THIMMEGOWDA
PW.2 : MAHADEVA
PW.3 : P.N.VIJAYENDRA

List Of Documents Marked For The Plaintiff:

Ex.P1 : Registered Agreement of Sale Dated
24.04.2013
Ex.P1(a) : Signature of Mahadevappa
Ex.P1(b) : Signatures of plaintiff
Ex.P1(c) : Signatures of defendant No.3
Ex.P1(d) : Signature of defendant No.4
Ex.P1(e) : Signature of P.N.Vijayendra
Ex.P1(f)to1(i): Photos of defendant No.1 to 4
Ex.P2 : Legal Notice Dated 23.04.2018
Ex.P3 to 5 : Three Postal Acknowledgment Due Card
Ex.P6 : Unserved RPAD cover
Ex.P7 : RTC Extract in respect of Sy.No.66/P13
Ex.P8 : Commissioner Report Dated 18.07.2023 in
OS.No.337/2018.

List Of Witnesses Examined For The Defendants:

DW.1 : GANESHA

List Of Documents Marked For The Defendants:

- Ex.D1 : Certified copy of Registered Cancellation of Agreement of Sale Dated 24.04.2013
- Ex.D2 : Certified copy of Mortgage Deed Dated 24.04.2013
- Ex.D3 : Certified copy of Registered Agreement of Sale Dated 27.04.2011
- Ex.D4 : Legal Notice Dated 05.03.2018
- Ex.D5to7 : Three postal receipts
- Ex.D8 : Unserved RPAD Cover
- Ex.D9&10 : Two Postal Acknowledgment Due Card
- Ex.D11 : Legal Notice Dated 23.04.2018
- Ex.D12 : Reply Notice Dated 03.05.2018
- Ex.D13 : RTC Extract in respect of Sy.No.66
- Ex.D14 : MR.No.H11/2017-18

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